The Planning Inspectorate

Appeal Decision

Hearing Held on 24 November 2020 and 30 November 2020
Site visit made on 4 December 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2021

Appeal Ref: APP/M3645/W/20/3246023
62, 64, 66 and 68 Banstead Road, Caterham, CR3 5QE

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Chris Maunders of Turnbull Land Ltd against Tandridge District Council.
- The application Ref 2019/1368 is dated 26 July 2019.
- The development proposed is demolition of 4 no. 3 bedroom semi detached houses and the construction of 27 no 1 and 2 bedroom apartments and 2 no 4 bedroom houses in a 3 storey building. The creation of two new vehicular accesses and 33 car-parking spaces and associated works.

Decision

1. The appeal is dismissed and planning permission for demolition of 4 no. 3 bedroom semi-detached houses and the construction of 27 no 1 and 2 bedroom apartments and 2 no 4 bedroom houses in a 3 storey building. The creation of two new vehicular accesses and 33 car-parking spaces and associated works, is refused.

Application for costs

2. At the Hearing an application for costs was made by Turnbull Land Ltd against Tandridge District Council. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. The appeal is against the failure to make a decision within prescribed timescales. The Council confirmed in its statement of case submitted in advance of the hearing that, had it made a decision, it would have refused planning permission. 6 putative reasons for refusal were provided. Due to the number of contested issues, the hearing took place over two days.

4. This is an outline planning application, with approval sought for layout and access. Scale, appearance and landscaping are reserved matters. Revised plans were submitted and accepted by the Council in the course of the planning application, detailing amended visibility splays. It was agreed in the hearing that any approval would include an approved plans condition fixing the access arrangements (including visibility splays), location of the 3 respective blocks, and the parking layout within the site. The plans submitted showing the

appearance, scale and landscaping of the building are otherwise indicative, at this stage. I have dealt with the appeal on this basis.

5. The development plan comprises the Tandridge District Council Core Strategy 2008 (Core Strategy) and the Tandridge Local Plan Part 2 (detailed policies) 2014 (Local Plan). There is also a plan entitled the Caterham, Chaldon and Whyteleafe Neighbourhood Plan (Neighbourhood Plan). This has passed through examination, but the referendum has not yet occurred due to issues surrounding the COVID-19 pandemic. Given the advanced level of preparation of this emerging plan, it should be given significant weight in the decision.

6. In advance of the hearing it was agreed that the planning policies referred to by the Council in support of its putative reasons for refusal were consistent with the National Planning Policy Framework (the Framework). However, it was also agreed that its housing land supply is 1.93 years, and in consequence the circumstances in paragraph 11 (d) of the Framework apply. This is a matter to which I will return in the course of the decision.

Main Issues

7. Having had regard to all the putative reasons for refusal and the discussion that took place at the hearing, I consider that the main issues in this appeal are as follows:

    - The effect of the proposal on the character and appearance of the area, including an area identified as local green space.
    - The effect on the living conditions of the occupants of existing neighbouring residential properties, with particular regard to i) noise and disturbance; and ii) disturbance generated by overflow car parking demand generated by the proposed development.
    - Whether or not a satisfactory standard of living accommodation would be provided for future occupants, with particular regard to the quality of external space around the proposed development; and
    - Whether or not an affordable housing contribution is necessary.

Reasons

Character and Appearance

8. The site currently comprises four existing dwellings that sit on the intersection between Banstead Road and Foxon Lane. They sit well away from the road, forming a curve. The surrounding area has a predominantly residential character, with houses and flats of various designs interspersed with pockets of green open space and commercial development.

9. The area to the front of these properties is landscaped with mature, well established vegetation. It forms the centre part of a chain of three small open spaces. Alongside the site, this also includes a small triangle of open space on the opposite side of the Banstead Road and a larger open landscaped strip on the other side of Foxon Lane, which also fronts on to the Banstead Road. These three areas of open space provide a verdant and open setting to the road, as well as the existing properties on the site. They provide balance to the built environment, giving the area around the site a spacious quality.

10. The development makes little attempt to preserve or reinterpret this existing open, landscaped area. The car parking area adjacent to the Banstead Road would encroach into it significantly. So would the building itself, particularly on the Foxon Lane elevation. The residual area of green landscaped space to the front of the development, directly adjacent to the corner and orientated around a Cypress tree is of a very small size and performs little function other than to provide a small green buffer between the proposed building and the road. The chain would be lost, and the spacious character around the site would be significantly eroded.

