



Appeal Decision

Site visit made on 25 November 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/Y3615/W/19/3236508

Birchcroft & Stonecrest, 29 Alexandra Road, Ash GU12 6PQ

- 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 Forays (Southern) Ltd, Sally Dickinson, Susan Newman and Belinda Teyfik against the decision of Guildford Borough Council.
 - The application Ref 19/P/00816, dated 3 May 2019, was refused by notice dated 2 July 2019.
 - The development proposed is the demolition of existing building and erection of four dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appeal has been supported with an optional revision to the plans. The revised plans show plot 1 with two rear rooflights rather than a rear dormer window. This is shown on elevation and layout plans "plots 1 and 2 18.004.E(PA)021 rev PA4", "Plots 3 and 4 18.004.E(PA)022 rev PA1" and "second floor plan 18.004.L(PA)016 rev PA3".
3. Furthermore, revised details also show the rear garden of 9 Star Lane correctly plotted on "proposed site plan 18.004.L(PA)010 rev PA6" and "Site Location Plan 18.004.L(PA)001 rev PA3". These also show minor changes to the refuse collection area to satisfy the comments of the Council's Recycling and Waste projects Officer. In applying the Wheatcroft principles, I have determined that the proposed changes are not substantially different and would not deprive those who should have been consulted the chance to comment on a substantive alteration. I have therefore determined that I can take these revised plans into account if determinative.
4. Furthermore, the submission includes additional details of a plan dated 5/8/19 showing the extent of the proposed garden areas, a section showing the relationship to Eton House; 18.004.E(PA)020 rev PA2 and boundary separation distances on plan 18.004.L(PA)011 rev PA4. As these changes only add further information, and have not altered the parameters of the proposal, I have also taken them into account.
5. Since the application was determined the appellants have submitted a Section 106 Legal Agreement¹. This seeks to provide financial contributions to mitigate

¹ Section 106 Legal Agreement, dated 18 November 2019

the impact of development on the Thames Basin Heaths Special Protection Area (TBHSPA). As a consequence, the Council no longer wish to uphold the third reason for refusal. Although this issue is no longer in dispute between the parties, it is a matter that I will return to later in my decision.

Main Issues

6. The main issues are:

- The effect of the proposed dwellings on the character and appearance of the area,
- The effect of the proposal on the living conditions of neighbouring properties with particular regard to privacy and outlook, and
- The effect of the proposed development on the integrity of the TBHSPA.

Reasons

Character and appearance

7. The site, the subject of this appeal, consists of a stonemason's business. The site is generally open with areas assigned for storage of large materials and some parking. There is also a large single-storey warehouse/office building to one side. The site also includes some areas of landscaping, including several mature trees, mostly to its rear boundaries. It is in a back-land location within a residential area. Access is gained by a driveway from Alexandra Road. The character of the area consists of largely detached dwellings, being both two-storey and bungalows, many having long verdant rear gardens that contribute towards a sense of spaciousness. Due to the limited scale of existing built form, the site also contributes to this openness. Consequently, the current open nature of the site makes a positive contribution to the character and appearance of the area.
8. The proposal would result in the erection of two pairs of semi-detached dwellings. These would be two-storey and be traditional in design. The layout would include a hard-surfaced area in front of the dwellings that would provide parking and manoeuvring space. The proposed dwellings would occupy a central part of the site and be relatively close to side boundaries. Although, the mature boundary trees would be retained, the effect of the scale of development would be harmful to the existing character of the area. Therefore, although there is no uniform pattern of development, the proposal would not accord with the prevailing character. The proposal would provide limited space for gardens and parking resulting in congested plots. Consequently, the scale of development would not accord with the local established character. Furthermore, although the proposed plot sizes are similar to some local examples, the proposal would not pay sufficient regard to the character of the site being currently open and low-key.
9. Therefore, the proposal would be contrary to saved policies G5 and H4 of the 2003 Guildford Borough Local Plan (2003 LP), which seek development to respect its relationship to other buildings and to be in scale and character with its surroundings. The proposal would also be contrary to policies H1 and D1 of the Local Plan Strategy and Sites 2015-2034 (2019 LP), which seek development to be appropriate to a site's size and characteristics and to enhance the environment in which they are set. These policies are consistent

with the National Planning Policy Framework (The framework) which requires development to be sympathetic to the local character.

