



Appeal Decision

Site visit made on 17 July 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2019

Appeal Ref: APP/Q3630/W/18/3202330

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.18/0175, dated 10 December 2017, was refused by notice dated 10 May 2018
 - The development proposed is erection of 3. No Chalet Bungalows to the rear of 307, 309 and 311 Green Lane following the demolition of 307 Green Lane.
 - This decision supersedes that issued on 24th 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 effect on
 - i) the character and appearance of the area; and
 - ii) the integrity of the Thames Basin Heath Special Protection Area.

Reasons

Character and Appearance

3. The site is surrounded by residential properties on Green Lane and Gordon 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. There are several mature trees to the rear of the site which give it a particularly verdant character.
4. The chalet bungalow style would not differ significantly from 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 new 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. An undeveloped piece of land to the rear of the site would be retained around the retained trees, also identified as an ecology zone, which would help retain the

prevailing spacious and verdant qualities of the site in relation to the surrounding land and buildings.

5. Reasonably sized gardens are retained for the properties along Green Lane, and there would be a large gap between the new buildings and those to the rear of the site. Whilst the buildings would sit close together, the overall density would be within a broadly similar range to that exhibited by the modern housing found along Gordon Close. In this respect, the development would not appear unduly cramped or overdeveloped.
6. The plots would be narrower than those facing Green Lane. Furthermore, the new buildings would be visible at points through the access driveway and the gap between 309 and 311 Green Lane. However, they would be set back a reasonable distance in to the site and would be of a broadly similar bulk and scale to the bungalows facing on to Green Lane. They would also be set against a backdrop of retained mature trees, preserving the verdant character of the site. As such, the new buildings would not comprise an unexpected or unusual feature in this built- up area.
7. 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. As noted previously, each of the properties along Green Lane would retain reasonably sized rear gardens. Whilst these are shorter than comparable residential properties along Green Lane to the west, they would be similar to those within the development itself and the existing buildings found to the rear of the site on Gordon Close.
8. Overall the development of this back-land plot could be achieved without any harm to the character and appearance of the area. The proposed development 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.

9. 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.
10. 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.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. There are no alternative solutions proposed in respect of this matter. The additional residential units would fulfil a housing demand and are well designed and located, close to services in a built-up area, and would otherwise accord with the National Planning Policy Framework ("the Framework") along with

¹ APP/Q3630/W/18/3219397

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

³ APP/Q3630/W/18/3211421

other policies in the Local Plan. 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.

17. 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

18. 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.
19. The 2018 decision, which was not part of the high court challenge which led to this redetermination, dismissed an appeal for 4 units on the site⁴. In that decision, character and appearance was not a main issue and, as the appeal was failing for other reasons, there was no substantive conclusion on the effect on the TBSPA. In the 2019 decision⁵ on the land to the west of the site, the Inspector found that very similar back-land development would not result in an adverse impact on the character and appearance of the surrounding area but would lead to harm to the TBSPA. My findings on the main issues are not inconsistent with these decisions.
20. My findings on character and appearance differ to that of the previous Inspector in the quashed appeal decision that led to this redetermination. Whilst that decision has no legal effect, it is cited by the appellant. In coming to the view that there would be unacceptable harm to the character and appearance of the area, the previous planning Inspector placed significant weight on the fact that the plots and gardens would be narrower than those of the existing properties facing Green Lane, and that there would be limited space between the proposed dwellings. Having reconsidered the proposal in light of the successful high court challenge and subsequent representations, and also having taken in to account the 2019 appeal decision on the adjacent site, I am of the view that these are not deficiencies in the proposed development which would justify the refusal of planning permission. This is clear in my reasoning on the first main issue in this appeal. However, the breach of the habitats regulations is a matter that is before me, which means that permission must be refused.
21. I note that there are objections from interested parties. However, these do not raise issues that materially add to the harm identified.
22. 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 2 additional dwellings is therefore of particular importance, and on the evidence before me these would be delivered quickly. In this respect the proposal would help to boost the supply of housing, whilst also achieving well designed places with a high standard of amenity for existing and future users.

⁴ APP/Q3630/W/18/3192848

⁵ APP/Q3630/W/18/3211421

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. In all of these respects the proposal accords with the Framework.

23. However, on this occasion there is a breach of the Habitats Regulations. This amounts to a clear reason for refusing the proposal. Paragraph 177 of the Framework makes clear that in these circumstances the presumption in favour of sustainable development does not apply.

Conclusion

24. The proposal would not lead to harm to the character and appearance of the area. However, it would result in a breach of the habitats regulations due to the adverse impact on the TBSPA, which is a material planning consideration of considerable importance and weight. For this reason, notwithstanding the compliance with the development plan, the appeal should be dismissed.

Neil Holdsworth

INSPECTOR