11. The appellant suggested that, because this land is private, the existing vegetation could be removed and covered in hardstanding, with fencing erected on it. However, under such a scenario it would remain relatively open, and in this respect it would contribute positively to the character of the area. The substantial loss of this area of open space would cause significant harm to the character and appearance of the area. This weighs heavily against the proposal.

12. Other aspects of the site layout are also of concern. The two front car parking areas facing the Banstead Road would sit very close to both the proposed building and the road. The contrast with the well vegetated front garden areas on other parts of the Banstead Road, where parking is typically balanced with extensive soft landscaping would be readily apparent. Consequently, this element of the scheme would also detract from the prevailing spacious character of this road, contributing to the impression of a cramped development which relates poorly to its surroundings.

13. The area at the rear of the property would also accommodate a large parking area. For the most part this is set away from both the new building and important public views. However, the car parking area would be set hard up against the boundary with the rear garden of No.15 Foxon Lane. The area for landscaped space between the parking area and the rear garden of this existing property is too narrow to encompass any significant landscaping. Consequently, the visual relationship between this part of the development and the neighbouring property would be poor, further reinforcing the impression of an unduly cramped development.

14. The two houses to the rear of the flats would make efficient use of this part of the site. Whilst they would depart from the prevailing frontage pattern of development, they would be seen in the context of a comprehensive redevelopment involving the creation of a large rear parking area. However, the description of development describes a 3-storey building. Because of the narrow dimensions of this part of the plot, it would be therefore likely to appear as an unduly vertical structure, squeezed into its plot between open residential gardens. This is reflected in the building shown on the indicative plans. Because of its significant height in close proximity to the site boundaries it would visually dominate the adjacent neighbouring gardens to an unreasonable degree, appearing as an oversized and incongruous feature in this garden environment.

15. The Council and interested parties raised a range of other issues regarding the effect of the development on the character and appearance of the area. However, the preceding paragraphs detail what, in my view, comprises the significant harm given that it is only layout and access that is being determined

at this stage. Whilst there is a fundamental concern here regarding the loss of open space, the apartment buildings would otherwise address both frontages, with the proposal following the building line found along both Banstead Road and Foxon Lane. The mass would be broken up in to two buildings of broadly similar bulk and width to others along the Banstead Road. Given the existing flatted development in the surrounding area, the density of development would not detract from the built environment.

16. However, when the proposal is considered as a whole there would be significant harm to the character and appearance of the area. The proposal conflicts with development plan policies CSP18 and CSP21 of the Core Strategy together with policies DP7 and DP8 of the Local Plan, which seek a high standard of design that reflects the character, setting and local context.

17. The proposal also conflicts with the emerging Neighbourhood Plan, including policies CCW4 and CCW5 which share similar objectives to the development plan policies cited above. Policy CCW11 designates the land to the front of the site, together with the other two clusters of open space discussed previously, as local green space. If the plan is adopted, this land will have a similar degree of protection as the Green Belt with a strong presumption against new building on it. The proposal would result in the partial loss of this local green space. It therefore conflicts with this policy and whilst this emerging plan has not yet been adopted, the identified conflict with the emerging Neighbourhood Plan can be given significant weight. Overall, the harm to the character and appearance of the area, including through the loss of local green space, is of a magnitude that attracts very significant weight.

Living Conditions – existing residents

18. Noise and Disturbance The area to the rear of the site would be used as a car parking area, which would create a degree of additional noise, activity and disturbance. The effect on the rear garden of Number 15 Foxon Lane is of particular concern. This neighbouring garden would face directly on to a car park. As noted previously, cars would be parked hard up against the boundary with only a very narrow verge to provide separation. In addition to the poor visual relationship, there is a high likelihood that there would be significant noise and disturbance travelling from the car park to the garden of No.15, adversely affecting the living conditions of the residents of this property when within their garden.

19. It was suggested at the hearing that an acoustic fence could be installed as part of the landscaping submitted at reserved matters stage. However, there is no certainty, on the evidence before me, that this could be effective in bringing airborne noise transmission from the car park down to an acceptable level. In the absence of such evidence I conclude that the layout adopted would result in unacceptable harm to the residential occupiers of No.15 Foxon Lane, through noise and disturbance.

20. The other neighbouring gardens would not be exposed to the car park to the same degree and intensity as No.15. In principle, there would be no significant harm to the living conditions of these residential occupants subject to appropriate boundary treatments and landscaping which are matters that would be considered at the reserved matters phase. In other respects, the new buildings would be set a sufficient distance away from these properties to avoid any significant loss of amenity, including outlook.

21. Disturbance through on street parking. It is common ground that, whilst the proposal complies with the relevant parking standards adopted by the County Council, the level of on-site parking provided does not meet the standard set out in the local Tandridge Parking Standards Supplementary Planning Document (2012). On the basis of these standards, the proposal would generate overspill parking demand in the region of 15 cars.

22. The appellant has undertaken surveys which show that on-street parking demand in the surrounding area is currently at around 63% capacity. There is a large degree of variation between the surrounding roads, with parking in Elm Grove being particularly high. However, there are also roads with a relatively low take up of parking such as Money Road and Banstead Road. It is reasonable to assume that any overspill parking demand associated with the development will eventually gravitate towards these roads.

23. The parking survey was carried out by an engineering consultancy having had regard to the Lambeth methodology. Whilst the Council express concern about the methodology of this survey, it did not provide any significant technical evidence of its own to challenge its conclusions. This is reinforced by the fact that the local highway authority did not object to the development. These considerations lead me to the view that there would be no significant disturbance through additional on street parking, generated by the development, as there is sufficient capacity on the surrounding roads to absorb it. In these circumstances an exception to the Council's parking standards is justified.

24. To conclude on this issue, there would be unacceptable harm to the living conditions of the occupants of the existing residential dwelling at No.15 Foxon Lane through noise and disturbance generated by the proximity of the parking area to this property. For this reason, the proposal conflicts with policy CSP18 of the Core Strategy and policies DP7 and DP22 of the Local Plan which, amongst other things, seek to ensure that new development does not significantly harm the amenities of the occupiers of neighbouring properties by reason of noise. I attach significant weight to the harm that would arise, in consequence. In all other respects the proposal is acceptable in terms of its impacts on the living conditions of the occupants of existing properties, including through disturbance from on-street parking. There is no significant conflict with the other related development plan and emerging policies in relation to this issue.

Living conditions of future residents

25. The proposal encompasses a modest amount of space for landscaping around the building. This provides a buffer between the building, and the road and various parking areas. In principle, the degree of separation would be adequate to preserve the privacy, outlook and general amenity of future residents. The appearance of the building would be considered further at reserved matters stage, where the detailed location of windows and balconies would be considered, together with the detailed design of the landscaping itself. The site layout demonstrates that the semi-detached houses would each benefit from an appropriately sized rear garden.

26. There is a bench feature shown on the indicative plans within the development as a form of common amenity space. It could serve, for instance, as a occasional meeting point for residents. Whilst the extent of external common

amenity space is otherwise limited there is a large recreation ground around 200 metres away from the site. There is therefore a good amount of alternative open space which mitigates the limited amount of amenity space being provided on the site.

27. Consequently, the lack of a large amount of landscaped space within the development would not significantly compromise the living conditions of future residents. There is no significant harm in this respect. The proposal does not conflict with policy CSP18 of the Core Strategy, nor policies DP7 and DP22 of the Local Plan which, amongst other things, seek to ensure a satisfactory standard of residential amenity where new development is proposed.

Affordable Housing

28. Policy CSP 4 of the Core Strategy requires that, on sites in the built-up area where more than 15 units are proposed up to 34% of the dwellings will be affordable. It goes on to say that the actual provision will be negotiated on a site by site basis after taking into account market and site conditions. In this case no affordable housing provision is proposed and there is no method before me of securing any.

29. The original proposal was accompanied by a viability assessment which sought to demonstrate that it is not possible to provide any affordable housing. Specifically, it was argued that the 100% market housing scheme is marginal in terms of the overall profitability for the developer. This is due to a combination of factors including the high existing use value of the land, and the cost of building flats relative to the ultimate likely sale values in this part of the District.

30. Various adjustments were made following review by the Local Planning Authority. A subsequent assessment was provided that identified a 16.5% profit to the developer on the market led scheme, having taken on board many of the Councils assumptions on a without prejudice basis. This report was provided over a year ago, and until the first day of the hearing the Council had not provided any substantive comments on it.

31. The main argument advanced by the Council in the discussion at the hearing was that another site in Caterham, on Tupwood Lane, sold for £2.5 million for 18 flats, thus calling in to question the conclusions of the viability report. I visited the site in question. It falls within a different part of Caterham on a quiet road with an exclusive feel, characterised by very large detached houses. It is of limited value as a comparison to this scheme, and does not cast significant doubt on the conclusions of the appellants viability report.

32. The appellant provided acceptable explanations for the stamp duty calculation and the build cost calculations in the written evidence, and in the discussion that took place in the hearing. I consider that the report, which as noted previously adopted most of the Council's assumptions on a without prejudice basis, is robust.

