



Appeal Decision

Site visit made on 7 January 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 20 April 2020

Appeal Ref: APP/M3645/W/19/3238028

Land to rear 156-170 Whyteleafe Road, Caterham CR3 5ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Martyn Avery (Chartwell Land and New Homes Ltd) against the decision of Tandridge District Council.
 - The application Ref TA/2019/38, dated 19 December 2018, was refused by notice dated 25 July 2019.
 - The development proposed is erection of 38 dwellings (24 houses & 14 apartments) with associated parking, access and ancillary works.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the Council's decision notice refers to the appeal site as 156-180 Whyteleafe Road, the submitted plans, application form and other documents refer to the site as rear of Nos 156-170 Whyteleafe Road. I have therefore used that address in the heading above.
3. The original application referred to 37 dwellings. It is clear from the submissions that the proposal evolved over the course of its consideration by the Council, as evidenced by the submission of an amended application form and amended plans. Although at one point 40 dwellings were proposed, this was subsequently reduced to 38. I am satisfied that the Council considered the application as being for 38 dwellings and I have also considered the appeal on this basis. The description above is therefore taken from the amended application form.
4. The proposal has been made in outline with access, appearance, layout and scale sought for consideration in this appeal and landscaping reserved for future consideration. Details have however been provided of the trees to be retained as part of the proposal and I have therefore had regard to the arboricultural information submitted. I have treated all other indications of landscaping on the submitted plans as illustrative.
5. A signed and completed Unilateral Undertaking (UU) has been submitted by the appellant in relation to s106 of the Town and Country Planning Act 1990. It contains planning obligations in respect of contributions towards affordable housing and off-site highway works.

Main Issues

6. The main issues are:

- i) the effect of the proposed development on the character and appearance of the area, including green infrastructure;
- ii) the effect of the proposed development on flood risk and ground water contamination; and
- iii) whether appropriate provision is made for affordable housing, off-site highway works and sustainable transport.

Reasons

Character and appearance

7. The appeal site is within the defined settlement boundary of Caterham in a predominantly residential area, with Audley Primary School and Saint Francis Roman Catholic Primary School to the south. Land to the south and east of the site, including the school grounds and playing fields, is within the Green Belt. Along Whyteleafe Road, development mainly comprises a linear arrangement of large, detached dwellings in sizeable plots. There are however several cul-de-sacs of houses set behind the frontage dwellings. Gardens to the west and north of the appeal site benefit from planning permissions for schemes of 10¹ and 39² dwellings respectively.
8. The site comprises a single large garden and a small section of overgrown land and hedge from a neighbouring garden. It is bounded by well-maintained hedges and although it contains several trees, most of the site is laid to lawn. As such the site has an open, spacious character. In contrast, surrounding gardens contain numerous mature trees, giving them a verdant, wooded character. Many of these trees, including some around the edges of the appeal site, are protected by a Tree Preservation Order. The openness of the site allows for views towards these trees and to an area of woodland to the north-east. As such, the appeal site provides a transition from the built development along Whyteleafe Road to the Green Belt and countryside beyond and contributes positively to the character of the area.
9. The Council has not raised any objections to the principle of development in this location. Rather, it considered that the specifics of the scheme were inappropriate. The site is within a built-up area where the development plan provides in-principle support for residential development and where both national and local policies encourage effective use of land. Furthermore, I note that the site is proposed as a housing allocation in the emerging Local Plan, for which the Inspector's Report is awaited. A change in the nature of the site would be an inevitable consequence of housing development on the site. Nevertheless, local and national policies also emphasise the importance of achieving high quality design and well-designed places.
10. The proposal includes detached, semi-detached and terraced houses and two blocks of flats, all of fairly traditional design with pitched roofs, gables and dormers and using brick, render and tile hanging. The variety of built form would contrast with the generally consistent form of development along Whyteleafe Road. However, the various modern cul-de-sacs in the area include a wider range of designs and forms, including terraces, and the approved 39-dwelling scheme adjacent includes flats. From the main part of Whyteleafe Road, the existing

¹ TA/2015/2263

² APP/M3645/W/19/3234386

dwelling would largely screen the site from view. Therefore, from that viewpoint the difference in character would not be particularly noticeable or harmful in nature. The development would however be more prominent from the schools, their grounds and playing fields, and from the section of Whyteleafe Road that provides access to them.

11. The 3-storey flats of Block A would be located close to the northern boundary of the site and while relatively large, the staggered form proposed would break up the massing of this building. It would also be surrounded by predominantly 2.5 storey dwellings and as such would not look out of place or excessive in relation to the surrounding built form.
12. The taller of the flatted blocks, Block C, would however be close to the boundary in a prominent location. Despite the pitched roof profile and incorporation of accommodation within the roof space, the building would be of considerable bulk and substantially taller and wider than the 2-storey houses proposed adjacent to it. Consequently, when seen from the schools and open space it would be a dominant and jarring feature, and would appear out of place in relation to the smaller scale development around it. Although there is a group of trees along the school boundary in this location, they are conifers with high canopies and as such would provide only limited screening of the building.
13. The 3 pairs of dwellings comprising Plots 21-26 along the eastern boundary of the site would form the end-stop to the view gained when entering the site from Whyteleafe Road. They would be arranged close together and thus would appear as a nearly continuous row of built development, substantially screening views of the woodland. Furthermore, from the school grounds they would be seen in combination with Block C close to the boundary of the site. Together, they would result in a hard, suburban edge to the site, at odds with the edge of settlement location, and would diminish the sense of transition to the open space and the contribution of the woodland beyond to the character of the area.
14. The remainder of the site would comprise more widely spaced dwellings in modest plots of similar size to those in Alder Grove and the approved schemes adjacent. The dwellings would however be surrounded by parking areas and roads, resulting in a significant proportion of the site being hardsurfaced. The areas of landscaping between would be small and narrow, with limited opportunities for any significant planting, and as such would create little relief.
15. Although two areas of green space are proposed, the smaller of the two would be akin to a wide verge, sited between rear garden fences and a parking area. Due to its size and position, it would not provide an attractive or useable open space for the enjoyment of residents. While the other area would be larger, it would be sited behind a terrace of 4 dwellings where it would not be seen from most of the site. As such, it would do little to soften the overall visual impact of the proposed development. Consequently, these open areas would be poorly integrated with the proposed built development and would provide limited opportunities for residents to interact with the green environment, contrary to the principles of the Surrey Design guide 2002.
16. The density of the proposed development would not be particularly high, at approximately 36 dph, and would be within the range set out in Policy CSP19 of the Tandridge District Core Strategy 2008 (CS). Nevertheless, it would be substantially higher than that of nearby streets, and significantly greater than the 26dph of the 39-dwelling scheme adjacent. For the reasons given above, due to the amount of development proposed and the scale and arrangement of the proposed dwellings, the proposal would result in an intensive form of development

out of character with the surrounding area. Accordingly, the design solution for the density proposed would conflict with the local character and distinctiveness of the area and as such, the proposal would conflict with CS Policy CSP19.

17. The proposal would retain most of the existing hedges, with the notable exception of sections in the north-west corner, which would be removed to facilitate Block A and to create links to the 39-dwelling scheme adjacent. As such, the habitat connectivity of the site to the wider landscape would be largely retained. Consequently, while the proposal would not enhance or increase provision of, or access to the green infrastructure network, neither would it result in significant harm to it. As such, I find no conflict with Policy DP19 of the Tandridge Local Plan Part 2: Detailed Policies 2014-2029 (LPP2).
18. This does not alter my view however, that the layout and scale of the proposal would result in significant harm to the character and appearance of the area. Accordingly, there would be conflict with CS Policy CSP18 and LPP2 Policy DP7 which, amongst other things, seek to ensure development is of high-quality design and respects the local character and distinctiveness of the area.
19. Furthermore, the proposal would conflict with the requirements of the National Planning Policy Framework (the Framework) to achieve well-designed places that add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.
20. The appellant contends that the overall spatial standard of the proposal is similar to that considered at a previous appeal in 2016³, for which I have been provided with a site plan. That scheme proposed 59 dwellings on a larger site, comprising the appeal site plus the land to the north which now has permission for 39 dwellings. Combined with that permission, the proposal before me would therefore result in a total of 77 dwellings in the same area, significantly more development than was considered by the 2016 Inspector. Nevertheless, I have reached the same conclusions as the 2016 Inspector in respect of the principle of development of the site, and the ability for it to accommodate a wider variety of built form than is prevalent in the surrounding area.
21. The 2016 scheme proposed significant areas of open space along the eastern edge of the site close to the woodland, which the Inspector concluded would allow the dwellings to breathe and help soften the overall visual impact of the development. Furthermore, although it included 3-storey blocks of flats, they were to be concentrated in the northern part of the site adjacent to existing dwellings in Anne's Walk, where the Inspector considered they would not be overly dominant and intrusive. As such, there are significant differences between that scheme and this proposal, and consequently it would not have resulted in comparable impacts on the character and appearance of the area.
22. The appellant also contends that the recent decision for the 39-dwelling scheme adjacent has relevance to the appeal proposal. Again, I have reached a similar conclusion to that Inspector in relation to the proposed variety of built form. I do not however have details of the design of those buildings, only a site plan. This shows open space in key areas of the site, particularly around the link to the appeal site and around the woodland edge. In addition, the dwellings are more closely spaced adjacent to existing development and set further apart in the eastern part of the site, creating a clear transition and views through to the woodland. That site is also set further from the open space than the current appeal site and as such, the impact of that development on the character and appearance

³ APP/M3645/W/16/3164394

of the area would be materially different to the scheme before me. That grant of permission would not therefore justify the appeal proposal.

Flood risk and groundwater contamination

23. The Environment Agency's Flood Mapping for the area identifies that the appeal site is in Flood Zone 1, where there is a low risk of fluvial or tidal flooding, and that parts of the site are at low risk of surface water flooding. The site is also located above a Principal Aquifer and within Source Protection Zone 2. The Environment Agency and interested parties advise that the general location has been subjected to groundwater flooding in the past. Significant surface water flooding has also occurred in the local area on several occasions in recent years. Interested parties also set out that groundwater is an important source of water for the area.
24. The proposal would result in a substantial increase of development and hardsurfacing on the site compared to the existing situation. As such, there is a need to deal with potential flood risk, surface water and groundwater impacts. The appellant has submitted a Technical Note, a Flood Risk and Drainage Statement and a surface water drainage strategy, with the latter having been revised during the application process to reflect the changes made to the proposal. These documents assess surface water and groundwater impacts and set out the measures that would be used for the site, taking into account the underlying geology and the effects of climate change.
25. The proposed approach to surface water is to incorporate sustainable drainage systems (SuDS) into the green spaces of the site. Deep borehole soakaways are proposed, which would infiltrate surface water into the chalk bedrock which lies below an 8-metre thick clay layer. An attenuation tank is proposed to hold any additional surface water, while permeable paving and a hydrodynamic vortex separator are proposed to remove contaminants and silt from surface water. Where surface water flows would occur, these would be directed along the internal road network to the open space and beyond to the woodland, following a similar path to the current greenfield route. I am mindful that the Lead Local Flood Authority (LLFA) has raised no objection to this approach, subject to appropriate planning conditions for implementation and subsequent maintenance. In the absence of any substantive evidence to the contrary from the Council or interested parties, I am satisfied that it would ensure that the proposed development would not contribute to surface water flooding on-site or elsewhere.
26. The Technical Note sets out that the site is at low risk of groundwater flooding as the clay layer should stop vertical movement of groundwater. However, despite the evidence available of a local history of groundwater flooding, no assessment has been made of the impact of the proposed underground infiltration of surface water on groundwater flooding elsewhere.
27. Notwithstanding the position adopted at application stage, in comments for this appeal the LLFA now sets out that queries have arisen in relation to groundwater for a scheme at 172 Whyteleafe Road. Consequently, it recommends that a detailed surface water drainage design be submitted which includes mitigation for the potential hydro-geological groundwater impact of the development.
28. The appellant suggests that run-off into the soakaways could be restricted to reduce the proposed rate of discharge into the overloaded groundwater table. However, this would require additional attenuation provision within the site. While the appellant suggests that this can be achieved, no specifics of the additional capacity required have been provided. The current drainage strategy proposes a single large attenuation tank under the larger area of green space. Given the

amount of development proposed on the site, it has not been demonstrated that further attenuation could be accommodated with the layout proposed. No other means to mitigate the impacts of the proposed development on groundwater have been put forward in the appeal submissions and I therefore have no details of what other form such mitigation might take. I cannot therefore be certain that appropriate mitigation for groundwater flooding can be satisfactorily integrated into the scheme before me.

29. Despite the filtration measures proposed, the Environment Agency has raised concerns about the use of boreholes and deep soakaways to discharge surface water to ground due to the potential to bypass any potential attenuation layers and offer a direct conduit for the rapid transport of contaminants to groundwater. It advises that given the history of groundwater flooding in the local area, the site may not be suitable for deep borehole soakaway discharges. Given the location of the site in a Groundwater Protection Zone, a discharge licence would be required from the Environment Agency for discharge to groundwater. However, given the concerns it has raised about the proposed use of deep boreholes, I cannot be certain that such a licence would be granted.
30. Consequently, it has not been demonstrated that the proposal would make appropriate provision to mitigate flood risk from groundwater, or that it would not result in contamination of groundwater. As I cannot be certain that a technical solution can be achieved with the layout of the scheme before me, it would not be appropriate to secure a detailed design by condition. Accordingly, the proposal would conflict with LPP2 Policy DP21 which requires proposals to avoid damage to Groundwater Source Protection Zones and to reduce flood risk both to and from the development, or at least be risk neutral.
31. Furthermore, it would conflict with the Framework requirements to ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed; and that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on the natural environment.
32. I am advised that a similar approach to surface water has been agreed for the 10 and 39-dwelling schemes, however I have very limited details of those strategies and cannot therefore be sure that they are comparable to what is before me. It is also suggested that the approach was found acceptable for the 2016 scheme, however as that Inspector did not discuss drainage in their decision, it is unclear what was before them. Therefore, I cannot be certain that the drainage strategy before me is consistent with what has been approved elsewhere. In any event, even if previously accepted, statutory bodies have raised issues in relation to groundwater that have not been resolved through the appeal submissions. Given the importance of avoiding flood risk and pollution of water supply, a precautionary approach is appropriate in these circumstances.

Affordable housing

33. Framework paragraph 56 and Regulation 122 of the Community Infrastructure Levy Regulations (as amended) (CIL) require that planning obligations may only constitute a reason for granting planning permission for development if the obligation is: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
34. CS Policy CSP4 requires that up to 34% of dwellings should be affordable housing for sites of this size, with actual provision negotiated on a site by site basis taking

into account market and site conditions. The UU submitted includes an obligation for 11 of the dwellings to be affordable housing. Although this is less than 34% of the dwellings, there is flexibility inherent in the wording of the Policy. Achieving an appropriate mix of provision to secure both flats and houses to meet the needs of the area would assist in creating a balanced community whilst meeting a broad range of housing needs. Such an approach is supported by local and national policies. As such, the delivery of affordable housing to meet identified needs would be a benefit of the appeal proposal.

35. The obligation in Schedule 1, Part 1, clause 1 of the UU requires that an Affordable Housing Scheme (AHS) be submitted, such scheme to conform to the Housing Tenure Mix. The definition of Housing Tenure Mix specifies that both affordable houses and flats must be provided, with a mix of affordable rented and shared ownership housing. The evidence before me indicates that this mix of dwelling types and tenures is necessary to meet identified affordable housing needs and, therefore, would justify provision of less than 34% affordable housing. Accordingly, this obligation is necessary to make the development acceptable in planning terms. As it is tailored to the types of dwelling proposed, it is directly related to the development and fairly and reasonably related to it in scale and kind.
36. Clauses 2 and 3 of Part 1 then prevent development from commencing until the AHS has been approved by the Council; and require that the development be carried out and the affordable housing units be provided in accordance with the AHS. These directly follow from clause 1 and secure the provision of the affordable housing. As such, they also meet the Regulation 122 and Framework paragraph 56 tests.
37. However, the trigger for submission of the AHS is with the first reserved matters application for approval of details of the layout of all or part of the development. As layout is not a matter reserved for future consideration in this proposal, no reserved matters application for layout would be submitted, were I to allow the appeal. Consequently, there is no effective and enforceable trigger in the UU to secure submission of an AHS. It would not therefore provide a suitable mechanism to deliver affordable housing, or to ensure that the mix of affordable housing would meet identified needs.
38. The UU contains a clause in paragraph 5 that any obligation that I consider is not justified or does not meet the Regulation 122 tests shall not take effect. However, for the reasons set out above I find that clause 1 of Part 1 is justified and meets the relevant tests. Accordingly, as the UU is flawed, the proposal would not make appropriate provision for affordable housing and the proposal would therefore conflict with CS Policy CSP4.

Off-site highway works and sustainable transport

39. Schedule 2 of the UU requires the owner to enter into a Highway Agreement with the County Council for the 'highway works' prior to commencement of the development. These are defined as: a) a traffic calming scheme to be agreed along Whyteleafe Road, joining up the section from Whyteleafe Hill to Cedar Park; b) a scheme to include parking restrictions along Whyteleafe Road; c) or such other works as may be agreed between the owner, the developer and the County Council.
40. Whyteleafe Road is a reasonably busy road serving several schools and other facilities. The proposed dwellings would result in additional traffic on the highway in an area which I saw on site is subject to on-street parking stress, and which is a key route for walking to school. The information in the Council's committee report,

appeal statement and representations from the highway authority demonstrate that off-site measures are required to mitigate the impact of this additional traffic on the highway network. These are not disputed by the appellant. From the evidence before me, I am satisfied that the traffic calming measures and parking restrictions required by the UU would mitigate the impacts of the traffic from the development using Whyteleafe Road. As such they would be necessary to make the development acceptable in planning terms and would be directly, fairly and reasonably related in scale and kind to the development proposed.

41. However, the third element of the highway works is not specific and is expressed as an alternative to a) and b). There is no substantive evidence before me that other off-site works would be required to mitigate the impacts of the proposal, or that there are other works that would have the same effect as the traffic calming and parking restrictions. Furthermore, the vague wording could be used to require works which would not necessarily be directly, fairly or reasonably related to the impacts of the appeal proposal. As such, it has not been demonstrated that these unspecified other works would meet the Regulation 122 and Framework paragraph 56 tests.
42. There is also no requirement in Schedule 2 for the highway works to be carried out or completed. If the intention is to rely on the terms of the agreement with the highway authority, this is not explicit in the wording of the obligations or the definition of highway works. There is therefore no enforceable means to ensure that the highway works would be delivered. Therefore, the effect and enforceability of the UU in respect of highway works is uncertain and the obligation is flawed.
43. However, the traffic calming and parking restrictions could instead be secured through a Grampian-style condition linked to occupations of the site. As such, there would be a suitable mechanism available to mitigate the impact of the proposal on highway safety.
44. The proposal would also result in additional pedestrians and cyclists using the local area, who would be likely to travel to key destinations including the train station close to the site. Both the highway authority's comments and the Council's Committee report refer to the need for the appeal proposal to contribute to a new shared pedestrian/cycle link to the station, for which some funding has already been secured from the 39-dwelling scheme. LPP2 Policy DP5 promotes access by public transport, foot and bicycle to nearby residential, commercial, retail, educational, leisure and recreational areas and CS Policy CSP11 sets out that developers will be required to contribute to improved infrastructure and services necessary to support the proposed development.
45. From the evidence before me therefore, it would be necessary for the appeal proposal to contribute towards this link to mitigate the additional impacts on sustainable transport infrastructure of the additional residents generated by the development. However, although the appellant acknowledges the requirement for a contribution towards this link, the UU before me does not include such an obligation. The main parties have not provided any reasoning or justification for its omission. There is no substantive evidence before me that the link is included in the Council's CIL Regulation 123 list, or that it has been fully funded by any other means. As such I am unable to conclude that a planning obligation to secure this contribution is no longer necessary.
46. Consequently, the proposal would not make appropriate provision for sustainable transport and it therefore conflicts with CS Policy CSP11. Furthermore, it would not facilitate access to high quality public transport or provide appropriate facilities to encourage public transport use, as required by Framework paragraph 110.

47. Overall therefore, the obligations in the UU cannot be taken into account in this appeal. The proposal would not therefore make appropriate provision for affordable housing and sustainable transport, and as such would not deliver benefits in this regard.

Planning Balance and Conclusion

48. The appellant contends that the Council cannot demonstrate a 5-year housing land supply and has only a 3.36 year supply when assessed against objectively assessed needs, or 2.45 years against the standard methodology in the Framework. The Council does not dispute this. Framework paragraph 11d) is therefore engaged.
49. The proposal would provide housing in an accessible location in a built-up area, where the development plan supports the provision of housing. It would provide a mix of dwelling types and sizes, contributing towards housing supply and identified housing needs. Given the extent of the housing shortfall, and in the absence of any details of the steps being taken to address that shortfall, I give the contribution of 38 dwellings moderate weight in favour of the scheme.
50. There would be economic benefits through construction of the dwellings. In the longer term, new households would introduce expenditure into the local economy and there would be additional benefits from further council tax income and a new homes bonus. However, no schemes upon which the bonus would be spent have been identified. In accordance with the Planning Practice Guidance, it would not be appropriate to make a decision based on the potential for the development to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms. Moreover, the economic benefits of the proposal would be generic and would arise with any housing development. Consequently, I can only attach limited weight to the economic benefits.
51. My attention has been drawn to the emerging Local Plan which allocates the appeal site and land to the north for 60 dwellings. However, I have not been provided with the full details of this allocation, the wording of the document or any details of the extent of any unresolved objections there may be to it. The Inspector's report has also not yet been published. Therefore, having regard to Framework paragraph 48, I can give this matter only limited weight in my decision. In any event, the principle of development of the site is not in dispute in this appeal.
52. Although interested parties refer to an emerging Neighbourhood Plan, I have not been provided with details of its status or the stage that it has reached. As such, I can give it very little weight.
53. The proposal could provide some biodiversity enhancements, in particular the larger green space would provide opportunities for additional planting to offset biodiversity lost through the development of the site. The extent of potential enhancements would however be constrained by limited space afforded by the proposed layout for other landscaping, and as such can be given only limited weight.
54. The scheme would provide sufficient car parking and would incorporate sustainable construction measures and renewable energy provision. However, these would only offset the impacts of the new development proposed rather than provide benefits, and as such are of neutral consequence in the planning balance.
55. The appeal site is relatively close to archaeological remains and may have some archaeological potential. However, any potential impacts on archaeology could be

mitigated through an appropriately worded planning condition and as such are neutral impacts.

56. While the proposal would comply with some policies of the development plan, I have found that it would result in significant harm to the character and appearance of the area, would not make appropriate provision to mitigate risk from groundwater or prevent contamination of groundwater. Nor would it make appropriate provision for affordable housing or sustainable transport. As such, it would conflict with the development plan as a whole. The relevant development plan policies are consistent with the Framework and as such I give very substantial weight to the conflict with these policies.
57. The proposal would support the Framework objectives of significantly boosting the supply of homes and making effective use of land. However, it would not deliver the high-quality buildings and places that the Framework identifies are fundamental to what the planning and development process should achieve, nor would it contribute to sustainable travel. Furthermore, the failure to provide affordable housing means that it would not contribute to the objectives of creating mixed and balanced communities and meeting the needs of different groups in the community. Given the importance attached to these matters by the Framework, these weigh heavily against the proposal.
58. Consequently, even if I were to conclude that there is a shortfall in the 5-year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the Framework as a whole.
59. Overall, taking account of the Framework and the above considerations, including the benefits of the development, I conclude that there are no material considerations that would indicate that the decision should be taken otherwise than in accordance with the development plan. Consequently, I conclude that the appeal should be dismissed.

L McKay

INSPECTOR