
Appeal Decision

Site visit made on 22 October 2019

by Rajeevan Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2019

Appeal Ref: APP/D3640/W/19/3224104

1 Diamond Hill, Camberley, Surrey GU15 4LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Barry James against the decision of Surrey Heath Borough Council.
 - The application Ref 17/1075, dated 14 November 2017, was refused by notice dated 23 October 2018.
 - The development proposed is demolition of the existing dwelling and garage and erection of two detached houses with integral garages.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's first reason for refusal refers to the National Planning Policy Framework 2018. In February 2019, the latest version of the National Planning Policy Framework (the Framework) was introduced. The appeal was submitted after this date, so both parties have been able to refer to the updated Framework in their submissions. I have therefore used the latest version in my assessment without prejudice to any party.

Main Issues

3. The main issues are the effect of the development on:
 - The character and appearance of the area with particular reference to protected trees on the site;
 - The living conditions for future occupiers of the new dwellings with regard to the provision of private amenity space; and
 - The Thames Basin Heaths Special Protection Area (SPA).

Reasons

Character and appearance - protected trees

4. The application site lies within the Wooded Hills Housing Character Area, as defined within the Western Urban Area Character Supplementary Planning Document, 2012 (WUACSPD). The WUACSPD explains that the Wooded Hills

Character Area is characterised by hilly areas, large irregular plots, winding roads/lanes, heavy vegetation and a scattering of Victorian/Edwardian buildings, and that this area has a semi-rural residential character.

5. A number of mature trees and hedging lie within the site, and a number of trees on the rearmost part of the site adjacent to the A30 London Road are protected by a woodland Tree Preservation Order (TPO). These trees form part of the green tunnel effect on Diamond Ridge and A30 London Road frontages. Collectively, these trees make a substantial and positive contribution to the verdant character and appearance of the area, when viewed from A30 London Road and Diamond Ridge.
6. The evidence submitted, including the Arboricultural and Planning Integration Report¹ (Tree Report) indicate that a number of trees would be removed as part of the new development. The submitted Design and Access statement (D&A) proposes the removal of the Leylandii trees (within the woodland TPO area). It is also stated within the D&A to remove the Sweet Chestnut tree and a Beech tree. The corresponding tree plan submitted also identifies these trees within the woodland TPO area. The D&A also proposes 6/8 new woodland trees between the new house and London Road to compensate for loss of trees, but no specific details of these replacement have been proposed.
7. There is a dispute between the parties whether the Leylandii trees are excluded from the woodland TPO. However, the Planning Practice Guidance (PPG) makes clear that² orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.
8. Paragraph 6.2 of the Tree Report advises that trees to be removed are category C and "should not act as a limitation on the effective use of the site or impose any significant constraints on the layout". This is disputed by the Council who highlight that the 2012 version of the British Standards³, has removed this statement. Therefore, in accordance with the 2012 version of the British Standards category C trees should be presumed retained unless sound reason can be provided for their removal. It is clear that these existing protected trees, due to their overall size and prominent position visible from the road, have a collective amenity value. The Tree Report also advises that the Leylandii trees have life expectancies of between 10 to 20 years, and that the Sweet Chestnut tree and a Beech tree have life expectancy between 20-40 years. Consequently, the removal of these trees would have a harmful effect on the character and appearance of the area.
9. Furthermore, any replacement trees would be likely to take some time to establish, and only limited details have been provided with regards to these replacement with regards to their size and species. As such, at this stage, insufficient evidence has been submitted to demonstrate that any replacement trees would mitigate against the harm identified above.

¹ Dated 20 August 2018.

² Paragraph: 011 Reference ID: 36-011-20140306, Revision date: 06 03 2014.

³ BS5837:2012.

10. The Council further alleges that there will also be pressures to contain or remove vegetation with the TPO area of the site. Whilst I acknowledge the concerns of the Council's Tree Officer, I consider that the position of the new dwellings, in a similar position to the existing dwelling to be demolished, would be set back a sufficient distance away from the woodland TPO area to ensure that it would not have a harmful effect on the protected trees, nor result in pressure for future pruning works. With regards to concerns regarding the loss of trees outside of the area of the woodland TPO, as the site is not within a conservation area, these trees are not protected. Therefore, I find no harm in relation to the loss of these trees. However, lack of harm in these respects do not outweigh the concerns raised above regarding this wider issue.
11. I therefore conclude that the proposed development would harm the character and appearance of the area with particular reference to protected trees on the site. Therefore, the proposal is contrary to Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies, 2012 (CSDMP), which amongst other things states that development will be permitted where it respects and enhances the local, natural or historic character of the environment, and protects trees and other vegetation worthy of retention. The proposal would also conflict with Guiding Principles WH1, WH3 and WH4 of the WUACSPD, which state that proposals which would erode the green tunnel character will be resisted. The proposals would also conflict with paragraph 127 of the Framework, which aims to ensure that developments add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Living conditions for future occupiers of the new dwelling - private amenity space

12. The proposed plans and tree plan submitted shows that the new houses would maintain a sufficient distance from the woodland TPO at the rearmost part of the site. Indeed, the position of the new dwellings would be similar to the existing dwelling to be demolished. Furthermore, the proposed gardens, would be relatively long and would meet the minimum requirements of the residential Design Guide Supplementary Planning Document, 2017 (RDG SPD). As such, I am satisfied that there would be no significant overshadowing of the garden areas from the existing trees. Therefore, I conclude that future occupiers would have sufficient amenity space in accordance with the minimum outdoor amenity space size standards for houses contained in Principle 8.4 of RDG SPD.

The SPA

13. The site is within 5 km of the buffer zone of the SPA, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). The SPA is a network of heathland sites which are designated for their ability to provide a habitat for internationally important bird species.
14. Recent caselaw has established that potential mitigation for SPAs cannot be taken into account when determining whether an Appropriate Assessment (AA) is required but may be considered if an AA has been undertaken and determined that the development would harm the integrity of the designated European sites. The Council state that the Strategic Access Monitoring and Maintenance tariff (SAMM) payment has not been made for this development. However, as I am dismissing for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Other matters

15. Reference is made to another site which is also surrounded by trees, where planning permission has been approved⁴. However, this relates to a different site, and therefore the circumstances are unlikely to be identical to those before me. I also note that the Council state that that site is not subject to any TPO. Therefore, the circumstances are not directly comparable to the case before me. In any case I have considered the proposal on its own merits.

Planning Balance and Conclusions

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. I recognise that there are policies in the development plan that are supportive of the provision of additional housing. Whilst I have found no harm with regards to the living conditions of future occupiers, I have found that the proposal would result in harm to the character and appearance of the area, with particular regard to protected trees. I have identified that the proposed development would be in conflict with saved Policy DM9 of the CSDMP, as well as Guiding Principles WH1, WH3 and WH4 of the WUACSPD (which support the development plan policies). It would therefore be contrary to the relevant policies, and the development plan as a whole.
17. Since the determination of this planning application, the Council have published its Interim Housing Land Supply Paper 2019-2024 which confirms that the Borough has a 5.52 years housing land supply, with a 5% buffer applied. There is no substantive or robust basis to conclude that the Council does not have a deliverable 5 year housing land supply at this particular point in time. Therefore, a presumption in favour of sustainable development does not apply.
18. There are no material considerations of sufficient weight or importance that determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.
19. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR

⁴ At Middleton Road.