
Appeal Decision

Hearing held on 19 and 20 January 2021

Site visit made on 20 January 2021

by Robin Buchanan BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2021

Appeal Ref: APP/M3645/W/20/3259930

Woodlands Garage, Chapel Road, Smallfield RH6 9NN

- 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 Mrs Jeanette Reynolds (Design and Build Ltd) against the decision of Tandridge District Council.
 - The application Ref TA/2019/638, dated 29 March 2019, was refused by notice dated 23 April 2020.
 - The development proposed is demolition of all buildings on site. The erection of a two storey building to accommodate 4 flats, erection of 2½ storey building to accommodate 6 flats and 1 retail unit on the ground floor with storage space at the rear and ancillary parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for Costs

2. Prior to the start of the hearing a written application for costs was made by Mrs Jeanette Reynolds (Design and Build Ltd) against the Council. At the hearing, the Council submitted a written response to the costs application and the applicant submitted written final comments. Neither main party added to their respective submissions orally at the hearing. This application is the subject of a separate Decision.

Preliminary Matters

3. At the hearing the appellant agreed that the description of development in the banner above for a 10 flat scheme, which is taken from the Council's decision notice and is how the Council consulted on the application, is more concise and accurate than the description in the application form. It was also used by the appellant in the appeal form. At application stage, the appellant submitted amended plans to the Council, including to alter the development to a 9 flat scheme. The Council did not formally consult statutory and non-statutory consultees or the public on these changes to the proposed development. It considered that the amended plans did not overcome all of its concerns. The Council made its decision based on the original plans for a 10 flat scheme (the appeal proposal).
4. After the Council's decision, the appellant sought informal comments from the Council and from some external consultees in light of the Council's reasons for refusal. This was with a view to submitting a new planning application, though

the appellant instead lodged the current appeal, including seeking to address a number of outstanding matters by planning conditions. At the hearing, the appellant confirmed that it seeks to have the appeal determined on the basis of the amended plans for the 9 flat scheme, including further plans and documents submitted with the appeal (the revised proposal). The appellant and the Council consider that the revised proposal would overcome the Council's reasons for refusal No 2 (in part) and Nos 3 to 7.

5. Nevertheless, I consider that the revised proposal includes significant changes¹ to the development that was refused by the Council (ie the appeal proposal), including the amount, design and layout of development. It would also necessitate a change to the description of development. Neither the Council nor the appellant has undertaken any formal consultation with statutory and non-statutory consultees or with the public on the revised proposal. At appeal stage interested parties are not otherwise consulted on, or notified about, amended plans or documents. There were a substantial number of interested party representations at application stage. Most of these were objections by local residents, and by Burstow Parish Council, to the development that was refused by the Council. I am therefore concerned that requisite consultation on the revised proposal, including with these interested parties, has not occurred.
6. Amended plans seeking to overcome the Council's reasons for refusal should normally be the subject of a fresh planning application and the appeal process should not be used to evolve a scheme.² Having regard to the 'Wheatcroft Principles'³ I consider that the amended plans and further documents before me in this appeal for the revised proposal for a 9 flat scheme would materially alter the development and potentially prejudice the interests of those who should have been consulted on the changed development. I have therefore dealt with the appeal on the basis of the original plans and documents for the appeal proposal (ie 10 flat scheme) considered by the Council, and on which it made its decision, and the description of development in the banner above.
7. At the hearing the Council confirmed that the word 'not' in reason for refusal No 2 in the decision notice in respect of a rear service area (which otherwise suggested no alleged harm to living conditions) was an error and that this word should be omitted. Both main parties have addressed this reason on this basis and so have I.
8. On the 19 January 2021 the Government published the 2020 Housing Delivery Test (HDT) results. The main parties have had an opportunity to comment on the HDT. I have taken the HDT and these comments into account in 'other matters' below.
9. At the hearing the appellant confirmed that the proposed retail use would be a Use Class A1⁴ shop. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order). Having regard to regulation 4 of the Regulations, I have considered this appeal on the basis of the use classes specified in the Schedule to the Use Classes Order on 31 August 2020.

¹ Statement of Common Ground – paragraph 4.1(e), page 23.

² Planning Inspectorate 'Procedural Guide Planning Appeals England', November 2020 – Annexe M.1.1 and M.2.1.

³ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37].

⁴ Town and Country Planning (Use Classes) Order 1987.

Main Issues

10. The main issues are the effect of the proposed development on:

- the character and appearance of the area including the streetscene;
- its effect on the living conditions of existing neighbouring residents in Chapel Road and The Woodlands and on future occupiers, with particular regard to outlook, noise and lighting;
- whether it would make provision for affordable housing;
- whether it would incorporate a suitable sustainable urban drainage system with particular regard to surface water flood risk;
- its effect on trees protected by a tree preservation order;
- whether it would achieve a 20% reduction in CO2 emissions; and
- whether it would make suitable provision for refuse and recycling facilities.

Reasons

Character and appearance of the area

11. The appeal site is within a residential part of Smallfield, not far from the village centre. It includes main buildings and a forecourt canopy constructed for use as a vehicle fuel filling station, showroom, workshops and ancillary offices but now used mainly for the display and sale of previously owned cars. These buildings are varied in external design and appearance, have staggered floorplans in relation to each other and variously step down in height across the site, from two-storey to single storey, with flat roofs. They are arranged broadly in a row and centrally within the site, surrounded by hardstanding at the front and both sides, with a storage compound to the rear which includes some trees in one corner.
12. The overall scale, massing and extent of this development is limited by its reasonably low vertical height, the articulation of built form and siting between the different buildings, and in different parts of the same buildings, and the degree of open separation between the main buildings and the boundaries of the appeal site. This results in an appreciable degree of spaciousness above, between and around these buildings. These characteristics are locally distinctive and can be observed from Chapel Road at the front, including in the immediate streetscene in either direction and from the parking courtyards for the flats in The Woodlands⁵ to the rear of the appeal site. Chapel Road is a main road through the village and I saw at my site visit that it is well used by vehicles, pedestrians and cyclists.
13. The appeal proposal would redevelop the appeal site at one end with a two-storey block of four flats with pitched roofs, and from the other end, extending into the centre of the site, with a two and a half-storey building over three floors. This would provide a ground floor retail shop unit and six flats above, including accommodation in a pitched roof. A single storey flat roofed

⁵ The Woodlands development is accessed by a private road from the public highway in Chapel Road. The car parking courtyards are nonetheless a communal public area for residents and visitors.

warehouse building would be attached to the rear of the retail unit. Most of the remainder of the site would be hardstanding for car parking, access and vehicle manoeuvring with some communal landscaped open space for residents.

14. The siting of the proposed buildings would be noticeably closer to the front boundary and, in particular, closer to each side boundary of the appeal site than the existing development. The spacing to the adjoining residential buildings and the gap between the proposed buildings would broadly reflect the spacing of other residential development along Chapel Road. This layout would also reflect the general building line along Chapel Road and pitched roof buildings on the appeal site would reflect the design of other development nearby. In scale, massing and appearance the proposed block of flats would also be broadly in keeping with other residential buildings in Chapel Road and The Woodlands.
15. However, the retail and flat building would have a single rectangular floorplan at ground level and would be a reasonably long building. While this may be convenient for a retail use of the size and type proposed, and the flat roof balcony across the whole width of the front elevation would articulate this part of the building, it would nonetheless give an overly dominant horizontal emphasis to it. In addition, the forward projection of the ground floor below the balcony would be reasonably wide. This protuberance would therefore be unduly prominent and would unacceptably accentuate the tall commercial floor to soffit height along the uniform plane of the entire ground floor elevation. This would be despite the variation in elevation materials, including large areas of glazing to the shop front, as these would nonetheless be in the same plane and to the same height as this part of the building.
16. Although it would be inset behind the balcony, the entire first floor front elevation would extend upwards in a uniform plane along the whole width of the building to eaves height, and higher still into the gable roofs at either end. In addition, the eaves level would be noticeably higher as a result of a significant gap (and resulting additional vertical elevation) above the top of the fenestration in this part of the building. Furthermore, rather than breaking up the appearance of the building, as the appellant otherwise suggests, the four dormer windows in the front roof slope would be reasonably large and high up and would therefore add appreciably to the overall amount of built form in this building and on this part of the appeal site.
17. Consequently, in terms of its detailed design, height, length and overall visual appearance, the scale and massing of the retail and flat building would be unduly dominant and conspicuous in views from Chapel Road, which has an open frontage along the appeal site boundary, and on the approach from the immediate streetscene in both directions.
18. There are some terraces of two-storey houses further along Chapel Road in one direction. However, these are set well back from the road frontage behind landscaped front gardens, which include mature trees, and as a result are not prominent in the streetscene. A two storey block of flats in the other direction is closer to the road frontage and so is more apparent in views. However, the ground floor part is obscured by a tall, dense boundary hedgerow and this building has conventional floor to ceiling heights with no dormer windows in the roof so it is of relatively modest scale and massing. The terraced residential properties opposite the appeal site, in Churchill Road, are sited narrow gable

