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## Appeal Decision

Site visit made on 6 October 2020

**by S Leonard BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 December 2020**

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**Appeal Ref: APP/Y3615/W/20/3255600**

**408 and 410 Lower Road, Effingham, Leatherhead KT24 5JP**

- 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 Anna Harper (Berkeley Homes (Southern) Ltd) against the decision of Guildford Borough Council.
  - The application Ref 20/P/00373, dated 2 March 2020, was refused by notice dated 23 April 2020.
  - The development proposed is demolition of existing buildings (2x 4bed dwellings, C3 Use Class, plus outbuildings) and erection of 4no. dwellings (2x 2bed and 2x 3bed) with associated access, parking and landscaping.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. Since the planning application decision and the submission of this appeal, the appellant has submitted a formally completed planning obligation, pursuant to section 106 of the Town and Country Planning Act 1990, in relation to the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) of the Thames Basin Heaths Special Protection Area (TBHSPA). The Council has confirmed that the second reason for refusal has been overcome by this planning obligation. This is a matter to which I later return.

### Main Issues

3. The Council's reasons for refusal do not refer to the impact of the development on the Green Belt. However, having regard to the difference of opinion between the main parties as to whether the proposal comprises inappropriate development, and noting third party representations on this matter, as the decision-maker, I must come to a view in this respect.
4. Accordingly, the main issues are:
  - Whether or not the proposal would be inappropriate development in the Green Belt having regard to the *National Planning Policy Framework 2019* (the Framework) and any other development plan policies;
  - Whether the development should contribute towards the provision of affordable housing and local infrastructure; and
  - Whether the proposal would provide adequate mitigation for the TBHSPA.

## Background

5. The appeal site lies within Green Belt on the north side of Lower Road and is occupied by 2 vacant and boarded up, detached, 2-storey houses fronting onto Lower Road. Vehicular access is from the rear of the site, via an access from Lower Road which served the former Effingham Lodge Nurseries site and runs through the adjacent land. A grass verge in front of the appeal site separates it from the road. To one side there is a vacant British Legion club building, which lies within the Effingham Conservation Area whose boundary runs adjacent to the site. On the opposite side of the road are residential properties and a secondary school.
6. Land to the other side of the appeal site, which is within the appellant's ownership, comprises undeveloped fields and the remains of former buildings which occupied Effingham Lodge Farm. This land is herein referred to as the 'Lodge Farm site'. It forms part of a larger development site, including the school site on the opposite side of the road, which benefits from hybrid planning permission Ref 14/P/02109, approved by the Secretary of State on appeal in March 2018, for development including up to 258 dwellings and a replacement secondary school. This is herein referred to as the Howard of Effingham (HoE) scheme. Reserved matters approval has been granted for 175 dwellings on the Lodge Farm site, and I have been provided with the approved site layout plan, which, in part, has been incorporated into the appeal scheme planning application site layout drawing.

## Reasons

### *Whether Inappropriate Development in the Green Belt*

7. The appeal site forms part of a wider parcel of land incorporating land at Effingham Lodge Farm (ELF) to the side of the appeal site, which is allocated for up to 6 additional dwellings under Policy SA2 Previously developed land at Effingham Lodge Farm of the *Effingham Neighbourhood Plan 2018* (ENP). Having regard to the location of the site within the Green Belt, Policy SA2 requires the removal of all permanent buildings, hardstanding and redundant glass houses on adjacent land forming part of the wider ELF site, and the retention of this land for agricultural use or managed open natural grassland.
8. The ENP was undergoing Examination while the appeal in respect of the DoE scheme was being considered by the Secretary of State. The ENP Referendum took place in February 2018, around 6 months after receipt of the Examiner's Report and a month before the March approval of the HoE scheme, and the ENP was 'made' in April 2018. As such, ENP Policy SA2 does not have regard to the wider DoE scheme approval and the subsequent reserved matters consent for the Lodge Farm site, which incorporate the remainder of the Policy SA2 allocation site excluding the appeal site.
9. The buildings and glass houses on the ELF site have since been removed as part of site clearance works in preparation for the approved HoE residential development, and the appellant has confirmed commitment to building out the DoE scheme, as evidenced by the approval of reserved matters and the discharge of conditions. As such, the redevelopment of the appeal site can no longer meet the requirements of Policy SA2.

