



Appeal Decision

Site visit made on 17 July 2019

N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2019

Appeal Ref: APP/Q3630/W/18/3199096

307 Green Lane, Chertsey, Surrey, KT16 9QR.

- 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 Green Lane (Chertsey) Developments Ltd against the decision of Runnymede Borough Council.
 - The application Ref RU.18/0219, dated 10 December 2017, was refused by notice dated 21 March 2018
 - The development proposed is seven chalet bungalows to the rear of 299, 301, 303, 305 and 307 Green Lane Chertsey Surrey KT16 9QR following the demolition of 307 Green Lane.
 - This decision supersedes that issued on 24 October 2018. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - i) The effect of the proposed development on the living conditions of neighbouring residential occupants with particular regard to privacy;
 - ii) The effect on the character and appearance of the area; and
 - iii) The effect on the integrity of the Thames Basin Heath Special Protection Area.

Reasons

Living conditions

3. This residential development would be set on a contained plot surrounded by back gardens of residential properties, served by a new access road from Green Lane.
4. No.303 Green Lane would retain a deep back garden which cuts in to the site. However, the rear elevation of the proposed building at unit 11 would be set a very short distance away from this garden. Unlike unit 12, which sits in a similar position, unit 11 would have vertical windows at first floor level serving habitable rooms which would overlook the garden of No.303 in uncomfortably close proximity. This would result in a material loss of privacy for the existing neighbouring residential occupant.

5. Unit 6 would have 3 west facing dormer windows. However, 2 of these would sit almost directly on the shared boundary with No.9 Gordon Close. These windows would directly overlook the neighbouring garden, also in uncomfortably close proximity, leading to a material loss of privacy. Even if the windows were obscure glazed, which could be required by condition, there would still be a perceived loss of privacy arising from the positioning of these windows.
6. In most cases the new buildings would be set a sufficient distance away from surrounding residential buildings, to avoid harmful overlooking between properties. However, the rear elevations of units 8 and 9 would be set close to the respective rear elevations of number 13 and 15 Gordon Close and would contain first floor windows. Given the limited separation distance, there is the potential for materially harmful levels of interlooking at first floor level, between these properties. Whilst there is currently mature vegetation on the common boundary which might screen the new building and further planting could be secured by condition, this may not remain in place for the lifetime of the development. The siting of units 8 and 9 would therefore result in an unacceptable risk of a future loss of privacy to the existing residential properties along Gordon Close.
7. It is argued that there are no detailed guidelines relating to privacy and separation distances, and that the gardens would all exceed a depth of 10.6 metres. Furthermore, it is also suggested that on other occasions the Council have permitted new residential development with similar relationships. However, these considerations do not justify the proposal, in the face of the harm identified.
8. Whilst concerns are also raised about the bulk and density of the development, the limited height of the proposed buildings means that there would be no overbearing effect on neighbouring residential properties. Furthermore, the gardens would be of a sufficient size to provide sufficient amenity space for future occupants of the development, and there would be no harm in this respect. However, there would be an unacceptable loss of privacy arising from the positioning of windows within plots 6 and 11, as discussed above, and an unacceptable risk of future loss of privacy as a consequence of the siting of units 8 and 9. For these reasons the proposal conflicts with saved policy HO9 of the Runnymede Borough Local Plan Second Alteration 2001 ("Local Plan") which requires, amongst other things, that new housing development provides adequate privacy for existing properties.

Character and Appearance

9. The site is surrounded by residential properties on Green Lane, Gordon Close and Jersey Close. These comprise residential buildings of 1-2 storeys in height, exhibiting varied designs and plot shapes. With the exception of No. 307 Green Lane, which would be replaced by an access road, the site currently appears as a self-contained back-land plot, characterised by heavy vegetation.
10. The chalet bungalow style would broadly follow the prevailing appearance of frontage properties along Green Lane. The limited bulk of each building at first floor level would provide a good level of visual space between each dwelling above ground floor level. Parking and landscaped space would be provided to the front of each building, and a garden extending to around 10 metres in depth would be set to the rear of each property. In consequence, the

development would not appear unduly cramped, providing a reasonable gap to other residential buildings on the site and in the surrounding area. The overall density would be within a broadly similar range to that exhibited by the modern housing along Gordon Close and Jersey Close.