- end on to Chapel Road and these buildings do not therefore have any significant visual presence in the Chapel Road streetscene. In addition, none of the above buildings (or those immediately either side of the appeal site) are as long or as tall as the proposed retail and flat block and accordingly do not justify the approach to this building that is proposed on the appeal site.
19. It was confirmed by the appellant at the hearing that the flat roof of the warehouse building would be approximately 4.2m high to eaves. Part of this building would be sited reasonably close to the rear and one side boundary of the appeal site. The lower part of this building would not be conspicuous beyond the appeal site due to the screening effect of a normal 1.8m or even 2m high close boarded boundary fence. However, despite the staggered layout and alignment of its floorplan and elevations, a significant proportion (over half) of the height of this building would nonetheless project above a fence and along a reasonably large part of these two boundaries of the appeal site, including above or next to some taller boundary shrub planting at The Woodlands.
20. Some existing buildings or parts of buildings on the appeal site are sited in reasonably close proximity to the rear boundary of the appeal site, including in one place next to this boundary. However, they have relatively short elevations facing this boundary or are relatively low in height (or both) and therefore are not unduly prominent or conspicuous in views from the car park courtyards in The Woodlands.
21. Consequently, despite a flat roof, the siting, extent and scale and massing of the warehouse building would be unduly prominent and conspicuous in views from the parking courtyards in The Woodlands. It would also therefore appear to be unduly cramped and an overdevelopment of this part of the appeal site.
22. There is an extant planning permission⁶ (the extant permission) for a development of 10 residential properties on the appeal site, including 6 houses in a broadly similar location to the proposed retail and flat building. There are therefore some similarities between the development in the extant permission and the appeal proposal. However, the houses are arranged as two separate terraces of 3 houses with no extensions to the rear. While the gap between the two terraces is reasonably narrow this separation nonetheless appreciably alleviates the scale, massing and extent of these two blocks of built form. It also allows a view through and towards the open gardens behind and trees in the distance beyond The Woodlands. Albeit that the gap between these terraces is limited, it is nonetheless significant for these reasons.
23. Furthermore, the position of the floorplans of the two terraces are slightly staggered in relation to each other, the gable elevation in each terrace includes a very narrow forward projection and each house includes an angled lean-to style porch roof over the front door and side window. These design elements add an appreciable vertical articulation to the appearance of the built form in each terrace. In addition, the houses have conventional domestic floor to ceiling and eaves heights, lower gabled elevations and no dormer windows in the front roof slopes.
24. Consequently, while the extant permission would result in a similar amount of hardstanding for car parking, access and vehicle manoeuvring, especially to the

⁶ Council's reference TA/2017/2311, granted September 2018.

side and rear of some proposed buildings, it would result in two buildings on this part of the appeal site that were shorter in floorplan length and lower in height. Consequently, there would be significantly less scale, massing and extent of built form on the appeal site. These buildings would therefore be appreciably less conspicuous in views and not as prominent in the streetscene. Accordingly, the extant permission can be readily distinguished from the proposed retail and flat block.

25. I accept that it might be possible to alter the layout of the proposed retail unit car parking and forecourt area to allow for additional landscaping along the appeal site frontage with Chapel Road, perhaps even so that it was similar to the extant permission in this respect. However, this consideration relates to the design, layout and amount of development proposed and therefore any judgement on whether to grant planning permission. Accordingly, it would not be appropriate to relegate seeking to resolve this matter by a condition, as the appellant suggests, were I minded to grant planning permission.
26. I do not have full details before me of the appeal decision⁷ referred to by the appellant. However, I note that the decision relates to a materially different form of development (it does not include residential use) and was in a different Council area. It is also quite dated and consequently was considered under a different development plan and National Planning Policy Framework (Framework) context. Moreover, on the evidence before me, the landscape condition was imposed in circumstances where there was no uncertainty about the design and site layout of the development that was being approved in that case. This decision can therefore be distinguished from the current appeal which I have, in any event, determined on its planning merits.
27. Considering the above, the appeal proposal would cause significant harm to the character and appearance of the area, including the streetscene. It would not accord with Policy CSP18 of the Tandridge District Core Strategy, October 2008 (the CS) or with Policies DP7 and DP11 of the Tandridge Local Plan Part 2 Detailed Policies, July 2014 (the LP). These policies include that development should integrate effectively with its surroundings and that infilling and redevelopment should reflect and respect the character, setting and local context, including features that contribute to local distinctiveness, should be in keeping with the prevailing streetscape reflecting the variety of local building types by using complimentary designs and not result in overdevelopment by reason of scale, form, bulk, height and spacing.
28. It would also conflict with Framework paragraphs 8, 124 and 127. These include that development should protect and enhance the built environment, create high quality places, add to the overall quality of the area, be visually attractive as a result of good architecture and layout and be sympathetic to local character, including the surrounding built environment.

Living conditions

29. The facing end (side) elevation of the proposed retail and flat building would be reasonably close to the common boundary with the house and garden at 6 The Woodlands. The siting and height of this building would overlap beyond the rear elevation of the house by a significant degree. This part of the proposal

⁷ APP/P4605/W/16/3149213.