Living conditions

10. Due to its back-land nature, the proposal would result in new development being located close to neighbouring rear gardens and dwellings. In terms of overlooking from the front elevations, the proposed dwellings would overlook the rear gardens of 31 Alexandra Road (No 31) and 9 Star Lane (No 9). Furthermore, the rear elevation would enable rear windows, including three dormer windows, to overlook rear gardens of Windsor Gardens, Star Lane and Shawfield Road. Whereas, proposed side windows at ground and first floor would serve non-habitable rooms and would not result in overlooking. A degree of overlooking would therefore occur to the front and rear of the site.
11. The main garden for 29 Alexandra Road is beyond the dwelling and views into this space would therefore be limited. Tree and hedge planting exist along the access drive and within the rear garden of No 31. These would provide some screening to reduce overlooking into the garden of No 31. Nevertheless, moderately harmful overlooking would occur into the rear garden and rear elevation of No's 9 and 31, due to the proximity of the proposal and limited intervening screening.
12. Considering overlooking from the rear elevation, the orientation of the dwellings and location of rear facing windows would enable the proposal to have substantial views deep into some of these rear gardens. Although the offered revised plans would improve the relationship with the garden of 'Tavira', the proposal would still result in substantial overlooking into it and adjacent rear gardens. Although, the view would first take in sheds to the rear garden of 'Tavira', views beyond would also be significant and invasive. The proposed first-floor windows and second-floor dormer windows would provide direct and oblique views into these gardens. Although the Council has not referred to any policy in regard to separation distance requirements, the proposal would nevertheless result in substantial harm to the living conditions of adjacent occupiers, especially those to the rear, due to a loss of privacy.
13. In terms of the effect on outlook from neighbouring dwellings, the most affected property would be 'Eton House'. The proposed gable end of plot 1 would be in line with the rear outlook of this neighbouring property. The proposal would be in relatively close proximity. However, it would be set in from the side boundary and the neighbouring property would therefore retain a reasonably open aspect. Also, the intervening retained trees on-site would reduce the effect on outlook and this could be further softened with enhanced landscaping if required. Accordingly, in terms of outlook, the relationship of the proposal to occupiers of 'Eton House' and nearby neighbouring dwellings, would be acceptable.
14. As such, the proposal not accord with saved policy G1(3) of the 2003 LP, which includes seeking development to protect the amenities enjoyed by occupants from unneighbourly development in terms of privacy. Furthermore, these policies accord with the Framework, which require development to be of a high standard of amenity for existing and future users.

Special area of protection

15. The site is within the 400m – 5kms buffer zone of the TBHSPA and therefore within its zone of influence. Saved policy NRM6 of the South East Plan 2009, indicates that permission will not be given for development that is likely to have a significant effect, either alone or in combination with other development, upon the integrity of a Special Protection Area. The Framework states that if harm to biodiversity, resulting from development, cannot be avoided, adequately mitigated or as a last resort compensated for, then planning permission should be refused. Furthermore, paragraph 63 of the Habitats Regulations² requires development to not have a significant effect on a Special Protection Area (SPA). This requires a competent authority to only agree to a project where it has been ascertained that it will not adversely affect the integrity of the European site.
16. The appellants have submitted a Legal Agreement to provide the Council's required mitigation to meet policy objectives on this matter.
17. However, the Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage³. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.
18. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the SPA. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective and could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other matters

19. Representations have included some support for the proposal on the basis that it would result in the removal of a commercial use from the site. The Council support the principle of residential use as it would remove a potentially harmful business use due to noise and disturbance. This conveys moderate weight in favour of the proposal.
20. The site is back-land in character. It is recognised that back-land development is evident locally and this forms part of the established character. However, although this includes some two-storey development, this largely takes the form of single storey development on large plots. As such, these interventions have mostly retained the spacious character of the area.
21. The roadside refuse collection area is proposed to be around 7.5m from the highway, amended plans have been offered that would relocate this to within

² The Conservation of Habitats and Species Regulations 2017

³ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

5m, to satisfy refuse collection requirements. On its own, this appears to be a resolvable and minor issue. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further.

Conclusion

22. The Framework seeks to boost the supply of housing. Furthermore, the proposal would deliver some limited benefits such as the provision of additional green space and landscaping and the removal of a non-conforming use. The design of the dwellings would be traditional and would suit the character of the local area in terms of materials. However, these benefits do not outweigh the harm I have identified to the Development Plan.

23. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR