
Appeal Decisions

Site visit made on 18 February 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal A Ref: APP/Y3615/W/19/3242547

Intilis, Surrey Gardens, Effingham Junction, Leatherhead KT24 5HH

- 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 Terri Amato (Chez Nous Living Ltd) against the decision of Guildford Borough Council.
 - The application Ref 19/P/01488, dated 23 August 2019, was refused by notice dated 10 October 2019.
 - The development proposed is construction of two detached dwellings at the rear garden of Intilis.
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Appeal B Ref: APP/Y3615/W/19/3242555

Intilis, Surrey Gardens, Effingham Junction, Leatherhead KT24 5HH

- 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 Terri Amato (Chez Nous Living Ltd) against the decision of Guildford Borough Council.
 - The application Ref 19/P/01483, dated 23 August 2019, was refused by notice dated 10 October 2019.
 - The development proposed is construction of a single dwelling with detached garage at the back of the property at Intilis.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matter and Background

3. In my decision I refer to the 'appeal site'. For clarity, this means the appeal site relating to both Appeal A and Appeal B.
4. The appellant refers to the site being within the Green Belt. However, the Council have confirmed that in the recent local plan the site does not lie in the Green Belt, and this is reflected in the Council's reasons for refusal. I have assessed the appeals on this basis.

Main Issues

5. The main issues in both appeals are the effect of the proposals on:
 - The character and appearance of the area;

- The designated Thames Basin Heaths Special Protection Area (SPA) and whether adequate compensation has been provided; and,
- The living conditions of nearby occupiers in terms of overlooking, noise and disturbance, and the living conditions of future occupiers of the proposed dwelling(s) in terms of outlook.

Reasons

Character and appearance

6. Surrey Gardens comprises a residential cul-de-sac fronted by houses which are set behind small front gardens and/or hardstanding areas. The bespoke arrangement and style of properties set amidst a leafy street exudes a sense of richness and pleasantness. The verdant quality of the street is reflected in the spacious rear gardens of many properties in the area, which reinforce the attractive suburban character of the street.
7. The appellant has identified that the plot sizes associated with the dwellings proposed by Appeal A would be comparable with the size of many other plots in the local area, with the plot associated with appeal scheme B being even larger. I do not dispute this. Moreover, I could see accesses on my site visit in between existing properties on Surrey Gardens leading to 'backland' developments, and a dwelling is also situated adjacent to the appeal site and to the rear of street facing dwellings. Despite this, the appeal site lies amidst a run of spacious and verdurous rear gardens which I consider to be the prevailing characteristics of properties on Surrey Gardens.
8. Both appeal schemes would occupy a large proportion of garden space associated with Intilis (the appeal property) both as a result of the building(s) themselves, and through the proposed access and parking areas¹, which would diminish the contribution the appeal site makes to its garden setting and the wider swathe of green infrastructure within which it sits. The provision of dwelling(s) on the appeal site would be at odds with the prevailing street facing pattern of built form on Surrey Gardens, contrary to paragraph 122 of the National Planning Policy Framework (the Framework), which makes it clear that development should maintain an area's prevailing character and setting, including residential gardens.
9. Obtainable views of both schemes would be limited from public vantage points and the design and scale of the built form would not be objectionable in itself. Moreover, the appeal schemes would occupy a relatively secluded position away from the street and behind existing buildings which would reduce their outward visible impact. However, the character of the area is defined by the aforementioned spatial and aesthetic qualities which distinguish it, and the provision of housing on the appeal site would appear out of step with the area's prevailing character and appearance.
10. Whilst each of the proposals would retain a proportion of the existing trees with any tree loss mainly involving specimens of lower value, and additional landscaping could be secured by a planning condition, this would not adequately compensate for the extensive and permanent form of urban encroachment proposed which would undermine the area's identity.

¹ According to the appellant this would comprise a permeable 'grid' system and not a hardstanding

11. For the foregoing reasons I find that the development proposed by Appeal A and Appeal B would harm the character and appearance of the area, contrary to Policy DM1 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (2019) (the Local Plan 2019) and Saved Policy G5(3)(5) of the Guildford Borough Local Plan 2003 (the Local Plan 2003) which require, amongst other matters, that existing spaces and local character is respected and development creates new spaces with an identifiable character. Moreover, the proposals would not be sympathetic to local character, contrary to paragraphs 122 and 127 of the Framework.

Thames Basin Heaths

12. The appeal site lies between 400m and 5km of the designated Thames Basin Heaths SPA. The SPA is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63(5) imposes a duty on local planning authorities as the competent authority, to consider whether any proposal may have a significant effect on such protected areas either alone, or in combination with other plans and projects.
13. In its reasons for refusal, the Council sets out that both appeal schemes would be harmful to the protected SPA, and that the failure to make an appropriate contribution towards mitigation measures would have an adverse effect on the integrity of the SPA. The mitigation necessary would involve a monetary contribution towards suitable alternative provision and access management of the SPA.
14. Despite the appellant indicating a willingness to secure mitigation via a planning condition, Government Planning Practice Guidance advises that a negatively worded planning condition requiring a planning obligation to be entered into would only be suitable in exceptional circumstances in the case of strategically important and complex cases. In my view, the provision of up to two dwellings would not constitute strategically important development. As such, I am not satisfied that a planning condition in the case of both appeals would be an appropriate mechanism in order to secure the required mitigation.
15. Therefore, as no planning obligation has been provided as part of the application or during the appeal process, I am unable to assess whether mechanisms are in place to ensure delivery of any required mitigation. In exercising my duty to protect the European Sites, I must adopt a precautionary approach. From the evidence before me I cannot be certain that the integrity of the protected site would not be harmed as a result of the appeal schemes, either alone or in combination with other plans and projects.
16. I therefore conclude that the appeal schemes would have an adverse effect on the integrity of the designated Thames Basin Heaths SPA. Both appeal schemes would therefore conflict with Policies NE1 and NE4 of the Local Plan 2003 and Policy NRM6 of the South East Plan 2009 which seeks to protect species and habitat of importance.

Living conditions

17. Both appeals propose an access off Surrey Gardens close to the boundary of the adjacent property, Adela. The appellant has submitted an independent noise assessment which concludes that whilst noise associated with vehicles

accessing the dwelling(s) would be likely to affect the neighbouring garden of Adela to a greater extent than from within house, the noise levels within the garden would be at the lower end of the background noise levels recorded as part of the assessment, thus the increase in noise levels would not be significant.

18. Notwithstanding the findings of the noise assessment, there is no suggestion that cars entering and leaving the appeal site would not be audible at Adela. I am also aware that, in addition to the noise arising from the movement of cars in and out of the appeal site, general disturbance could also arise as a result of incidents such as the slamming of car doors and the revving of car engines. However, the number of comings and goings and noise generating activities would be limited in the case of the two dwellings proposed by Appeal A, even more so in the case of Appeal B. Moreover, the Council have not provided a response to the appellant's noise assessment to question its veracity and its overall findings, which indicates that noise levels generated by the vehicles using the proposed access would not be unacceptable either from within the neighbouring dwelling or from the garden area. As a result, and based on all the evidence before me, I am satisfied that the noise and disturbance associated with each of the appeals would not unduly prejudice the living conditions of adjoining occupiers.
19. In Appeal B, the closest front facing dormer window would be approximately 9.2m from the boundary of Adela. One of the windows would be obscure glazed, with the other 'film coated', in order to reduce the potential for future occupiers of the dwelling to overlook the neighbouring garden. Notwithstanding the type of glazing proposed, I am satisfied that the distance between the boundary and these windows would limit the potential for significant overlooking, particularly when taking into account the limited height of the dormers above the ground as a result of their position within the roofspace of a bungalow. Consequently, the scope of obtainable vision from these windows across the garden of Adela would be curtailed. The dormers would not appear dominant from within the garden space of Adela such that there would be a definite perception of overlooking, nor would the dormers result in unacceptable overlooking of the garden resulting in a loss of privacy for users of the neighbouring garden space.
20. As a result of the above and given that the dwellings proposed by Appeal A would be further away from the boundary with Adela, the proposal would not lead to unacceptable overlooking, nor a perception of overlooking that would be detrimental to the enjoyment of the garden area. In terms of the properties which lie to the rear of the appeal site, both appeal schemes propose roof lights in the rear roof slope, and I agree with the Council that the living conditions of occupiers of other nearby properties would not be unduly affected.
21. Turning to the effect on future occupiers of the dwelling(s) proposed in both appeals. As per the aforementioned, I have already identified that there would be no unacceptable impacts on privacy for nearby occupants, notwithstanding the obscure/screened glazing proposed within each of the facing dormer windows. However, as a result of the Council's concerns regarding the effect that obscure/screened glazing would have on future occupants of the appeal dwelling(s), the appellant has confirmed that they would be willing to accept clear glazing and opening windows. I am satisfied that these measures could

be secured by planning condition, allowing occupants of the dwelling(s) an uncompromised outlook, thus ensuring satisfactory living conditions.

22. The Council raises no objections in terms of the internal floor space or outdoor amenity space of either proposals, and I concur. Therefore, I am satisfied that both appeal schemes would ensure a high standard of amenity for future occupiers.
23. Consequently, I find that appeal schemes A and B would not be unacceptably harmful to the living conditions of occupiers of surrounding properties in terms of overlooking, noise and disturbance, nor would either scheme result in unacceptable living conditions for future occupiers. The proposals would comply with Policy G1(3) of the Local Plan 2003, Policy EH-H8 of the East Horsley Neighbourhood Plan 2017-2033 and paragraph 127 of the Framework which require, amongst other matters, that the amenities enjoyed by occupants of buildings and spaces are not unacceptably compromised.

Other Matters

24. The appellant suggests that the Council do not have a five-year housing land supply, although that is disputed by the Council having regard to the relatively recent adoption of the Local Plan 2019. It has not been necessary for me to pursue this matter any further because even if I was to accept the appellant's assertion, footnote 6 of paragraph 11 of the Framework effectively disengages the tilted balance and presumption in favour of sustainable development where a proposal would result in harm to a habitat site, as is the case here.
25. The appellant has also referred to other planning permissions for housing developments locally which have some similarities with the appeal schemes. However, I do not know the specific details of those schemes and I cannot draw any meaningful comparisons between them and the schemes before me, which I have assessed on their own merits and find harm for the reasons given.

Conclusion

26. Both appeal schemes would ensure that living conditions for nearby occupiers and future occupiers of the dwelling(s) would be acceptable. However, I find that both schemes would unacceptably harm the character and appearance of the area and the SPA.
27. Therefore, for the reasons given, I conclude that Appeal A and Appeal B should be dismissed.

Matthew Woodward

INSPECTOR