- would therefore be apparent in views from some habitable room rear windows, a glazed conservatory and the garden of this house.
30. The closest part of the warehouse building would be the same distance away from this boundary and would extend further in depth behind the house by about 2m. Despite the staggered layout and alignment of the remainder of this elevation of the warehouse it would nonetheless face along the entire depth of the rear garden to 6 The Woodlands. While the floorplan area of this building would be less than the area of existing buildings in the rear part of the appeal site, approximately 2m of the vertical elevation of this part of the warehouse would nonetheless project above a 1.8m or even 2m high boundary fence and be significantly closer to 6 The Woodlands than existing buildings on the appeal site.
31. At the hearing the appellant suggested that a boundary fence could be 2.5m high or that there could be tall planting along the boundary with 6 The Woodlands. However, such a tall fence in such close proximity would be unusual and unduly intrusive in a normal domestic setting. It would not in any event screen the highest, thus most overbearing, part of the warehouse or the overlapping part of the retail and flats building. Furthermore, tall planting would also likely restrict outlook and daylight or sunlight to the occupiers of this house and might take many years to have any appreciable screening effect. It would not therefore alleviate the overbearing impact of the proposed buildings meantime. In addition, I saw at my site visit that the ground floor level of this house and garden is at a slightly lower level than the appeal site. This difference would unduly accentuate the apparent height, scale and massing of the proposed buildings or any unusually tall boundary treatment.
32. The extant permission includes a building of terraced houses next to 6 The Woodlands. However, this building is slightly narrower than the retail and flats building and is sited further forward on the appeal site, closer to Chapel Road. As a result, less of its side (end) elevation would overlap with this house, conservatory or garden or be visible to its occupiers. In addition, aside from a small domestic shed, the open rear gardens of the approved houses would run next to and along the common boundary facing the rear garden of this house. Consequently, the extant permission would not unduly harm the living conditions of the occupiers of 6 The Woodlands having regard to outlook.
33. On the evidence before me, when built the occupiers of the house in the extant permission next to 6 The Woodlands could extend this property using permitted development rights. However, this house does not yet exist and there is no compelling evidence before me that even if it was built it would be extended, including to the maximum allowed as permitted development, as is otherwise suggested by the appellant. Nonetheless, even if it was extended in this way, a rear extension would not extend to the same total depth as the entire side elevation of the proposed warehouse building and it would not therefore have the same unacceptable overbearing impact.
34. Consequently, these parts of the retail and flat building and of the warehouse would have an unduly overbearing effect on the occupiers of 6 The Woodlands with regard to use of rear habitable rooms, the conservatory and the garden.
35. It is not unusual for flats to be located above ground floor retail units, including convenience stores with reasonably early or late opening hours, such as in shopping parades with car parking spaces in front and rear service areas

accessed from the rear. Having regard to the appellant's noise report,⁸ I am satisfied that were I minded to grant planning permission a condition could ensure that necessary details of insulation of internal noise between the retail unit and the flats above, for acoustic glazing in the flats, for the opening hours of a retail unit and for internal or external plant or machinery could be submitted to and approved by the Council. This would avoid unacceptable harm to the living conditions of the future occupiers of these flats.

36. It would also avoid such harm to the future occupiers of the proposed separate block of flats with regard to acoustic glazing, opening hours and plant and machinery, and would avoid such harm to existing occupiers of adjoining residential properties with regard to opening hours and plant and machinery. I note that the Council's environmental health officer did not object to the appeal proposal in connection with these matters.
37. However, the absence of potential statutory nuisance does not mean the absence of planning harm. The balconies above the retail unit would be the only private external amenity space for the occupiers of the flats. The balconies would face the forecourt, the customer approach and entrance into the retail unit and the customer car park. The likely duration, nature and intensity of such public activity immediately below, and in such close proximity, would cause undue noise and general disturbance and would not therefore be conducive to satisfactory use of the balconies for normal private domestic activity, such as relaxation and entertaining. Furthermore, some of the retail unit car parking spaces would be sited reasonably close to habitable rooms and the front garden of 6 The Woodlands. The movement of vehicles and noise caused as a result, including potentially early in the morning and later at night, would not therefore be conducive to satisfactory normal private domestic activity at this property.
38. It was confirmed at the hearing that a delivery or service vehicle for the retail unit would have to reverse into the appeal site and park between the two proposed buildings. Considering the appellant's noise report, I am satisfied that were I minded to grant planning permission a condition could ensure that necessary details of delivery times for the retail unit, including the management of this activity, to ensure that delivery vehicles were not unduly intrusive by reason of reversing alarms or the operation of externally mounted chiller units, could be submitted to and approved by the Council. This would avoid harm to the living conditions of the future occupiers of the flats and to the existing occupiers of nearby residential properties in these regards. I also note that the Council's environmental health officer did not object to the appeal proposal in connection with these matters.
39. However, as I have indicated above, the absence of potential statutory nuisance does not mean the absence of planning harm. Whilst such servicing and delivery requirements in connection with the retail unit might be relatively infrequent, reasonably temporary in duration and not at antisocial times of the day or night, nonetheless on these occasions such activity and use would block access to the main residents car park serving the proposed flats, potentially up to 3 times a day. This would unreasonably restrict entry or egress to and from the appeal site by residents or visitors.

⁸ 'Noise Impact Assessment Report', July 2019, prepared by Noise Solutions Ltd.

40. In addition, a delivery or service vehicle would abruptly block views out of habitable rooms of the proposed flats on one side in the ground floor and (depending on the size of vehicle) possibly first floor. It would also result in a general intensity of unacceptable commercial activity next to these habitable room windows and one of the entrances into these flats, and next to the pedestrian entrance into the flats above the retail unit. Moreover, it would bring pedestrians into unacceptable conflict with such vehicles and general activity on this shared part of the appeal site including, potentially, older or disabled people, children and parents with buggies.
41. These adverse effects would also be experienced when other service or delivery vehicles parked on this part of the appeal site, including potentially for the collection of refuse and recycling. In this regard, the appeal proposal contains very limited details of arrangements for the storage of refuse and recycling for the proposed flats, including the location and nature of such facilities. I am therefore concerned that the living conditions of the occupiers of existing neighbouring properties and of future occupiers of the flats could be unduly harmed by related noise and disturbance in the absence of such details.
42. The extant permission includes car parking spaces next to No 6 but these would be for residents or visitors to these houses and would not therefore likely be used as intensively compared to the proposed retail use. It also contains a similar layout for access and the parking of service or delivery vehicles. However, it would be in connection with a residential use only of the appeal site and consequently future occupiers of the flats and houses would experience a materially lower frequency and intensity of such delivery and service vehicle activity. Accordingly, the extant permission can be readily distinguished from the proposed retail and flats proposal in these regards.
43. There is no objective evidence before me about commercial noise or activity and disturbance generated by the use of the appeal site for the purpose that it was originally constructed. Nonetheless, I accept that the existing use for car sales could generate commercial noise and activity in reasonably close proximity to the occupiers of any of the neighbouring properties to the appeal site. However, seeking to ensure the same or a similar level of noise and disturbance in the proposed development as that which exists, or previously existed, as a result of this fall-back position would simply maintain harm to the living conditions of existing occupiers. The redevelopment of the appeal site should reasonably provide an opportunity to deliver better living conditions for existing residents.
44. The warehouse building and service yard would be located in reasonably close proximity to some of the proposed flats and to nearby flats in The Woodlands. However, I am satisfied that were I minded to grant planning permission a condition could ensure that satisfactory details of lighting including intensity, direction and duration of floodlighting or other external lighting, were submitted to and approved by the Council. This would avoid nuisance and disturbance to existing and future occupiers of these flats in this regard.
45. Considering the above, the proposed development would cause significant harm to the living conditions of the existing occupiers of 6 The Woodlands, having regard to outlook and noise, to the existing occupiers of the neighbouring flats in The woodlands having regard to noise and to the living conditions of future occupiers of the flats having regard to outlook and noise.

It would not accord with CS Policy CSP18 or with LP Policies DP7 and DP22. These policies include that development should integrate effectively with its surroundings, not significantly harm the amenities of the occupiers of neighbouring properties by reason of overshadowing, noise, traffic or other general disturbance or adverse effect and provide a satisfactory environment for the occupiers of existing and new development.

46. It would also conflict with the Framework paragraphs 8, 127 and 180. These include that development should foster a well-designed and safe built environment, have a high standard of amenity for existing and future users, and ensure it is appropriate for its location taking into account the likely effects on health and living conditions and avoid noise giving rise to significant adverse impacts on the quality of life.

Affordable housing

47. I note that there is a 'a very high level of unmet housing need' in the district and that the Council seeks to 'maximise the supply of affordable housing'.⁹ Accordingly, for a 10 flat scheme, CS Policy CSP4 requires the appeal proposal to make provision for up to 34% of the flats as affordable housing. This policy 'presumes' that it be provided on site, though a contribution to off-site provision may be acceptable to the Council. At the hearing the appellant accepted that the appeal proposal would need to make provision for affordable housing and agreed that it makes no provision by either means. Furthermore, the appellant has not submitted a viability statement, or any other substantive evidence, to justify why the appeal proposal cannot provide up to 34% of the flats as affordable housing on-site or a contribution to off-site provision elsewhere.
48. Consequently, the appeal proposal would not make provision for affordable housing. It would therefore cause significant harm to the provision of affordable housing and be at odds with the Council's adopted housing and planning strategy in circumstances of a significant affordable housing need. It would not accord with CS Policy CSP4. It would also conflict with Framework paragraphs 8, 59, 61 and 62 which include that development should provide a range of homes and address the needs of groups with specific housing requirements, including those who require affordable housing, and ordinarily expect this to be met on-site.

Sustainable urban drainage system

49. The appellant's flood risk reports¹⁰ confirm that the majority of the appeal site is in Flood Zone 1 (low risk from fluvial flooding) and is surrounded by Flood Zones 2 and 3a (medium and high risk) which encroach on the boundaries of the appeal site. Part of the appeal site is also at very low or low risk from surface water flooding. Planning Practice Guidance (PPG) confirms that at least part of the appeal site is therefore in an area at risk of flooding.¹¹ In these circumstances, Framework paragraph 155 states that 'inappropriate development in areas at risk of flooding should be avoided' and PPG¹² confirms that housing is a 'more vulnerable' type of development.

⁹ CS - paragraph 8.3.

¹⁰ 'Flood Risk Assessment', Revised April 2019 and 'Foul and Surface Water Drainage Assessment', Revised April 2019 – prepared by Environmental Assessment Services Ltd.

¹¹ PPG paragraph 7-003-20140306.

¹² PPG paragraph 7-066-20140306.

50. I note that the Environment Agency did not object to the appeal proposal on flood risk grounds subject to any planning permission that might be granted including conditions to secure details of finished floor levels, low level walls (to control the direction of surface water flows) and interceptor drains at the access points into the appeal site from Chapel Road. I have no reason to reach a different view in those regards. However, the local lead flood authority (Surrey County Council) objected on the basis that the appeal proposal contained insufficient information with regard to surface water soakaway tests, including that it had not been demonstrated that a discharge rate could be reduced as close as possible to the existing 'greenfield' run-off rate, and also due to the absence of a satisfactory mechanism for future management of a surface water drainage system (SuDS).
51. The appellant refers to information previously supplied with respect to the extant permission or obtained or prepared after the Council's decision. However, those details are not before me in this appeal and in any event the appeal proposal is for a materially different development. The appellant has not therefore justified that the measures provided in respect of the extant permission would transfer to the appeal proposal or achieve the same outcomes, as the appellant suggests. This consideration relates to the amount, design and layout of development proposed and therefore any judgement on whether to grant planning permission. Accordingly, it would not be appropriate to relegate seeking to resolve this matter in this appeal by a planning condition, as the appellant also suggests, were I minded to grant planning permission.
52. Consequently, the appellant has not substantiated that the appeal proposal would incorporate a suitable SuDS and it would therefore cause significant harm to the safety of people and property at or close to the appeal site which are at risk of surface water flooding. It would not accord with CS Policy CSP15 or with LP Policy DP21. These policies include that development should reduce the cause and impact of flooding, including by a SuDS and its future maintenance, and ensure the discharge of surface water run-off is restricted to that of the pre-development site. It would also conflict with Framework paragraphs 8, 148 and 155 which include that development should foster a safe environment, take full account of flood risk, minimise vulnerability and improve resilience and should be made safe without increasing flood risk elsewhere.

Protected trees

53. On the evidence before me, some trees on the appeal site and some trees within the gardens of 6 The Woodlands are protected by tree preservation orders¹³ (the TPO trees). I saw at my site visit that the TPO trees make an appreciable contribution to the overall extent of trees along or near Chapel Road and as a setting or backdrop to development. Consequently, the TPO trees have significant local visual amenity value.
54. I appreciate that the Council has agreed to the removal of some other trees on the appeal site in the extant permission. However, the appeal proposal is for a materially different development, including the siting and extent of building footprint, and some parts of the appeal proposal and associated works, including excavation for foundations, would be in reasonably close proximity to

¹³ Council's references TPO No 4 and TPO No 1 respectively.

the TPO trees. There is therefore a realistic possibility of harm to the TPO trees. The appellant refers to information obtained or prepared after the Council's decision. However, those details are not before me in this appeal. The appeal proposal includes no detailed arboricultural information, such as a tree survey, to establish the accurate position and condition of the TPO trees or recommendations with regards to root protection areas relative to the proposed development.

55. Consequently, the appellant has not substantiated that the appeal proposal would have no adverse effect on the TPO trees and I am therefore concerned that it would cause significant harm to the TPO trees. It would not accord with CS Policy CSP18 or with LP Policy DP7 which include that development should retain important trees having regard to the layout of proposed development. It would also be inconsistent with the Council's 'Trees and Soft Landscaping' supplementary planning document, November 2017, which includes guidance for retaining and incorporating trees into development and measures for effective tree protection. It would also conflict with Framework paragraphs 8 and 170 which include that development should protect and enhance the natural and local environment, including valued landscapes, and recognise the intrinsic character and beauty of trees.

CO2 emissions

56. I appreciate that the Council has used a condition to approve some details of energy efficiency measures to reduce CO2 emissions for the extant permission. I also note that the appellant has provided 'indicative' values for some parameters of such measures for the appeal proposal and suggests that it is 'likely' that photovoltaics or air source heat pumps can also be used. However, the details already approved by the Council are not before me in this appeal and, in any event, the appeal proposal is for a materially different development to the extant permission, including an additional building and a flat roof which may not be as suitable for some measures. I cannot therefore be certain that the measures approved by the Council in the extant permission would transfer to the appeal proposal or achieve the same outcomes, as the appellant suggests.
57. As it would be a 10 flat scheme, CS Policy CSP14 requires the appeal proposal to achieve a 20% reduction in CO2 emissions. In the absence of an energy report the appellant has not justified that this can be achieved, nor is there any other substantive evidence to justify why a discretionary lower target of 10% under this policy should be applied as the appellant has referred to. This consideration relates to the amount, design and layout of development proposed and therefore any judgement on whether to grant planning permission. Accordingly, it would not be appropriate to relegate seeking to resolve this matter by a planning condition, as the appellant also suggests, were I minded to grant planning permission.
58. Consequently, the appellant has not substantiated that the appeal proposal would achieve a 20% reduction in CO2 emissions. It would therefore cause significant harm to climate change and be at odds with the Council's adopted planning strategy in this regard. It would not accord with CS Policy CSP14. It would also conflict with Framework paragraphs 8, 148 and 153 which include that development should mitigate and adapt to climate change, including supporting a low carbon future, comply with local requirements for

decentralised energy supply and take account of layout, building orientation and massing to minimise energy consumption.

Refuse and recycling

59. At the hearing the appellant confirmed that refuse and recycling generated by the retail unit would be stored inside the warehouse building. However, the appeal proposal contains no details of such provision, including how much floor area would be required for an appropriate number and size of bins. The appeal proposal contains some provision for residents refuse and recycling next to the flats building. Even if this was suitable and convenient for the residents of this building, there is insufficient details for refuse and recycling facilities for the residents of the other flats, including how much site area would be required for an appropriate number and size of bins.
60. This would be in circumstances where the proposed layout plan shows that most of the appeal site would be developed with buildings and hardstanding required for access, vehicle manoeuvring, car parking or residents open space. This consideration also relates to the amount, design and layout of development proposed and therefore any judgement on whether to grant planning permission. Accordingly, it would not be appropriate to relegate seeking to resolve this matter in this appeal by a planning condition, as the appellant suggests, were I minded to grant planning permission.
61. Consequently, the appellant has not substantiated that the appeal proposal would make suitable provision for refuse and re-cycling facilities. It would cause significant harm to the efficient and effective use of the proposed development and would not accord with LP Policy DP7(9). This policy includes that development should provide appropriate facilities for the storage and collection of refuse and recycling materials and be designed and sited to avoid adverse impacts on the amenities of proposed and existing properties. It would also conflict with Framework paragraphs 8 and 127 which include that development should provide infrastructure and function well with a high standard of amenity for existing and future users.

Other Matters

62. The HDT indicates that between 2017 and 2020 the number of homes delivered in the Council's district was 50% of the number required. Framework paragraph 215(c) confirms that the delivery of housing was therefore substantially below (ie less than 75%) of the Council's housing requirement over the previous three years. In their comments on the HDT, I also note that the main parties agree that the Council can only demonstrate a 1.71-year housing land supply. On the evidence before me I have no reason to reach a different view in this regard. The Council cannot also therefore presently demonstrate a 5-year housing land supply.
63. As a consequence, Framework paragraph 11(d) and footnote 7 is engaged such that the policies which are most important for determining the application are out-of-date. Accordingly, the presumption in favour of sustainable development as set out in Framework paragraph 11 requires planning permission to be granted unless either of two circumstances apply.
64. The first of these is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for

refusing the development proposed. These policies are set out in footnote 6 to paragraph 11 and include areas at risk of flooding. Given my findings in the fourth main issue above, Framework paragraphs 8, 148 and 155 provide a clear reason for refusing the appeal proposal. Therefore, in accordance with Framework paragraph 11(d)(i), the presumption in favour of sustainable development does not apply in this case. The second is where any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole, in which case in accordance with Framework 11(d)(ii) the presumption in favour of sustainable development would not apply.

65. I acknowledge that the appeal site is previously developed land in a settlement with a reasonable range of facilities and services and is served by public transport. It is a location where, under the current development plan, residential and retail development is acceptable in principle and I note that the Council does not object to a retail use on the appeal site. Moreover, at the hearing the Council confirmed that it considers that a retail unit on the appeal site would not necessarily prevent the delivery of approximately 10 residential units and would not therefore conflict with a current proposed site allocation for housing use of the appeal site in the Council's emerging local plan.
66. At the hearing the appellant confirmed that it has agreed 'heads of terms' with the 'Co-op', an operator who seeks to relocate its existing convenience store in the village centre to the appeal site. On the evidence before me, this would allow a larger store to be provided to serve the village and would help to alleviate parking congestion within the local parade of shops where the existing store is located. I saw that parking is limited in the village centre, though at the hearing Burstow Parish Council explained that it is in the process of helping to deliver a large new car park on greenfield land, which I saw would be near the village centre.
67. Nonetheless, considering that the Council's policies do not resist retail development in Smallfield (nor did the Council object to the appeal proposal for this reason in principle) a retail unit would be a significant benefit of the appeal proposal. In addition, having regard to the HDT and the substantial shortfall in the Council's 5-year housing land supply, the proposed flats would support the Government's objective of 'significantly boosting' the supply of homes¹⁴ and, albeit that it would be the same number of residential units as the extant permission, would therefore be a significant benefit of the appeal proposal.
68. I also appreciate that the appeal proposal would create or sustain employment at the construction and operational phases of the appeal proposal, including the retail unit, which is not part of the extant permission. It would also result in Community Infrastructure Levy, New Homes Bonus, and Council Tax payments made to the Council and could increase spending in the local (village) economy. These would also be modest benefits of the appeal proposal commensurate with the quantum of the proposed development.
69. The appeal site is not in a conservation area and no existing buildings are listed buildings. It would have satisfactory means of vehicular access and there would be no risk to human health having regard to potential contamination of the appeal site considering its present and former uses. However, the absence of harm in these regards is a neutral factor in my decision.

¹⁴ Framework paragraph 59.

70. Some local residents and Burstow Parish Council also objected to the appeal proposal due to concerns about crime and security risk to surrounding properties, the impact of a larger convenience store on other local small shops and that the relocation of the Co-op would result in a vacant unit in the village centre. However, there is no substantive objective evidence before me to suggest that unacceptable material harm would arise in these regards.
71. In addition, the proposed number of car parking spaces would meet the required standard and considering the fall-back of the existing lawful use of the appeal site there would be no unacceptable increased traffic generation or impact on the surrounding road network, thus no objective need for traffic calming measures in Chapel Road. In addition, if necessary, the Council, the Highway Authority or the Police could control or enforce on-street parking in Chapel Road or in nearby residential roads. I note that the Council and the highway authority (Surrey County Council) did not object for any of these reasons.

Planning Balance and Conclusion

72. As explained in the main issues above, the appeal proposal would cause significant harm to the character and appearance of the area, to the living conditions of existing and future occupiers having regard to outlook and noise and by failing to make provision for affordable housing. I give substantial weight to each of these harms. It would also cause significant harm by failing to incorporate a suitable SUDS, to trees protected by a tree preservation order, by failing to achieve a 20% reduction in CO2 emissions and by failing to make suitable provision for refuse and recycling. I give considerable weight to each of these harms.
73. The new retail and residential uses would be significant benefits of the appeal proposal. I give appreciable weight to both of these benefits. The appeal proposal would also have modest benefits with regard to employment, public financial receipts and support to the local village economy. I give moderate weight to each of these benefits.
74. Accordingly, these benefits do not outweigh or overcome the harm that I have identified and the appeal proposal would not accord with the development plan overall. Notwithstanding the HDT and 5-year housing land supply situation in this appeal, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
75. There are no material considerations that indicate that my decision should be taken otherwise in accordance with the development plan. For the reasons given, the appeal does not succeed.

Robin Buchanan

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Colin Smith MRTPI	Planning Consultant
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Mr Adam Padmore BSc (Hons) Environmental Geography MA Transport Planning MA Environmental Management MCIHT	Highway Consultant
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Mrs Ann Rowland BA (Hons) BLD CMLI	Landscape Consultant
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FOR THE LOCAL PLANNING AUTHORITY

Mrs Laura Field BA (Hons) Environmental Planning MA Town Planning MRTPI	Principal Planning Officer
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INTERESTED PARTIES

Mr Ian Wates	Chairman, Burstow Parish Council
Mr Alex Wilson	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

Doc 1	Council's written response to the appellant's costs application.
Doc 2	Appellant's written final comments on Doc 1.