11. The new buildings have been designed to largely align with those facing Green Lane. As they have a broadly similar bulk, scale and height to these existing buildings, they would not appear visually intrusive in glimpsed views from Green Lane, and would be set back a reasonable distance within the site, away from this road. As a consequence of the design approach adopted, overall the development would blend in to the existing varied suburban character exhibited by the three surrounding roads.
12. The removal of No.307 Green Lane would create a gap within a continuous linear frontage of residential dwellings. However, this single gap and access road would be surrounded by a landscaped verge with planting on each side, which would help soften the effect of the additional hardstanding. Each of the properties along Green Lane retain reasonably sized rear gardens. Whilst these are shorter than comparable residential properties along Green Lane to the west, they would be of a similar size to other existing properties along Gordon Close and Jersey Close, and those in the new development proposed.
13. Overall the development of this backland plot could be achieved without any harm to the character and appearance of the area. In this respect, the proposal complies with saved policy H09 of the Runnymede Borough Local Plan Second Alteration 2001 ("Local Plan"), which seeks to ensure, amongst other things, that new development is sensitively designed and does not damage the character and amenity of established residential areas.

Thames Basin Heath Special Protection Area.

14. The appeal site lies within 5km of the Thames Basin Heath Special Protection Area (TBSPA). This area provides a habitat for three internationally important bird species: woodlark, nightjar and Dartford Warbler. These nest on or near the ground and, as a result, are very susceptible to disturbance from informal recreational use, especially walking and dog walking.
15. The proximity to the TBSPA means that there is a reasonable likelihood that occupants of the new dwelling would access it for recreational purposes. This leads to the potential for disturbance to the habitats of birds within the TBSPA. Although this may be minimal in itself, a significant effect would occur, particularly when considered in combination with other new residential development in the surrounding area. In these circumstances, the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations") require that an Appropriate Assessment is carried out. Permission may only be granted after having ascertained that the proposal will not affect the integrity of this European site.
16. Consideration may be given to any conditions or other restrictions which could secure mitigation. The appellant has provided a Unilateral Undertaking which makes provision for a payment towards Strategic Access Management and Monitoring within the TBSPA. However, Natural England, in response to this Appropriate Assessment state that the proposal should also make provision for a Suitable Alternative Natural Greenspace (SANG). This is in line with guidance set out in the Runnymede Borough Council: Thames Basin Heaths Special

Protection Areas Supplementary Planning Guidance (amended November 2009). Whilst this may not have been required on previous schemes, I give significant weight to Natural England's view given its remit on matters relating to habitats sites. Furthermore, the appellant has not contested the need to make provision for SANG as part of this scheme.

17. The submitted UU does not specifically make such provision and the Council have subsequently advised that a SANG could either be provided within the development, or via a payment of money to the Council to obtain consent to utilise part of one of its SANG's as mitigation. In this case the development does not appear to make provision for a SANG so a contribution is necessary.
18. The appellant has requested that the matter is dealt with by a planning condition. My attention is drawn to another appeal decision issued in May 2019 where a planning condition was used to require SANG payments in relation to the TBSPA¹. However, Planning Practice Guidance² makes clear that no payment of money or other consideration can be positively required when granting planning permission. It goes on to state that a condition can be used to require an applicant to enter in to a planning obligation, but this is only in exceptional circumstances where there is evidence that the delivery of the development would otherwise be at serious risk.
19. I do not know the full circumstances behind the Inspectors decision to deal with the matter by planning condition on the Harvest Road scheme, but in this case there is no significant evidence before me to demonstrate that the delivery of the development would be put at serious risk if a condition is not used. Accordingly, the exceptional circumstances test, as set out in Planning Practice Guidance is not met. It follows that the matter should not be dealt with by condition. I note that this was also the conclusion of another planning Inspector in relation to similar issues on the adjacent site, in 2019³.
20. In the absence of any acceptable method of making provision for SANG, there is an unacceptable risk that the proposal would lead to additional recreational disturbance within the TBSPA, harming the habitat of protected birds. The conservation objectives of this European site seek to, amongst other things, protect and conserve the habitat of these birds. The mitigation proposed would be insufficient to address the harm that arises through such disturbance. Consequently, there would be an adverse effect on the integrity of this European site.
21. There are no alternative solutions proposed in respect of this matter. The additional residential units would fulfil a housing demand, being located close to services and public transport links in a built-up area, and in many respects would accord with the National Planning Policy Framework ("the Framework"), along with other policies in the Local Plan cited by the appellant in support of the appeal. These considerations, and the other arguments advanced by the appellants in support of the development weigh significantly in its favour, but do not constitute an imperative reason of overriding public interest.

¹ APP/Q3630/W/18/3219397

² Paragraph: 005 Reference ID: 21a-005-20190723

³ APP/Q3630/W/18/3211421

22. Consequently, the proposal would result in harm to the integrity of the TBSPA. Having regard to the Habitats Regulations, permission must not be granted for the proposal.

Other Matters

23. The background papers refer to previous appeal decisions relating to the land to the rear of 307 Green Lane. The two most recent decisions, which I have before me, were made in 2018 and 2019 respectively.
24. The 2018 decision, which was not part of the high court challenge which led to this redetermination, dismissed an appeal for 6 chalet bungalows and one bungalow on the same site⁴. In that decision the Inspector found that there would be unacceptable harm to the character and appearance of the area, finding that the lack of a street frontage meant that the proposal would appear as backland development which is uncharacteristic of the area. However, in the 2019 decision, the Inspector found that development with a broadly similar layout would not have an adverse effect on the character and appearance of the area. My own approach to character and appearance, as set out above, is consistent with the second appeal decision which is also the most recent.
25. My findings on living conditions differ to that of the previous Inspector in both the 2018 appeal decision discussed above and the quashed appeal decision that led to this redetermination. Whilst the latter decision has no legal effect, it is cited by the appellant. The previous Inspector found that, amongst other things, an increase in overlooking would be unlikely to occur as the existing appeal site is used as a garden. However, in my assessment some of the first-floor windows within the new development, as identified above, would be uncomfortably close to existing residential properties and their gardens. It is clear to me that this would result in materially significant levels of overlooking over and above the existing use of the site as private amenity land. These concerns were clearly raised by the Council when determining the planning application⁵ that led to this appeal and are before me now as Inspector. They must hold significant weight in the overall planning balance.
26. I note that there are objections from interested parties, raising other issues to those cited in my reasoning above. However, these do not materially add to the harm identified.
27. The Council cannot demonstrate a five-year housing land supply. On the evidence before me the current supply is 2.98 years at the most, which represents a significant shortfall, and this has not been disputed by the Council. In this context, having regard to paragraph 11 of the Framework, the policies most important for determining the application are out-of date. The provision of 6 additional dwellings is therefore of particular importance in the planning balance. In this context, the proposal would help to boost the supply of housing, which is an important national planning policy objective. The proposal would also provide good quality living conditions for future residents of the development, and there would be economic benefits including from construction activity.
28. However, the overlooking issues means that, overall, the proposal would fail to create a high standard of amenity for existing users. Because of this, the

⁴ APP/Q3630/W/18/3192868

⁵ Paragraph 6.11 of the officers report.

proposed development would not achieve a well-designed place and I attach significant weight to the harm that would arise, in consequence. Even taking account of the extent of the shortfall in housing land supply, these adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Furthermore, the conclusions of the Appropriate Assessment in relation to habitats sites mean that, having regard to paragraph 177 of the Framework, the presumption in favour of sustainable development would not in any case apply.

29. I note the concerns about the conduct of the Council in handling the planning application that led to this appeal. However, my decision must be taken on the planning merits of the case.

Conclusion

30. Whilst there would be no harm to the character and appearance of the area, there would be unacceptable harm to the living conditions of existing residents and to the TBSPA. The proposal conflicts with the development plan when considered as a whole and there are no other considerations that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR