



Appeal Decision

Site visit made on 16 March 2020

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/Y3615/W/19/3239744

Land to the north of Hareward Road, Merrow, Guildford GU4 7HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Anthony Broad of QQQ 33 Ltd against the decision of Guildford Borough Council.
 - The application Ref 18/P/02011, dated 16 October 2018, was refused by notice dated 24 April 2019.
 - The development proposed is erection of 5 no. dwellings, creation of new access, and associated drainage and landscape works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Anthony Broad of QQQ 33 Ltd against Guildford Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Guildford Borough Local Plan: Strategy and Sites (LPSS) was formally adopted by the Council on 25 April 2019, shortly after the determination of the planning application. Many of the recently adopted policies supersede saved policies contained within the 2003 Local Plan (LP). Remaining saved policies are however still used for the determination of planning applications. I shall determine the appeal on this basis.
4. The appellant has submitted a signed Unilateral Undertaking (UU), pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), which is dated 6 February 2020. I shall return to this later in my decision.

Main Issue

5. The main issue is whether the proposed loss of public open space would be acceptable.

Reasons

6. Located within an area of primarily residential character, the appeal site comprises a privately owned area, which is designated as open space. For the purposes of LPSS Policy ID4, this includes all types of open land, both public and private, that has public recreation and/or amenity value. The Guildford

Open Space, Sport and Recreation Assessment¹, which identifies land of public value for amenity, sport and recreation across the borough, recognises the appeal site as Accessible Natural Green Space. This includes all publicly accessible spaces including meadows, woodland and copses all of which share a trait of having natural characteristics and biodiversity value, but which are also accessible for informal recreation.

7. Policy ID4 seeks to protect open space from development, in accordance with the National Planning Policy Framework (the Framework). Paragraph 97 of the Framework however sets out a number of exceptions where the loss of open space is permissible. These include circumstances where an assessment has been undertaken which clearly shows the open space to be surplus to requirements. In that regard, I note that the Guildford Open Space, Sport and Recreation Assessment did not identify a surplus of open space in the locality and in fact, Merrow experiences deficiencies in several open space typologies. The proposal would therefore not accord with the exception set out by paragraph 97a of the Framework. As the appeal development does not relate to alternative sports and recreation provision to existing facilities, paragraph 97c is not considered relevant to the appeal proposal.
8. Paragraph 97b of the Framework permits the loss of open space if it would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. However, as confirmed by the Courts, there are circumstances where equivalent quantity would be too restrictive and would, if applied to the letter, prevent sensible development when in reality there has been no overall loss².
9. The appellant's submissions include an Open Space Assessment³ (OSA) undertaken by The Environment Partnership, which was considered by the Council as part of a revised planning application⁴ for an identical scheme and recently approved under delegated powers. As described within the OSA, there is currently no formal right of access to the site for members of the public. Additionally, the site's usability for recreational purposes is presently constrained by the function it fulfils as an attenuation drainage basin, but also its topography and densely vegetated condition. Although representations made by interested parties suggest that the site is used by members of the public, this could cease at any time as it is privately owned.
10. Accordingly, this raises questions over the categorisation of the site as an Accessible Natural Open Space which, as shown by the appellant, could be explained by the absence of up-to-date and robust assessment of this area by the Council. Notwithstanding this, and although it is somewhat overgrown, the site nevertheless holds some amenity value, particularly because it provides visual relief in an area otherwise largely surrounded by built development.
11. The appeal scheme would enable the construction of five dwellings and the retention of part of the site as an attenuation drainage basin, whilst providing a publicly accessible area of open space on the remainder. The area of open space would be repurposed as Amenity Green Space, for which there is an identified deficit in Merrow. Having regard to the evidence before me, and the

¹ June 2017.

² Turner v SSCLG & Others [2015] EWHC 375 (Admin).

³ Document Reference 7713.001 dated July 2019.

⁴ Local Planning Authority Reference 19/P/01512.

limitations of the Council's assessment of the appeal site in particular, I am satisfied with this approach.

12. The extent of the area designated as open space would be reduced as a result of the development. However, subject to the implementation of the Landscape Strategy, the proposal would bring substantive changes which would improve the accessibility and recreational use of the designated area, as well as increase its visual amenity.
13. The submitted UU seeks to secure part of the site as Recreation Open Space to ensure that it is not used other than for the purposes of public open space and informal recreation. For the reasons given above, I consider that the provision of publicly accessible open space is necessary, directly related to the development, but also fairly and reasonably related in scale and kind. As such, the UU would in that particular regard accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations (as amended) and the tests for planning obligations set out in the Framework.
14. I have however some concerns about the document itself. In particular, the UU refers to the Recreation Open Space as the area of land shown edged green on plan 2, but this does not appear to have been included or annotated as such within the document before me. The extent of the area of land which would remain in use as Recreation Open Space cannot therefore be clearly identified. Additionally, the submitted UU would, by reason of the lack of detail in respect of the specification, management and maintenance of the open space, fail to provide an appropriate and sufficiently robust mechanism for securing a high quality and accessible development. This limits the weight which can be afforded to this planning obligation. I note the appellant's reference to the Case Officer's report regarding the future maintenance and management of the open space, but conditions would not alone overcome the deficiencies of the UU which I have identified above.
15. Given that the provision of an area of public open space and informal recreation is required to comply with the requirements of local and national planning policies, the UU would, in its present form, not satisfactorily secure the provision and retention of a high quality and publicly accessible open space, but also its future management and maintenance. Accordingly, I conclude that the proposal would result in an unacceptable loss of protected open space, and would therefore fail to accord with LPSS Policy ID4 and paragraph 97 of the Framework.

Other Matters

16. The appeal site lies within 5km of the Thames Basin Heaths Special Protection Area (SPA), which is recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for supporting significant numbers of nightjars, woodlarks and Dartford warblers in particular. The Council, in collaboration with Natural England, consider that the increased recreational pressure arising from the proposed development is likely to have, either individually or in combination with other plans and projects, a significant effect on the integrity of these internationally important areas, unless suitable mitigation is provided.

17. The Thames Basin Heaths SPA Avoidance Strategy 2017 Supplementary Planning Document⁵ (SPD) sets out how the adverse effects of development on the integrity of the SPA should be avoided and mitigated. The appeal site lies between 400m and 5km from the SPA boundary and therefore falls within the 'zone of influence' where, in accordance with LPSS Policy P5 and the SPD, avoidance measures must be provided in the form of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) contributions. As noted above, the appellant has submitted a UU to provide the required mitigations in the form of financial contributions, which appear commensurate with the scale of development.
18. As I am dismissing this appeal on other substantive grounds, this is not a matter which needs to be considered further here. However, it should be noted that had the development been considered acceptable in all other respects, I would have sought to explore the necessity for undertaking an Appropriate Assessment to ensure that the proposal would not adversely affect the integrity of the Thames Basin Heaths SPA, in accordance with the Habitats Regulations.
19. At the time of the determination of the planning application, the Council was unable to demonstrate a five-year supply of deliverable housing sites. However, the Case Officer's report for the revised planning application approved in January 2020 indicates that the Council currently benefits from 5.83 years of housing land supply, based on the most recent evidence. This is not disputed by the appellant. Accordingly, paragraph 11 of the Framework is not engaged in this instance.

Conclusion

20. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR

⁵ July 2017.