10. Nonetheless, Policy SA2 remains part of a recently adopted development plan which intended the appeal site to be redeveloped in conjunction with the adjacent land within the allocated site. As such, the principle of the residential redevelopment of the site is established through the ENP, albeit in a different form.
11. Furthermore, given the existing buildings to the west side of the appeal site, the small increase in the number of dwellings proposed on the appeal site, and the approved reserved matters layout of development on the remaining part of the Policy SA2 site, comprising houses fronting onto Lower Road, the appeal scheme would amount to limited infilling outside the inset settlement boundary in accordance with the criteria contained within Policy P2 of the *Guildford Borough Local Plan: Strategy and Sites 2019* (the GBLPSS). Given these circumstances, the proposal would not be inappropriate development within the Green Belt.

*Affordable housing and local infrastructure contributions*

12. On the basis of the evidence before me, I find that, in respect of layout and design, the appeal scheme would, in effect, comprise an extension of the adjacent Lodge Farm site development. The proposed scale, size, height, materials, appearance and spacing of the dwellings would be in keeping with those approved on the adjacent land. The proposed front building line would align with that of the approved dwellings fronting Lower Road. The sole means of vehicular access to the appeal site would be from the rear, through the adjacent development via an extension of an internal tributary road. The land to the front of the new houses would be landscaped to form a continuation of the approved, enclosed, landscaped site frontage onto the street, which forms a notable element of the adjacent residential scheme and defines how the development relates to the public realm of Lower Road.
13. As such, the appeal scheme would operate as an integral part of, and would visually appear inseparable from, the adjacent Lodge Farm site development. It would be dependent upon that development for vehicular access via a new access from Lower Road, which was stipulated on the movement and access parameter plan approved under condition 1 of the DoE scheme approval, and forming part of the subsequent reserved matters approval for 159 dwellings on the Lodge Farm site granted in February 2020. As such, the appeal scheme could not be developed in its proposed form, unless the adjacent residential development takes place.
14. With the above in mind, and noting that the appellant is also the residential developer in respect of the DoE scheme, and has owned the appeal site since the submission of the DoE scheme planning application and determination of the associated appeal, I find that it is appropriate to determine the affordable housing and any other required local infrastructure contributions of the current appeal proposal, having regard to the combined impact of the appeal scheme and the extant permission.
15. My opinion is reinforced by the supporting text to Policy H2 of the GBLPSS in respect of the Council's affordable housing policy, which confirms the Council does not support schemes that seek to avoid the affordable housing requirements of Policy H2 by failing to make the most efficient use of land or by artificially subdividing land into smaller sites, and that the Council expects the full stipulation for the cumulative requirement of all the sites to be made.

This approach is also reflected in the Council's adopted *Planning Contributions SPD 2017* (PCSPD), in paragraph 5.20, with respect to affordable housing and other infrastructure contributions.

16. Whilst it may not have been the intention of the appellant to deliberately exclude the appeal site from the original DoE development for the purposes of avoiding future planning obligations, this does not alter the circumstances of the current proposal, which would make efficient use of the appeal site to extend the approved DoE scheme by 4 additional dwellings (the existing dwellings and the net increase of 2), which were not taken into account in the previous assessment of planning obligation requirements for the overall scheme and the Section 106 Agreement securing the contributions.
17. In this respect, I am not persuaded by the appellant's justification for splitting the two sites on account of the occupation of the two dwellings on the appeal site at the time of the DoE application, since this is not an uncommon scenario in respect of planning applications and would not, alone, prevent the appeal site from being comprehensively redeveloped in conjunction with the adjacent Lodge Farm site.
18. I have noted that the current appeal site was included within the blue line of the DoE application site plan, but as there were no proposals before the council to redevelop the site at this time, and the appellant has confirmed that nos. 408 and 410 were not required to form part of the appeal scheme at that time, this does not alter my above findings on this issue.
19. I have taken account of the appellant's withdrawn application for 4 dwellings on the appeal site with direct vehicular access from Lower Road, and the lack of objection to this access from the Highway Authority and other third parties. I also acknowledge that it is possible that a different developer could seek approval for a self-contained scheme with independent access from Lower Road. However, I must determine the appeal on the basis of the appeal scheme before me. In any event there is no extant permission for the withdrawn scheme or any other redevelopment scheme for the site, and as such, I find that there is no fallback position that would alter my conclusion on this matter.
20. Whilst I have evidence before me that the appellant had offered to make financial contributions towards affordable housing and education, community and highways schemes associated with the extant HoE approval, prior to the determination of the appeal scheme planning application, both main parties did not reach agreement on the nature and amount of required contributions and no method of securing any such contributions was established. The appellant's current stance in respect of this appeal is that no additional affordable housing or local infrastructure contributions would be required in respect of the appeal scheme, and I have determined the appeal accordingly.
21. The introduction to GBLPSS Policy H2 confirms that, outside of London, Guildford Borough is one of the least affordable areas of the country to live in, due to high demand to reside there and a limited supply of existing and new housing. It goes on to say that the West Surrey Strategic Market Assessment 2015 and Addendum 2017 show that more than 50% of all Guildford households over the Local Plan period will be unable to afford to buy or rent a home on the open market that meets their needs without subsidy due to the high cost of buying or renting homes on the open market in relation to local incomes.

22. In response to this identified need for affordable housing in the borough, Policy H2 requires at least 40% of homes on sites providing 11 or more homes, or more than 5 dwellings in Designated Areas, within which the appeal site lies, to be affordable homes, with off-site or payment in lieu contributions being an option where on-site provision or management would be impractical.
23. Whilst I acknowledge that applying Policy H2 to the appeal site as a stand-alone development would not result in an affordable housing requirement, applying the criteria of Policy H2 to the proposal in conjunction with the larger DoE scheme would result in a requirement for two affordable dwellings within the appeal scheme.
24. I am aware that a fully policy-compliant affordable housing contribution (assessed against Policy H11 of the former Local Plan) was not required as part of the DoE development, following the submission of viability evidence by the appellant during the consideration of that application and on account of the delivery of a new school. Furthermore, the Council has not specifically confirmed the nature and amount of affordable housing contribution that it considers would need to be provided as part of the appeal scheme. However, I have not been presented with any cogent viability evidence from the appellant to justify the proposed non-provision of an affordable housing contribution in respect of the appeal scheme. On the evidence before me, it appears that the need for an affordable housing contribution arises from the development, and, subject to an appropriate form and amount of contribution, this would satisfy the 3 tests set out in Paragraph 56 of the Framework and Regulation 122 of the *Community Infrastructure Regulations 2010* (the CIL Regulations).
25. The Council considers that financial contributions are required towards the provision of local infrastructure, having regard to the contributions that have been secured via a Section 106 Agreement attached to the DoE permission. It is the Council's view is that the appellant should make proportionate contributions towards the previously agreed infrastructure requirements to offset the impact of the proposed additional housing when considering the comprehensive redevelopment of the appeal site and the Lodge Farm site. However, notwithstanding reference to the adopted PCSPD, the Council has not specified precisely the amount and type of local infrastructure contributions it is seeking and how the amount of such contributions would be calculated having regard to the PCSPD.
26. There is no planning obligation in this respect before me, and the appellant has confirmed that there is no intention to make a local infrastructure contribution, notwithstanding discussions that took place between both main parties on this matter prior to the determination of the planning application
27. I have noted the appellant's commitment to providing a substantial amount of education, community and highways infrastructure contributions in respect of the extant DoE scheme, and I have no evidence before me to justify further contributions on the basis of the additional dwellings proposed by the appeal scheme, which would comprise a relatively small proportion of the overall development size.
28. The Council has not provided any detailed evidence to define the extent of any local deficiencies in infrastructure and the effect that the appeal proposal might have on them. Nor has a specific infrastructure need arising from the appeal scheme been identified. Furthermore, no detailed information been provided to

show how and where such contributions would be spent. Accordingly, I cannot be certain that local infrastructure contributions would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of the PCSPD, I am unable to conclude that a planning obligation seeking to provide local infrastructure contributions would comply with Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations. In such circumstances, the absence of a planning obligation to secure local infrastructure contributions does not weigh against the development.

29. For the above reasons, I therefore conclude that, it has not been satisfactorily demonstrated that the proposal is not required to make an appropriate financial contribution towards the provision of affordable housing. As such the appeal scheme would be in conflict with GBLPSS Policy H2 and the PCSPD, which seek to ensure that new developments make an appropriate affordable housing contribution in order to increase the number of affordable homes in the borough to contribute to meeting the identified needs. In respect of other local infrastructure contributions, I find that it has not been satisfactorily demonstrated that these are necessary. However, as I am dismissing the appeal on the basis of a lack of affordable housing contribution, there is no need for me to consider this matter further at this stage.

*Thames Basin Heaths Special Protection Area*

30. The appeal site is located within the 5 - 7 km buffer zone of the TBHSPA, an area of lowland heath which supports important breeding populations of ground nesting birds, including nightjar, woodlark and Dartford Warbler, which are vulnerable to increases in recreational pressure from new residential occupiers and associated dogs and cats.
31. Taken together, GBLPSS Policy P5, Saved Policy NRM6 of the *South East Plan 2009* (SEP) and the *Thames Basin Heaths SPA Avoidance Strategy SPD 2019* (TBHSPAAS) state that large scale residential developments of over 50 net new dwellings that lie within 5 – 7 km of the TBHSPA may be required to provide avoidance and mitigation measures comprising: payment of a contribution towards SAMM of the SPA; and, provision of SANG to act as an alternative recreational destination for residents.
32. Whilst the proposal would only result in a net increase of two dwellings on the appeal site, having regard to my findings in respect of the first main issue, that the appeal scheme forms an inseparable element of the extant planning permission for the adjacent land, I consider that the appeal scheme must be considered in combination with the residential development approved under application Ref 14/P/02109 for the purposes of avoiding harm to the TBHSPA.
33. The evidence before me is that Natural England agreed reduced SANG and SAMM tariffs in respect of the extant scheme and that these rates have been applied to the two additional dwellings arising from the appeal scheme and incorporated into the submitted unilateral undertaking. The SAMM contribution would go towards access management of the TBHSPA to be coordinated strategically by Natural England working with the Council and other affected SPA authorities and land managers as part of an overarching strategy for access management. The SANG contribution would be paid to the Council in



accordance with the TBHSPAAS as a contribution towards the cost of maintaining and upgrading SANGs.

34. As such, the appellant has made provisions for the required levels of contribution towards SAMM and SANG, secured by a legal agreement, to be provided as part of the appeal scheme. It is against this background that the Council has withdrawn its second reason for refusal related to the need for protection of the TBHSPA. I consider that these provisions are 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, and therefore meet the statutory tests set out in regulation 122 of the CIL Regulations.
35. I am therefore satisfied that the proposal would provide adequate measures to avoid and mitigate its potential adverse impacts on the integrity of the TBHSPA, in accordance with the aims of GBLPSS Policy P5, SEP Saved Policy NRM6 and the TBHSPAAS 2019. This would also accord with the *Conservation of Habitats and Species Regulations 2017* which seek to ensure that development does not adversely affect European sites and species.

### **Conclusion**

36. Whilst I have found that the proposal would not be inappropriate development in the Green Belt, the absence of a planning obligation to secure local infrastructure contributions does not weigh against the development, and the proposal would provide adequate measures to avoid and mitigate its potential adverse impacts on the integrity of the TBHSPA, this does not outweigh the harm I find in respect of the failure to satisfactorily demonstrate that the proposal is not required to make an appropriate financial contribution towards affordable housing provision.
37. For the above reasons, I conclude that the appeal should be dismissed.

*S Leonard*

INSPECTOR