33. The issue then turns on whether or not the 16.5% profit is fair for a 100% market scheme, as being proposed here. Planning Practice Guidance indicates that a range of 15% - 20% is appropriate in similar circumstances. The return quoted is already at the lower end of this range. There are no specific circumstances here that would justify a higher figure. The current economic

outlook is uncertain in light of the COVID-19 pandemic, which increases the risks associated with a project like this, justifying a higher return. I therefore accept the appellants position that the viability of this project is marginal.

34. As it has been demonstrated that the 100% market scheme which is before me is of marginal profitability, it is reasonable to conclude that there is no prospect of providing affordable housing. This would be likely to encroach further into the profitability of the scheme. I am therefore satisfied that the characteristics of this scheme are such that no affordable housing can be provided. There is no conflict with policy CSP 4 of the Core Strategy. Whilst it is not possible to provide affordable housing in line with the desired level set out in this policy, this is justified by the characteristics of the site and local market conditions.

Other Issues

35. The fifth putative reason for refusal relates to insufficient information regarding ecology, specifically bats. However, a preliminary ecological assessment was submitted, including extensive internal inspections of the existing buildings with the exception of one roof void, and this found no evidence of bats. Aside from gaps and holes in parts of the roof, which are not uncommon on buildings of this age, there is no other significant circumstantial evidence that supports the position that bats are likely to be on this site. Circular 06/2005[1] makes clear that developers should only be required to undertake additional surveys if there is a reasonable likelihood of protected species being present on the site. The work undertaken to date demonstrates that is not the case here. The information provided is sufficient to endorse the principle of development, for an outline planning permission. Planning permission should not be refused on these grounds.

36. Regarding the sixth putative reason for refusal, limited detail was provided on the drainage arrangements for the proposed development. However, the site is not in an identified area of significant flood risk. In its present form it comprises buildings, landscaped space and hardstanding and this would continue to be the case were the development to go ahead. In any scenario, the amount of additional surface water potentially escaping from the site would be limited. In this context it would be reasonable to require the appellant to specify the surface water drainage arrangements in response to a planning condition. This would demonstrate how, following a full assessment of ground conditions, surface water would be managed on site without contributing to flooding elsewhere in the District. As such, planning permission should not be refused for this reason. This approach would be consistent with the other recent planning appeal decision cited by the appellant in the hearing[2], although this is located a significant distance away from the appeal site, so the broader drainage and flood risk issues would have been different.

Development Plan - conclusion

37. The proposal provides 29 new housing units in an existing built up area, a net increase of 25, in accordance with local planning policies that seek to direct additional housing to built up areas such as this. It is compliant with policies on affordable housing, and the living conditions for future residents would be

[1] Biodiversity and Geological Conservation: Statutory Obligations and their impact within the planning system
[2] APP/M3645/W/19/3243184

acceptable. In all of these respects the proposal complies with the policies in the development plan. The fact that there is an acknowledged under delivery of housing within the District adds further to the importance and weight that should be given to the compliance with these policies. However, this does not overcome the conflict with other policies in the development plan, as identified in the first two main issues in this appeal. When it is considered as a whole, the proposal conflicts with the development plan.

Presumption in favour of sustainable development

38. As noted previously in the decision it is common ground that the Council cannot demonstrate a 5 year housing land supply. The current agreed 1.93 years supply represents a significant shortfall. In these circumstances the Framework, which is a very important material planning consideration, states that the development plan policies that are most important for determining the application are out-of-date. It directs that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when considered against the policies in the Framework taken as a whole.

39. The 25 additional residential units would help boost the supply of housing, which is a key objective of the Framework. They would be built to a modern standard and would be likely to be energy efficient. It has been demonstrated that the layout proposed can achieve a good standard of living accommodation for future occupants, and the limited amount of landscaped space would not detract from the overall quality of development for future occupants, given the proximity of nearby parks and green space. Furthermore, the site is well located for such housing, being close to existing services, facilities, and public transport links. The development would therefore also help to promote the objectives of sustainable transport, as set out in the Framework. I attach significant weight to the benefits of the proposal that accrue from the additional housing being provided.

40. However, the proposal would relate poorly to its surroundings. There are several factors that contribute to this judgement, but the most important is the significant encroachment of the building and parking areas in to the existing open green space to the front of the site. This area currently provides a strong degree of visual relief and contributes significantly to the spacious character of the built environment around the site. The concerns in this respect are compounded by the poor location of the rear parking area in relation to a neighbouring property, resulting in a loss of amenity; and the likely oversized appearance of the houses to the rear of the site.

41. The Framework states that the creation of high-quality buildings and places is fundamental to what the planning process should achieve. Additionally, proposals must be sympathetic to local character, including the surrounding built environment and landscape setting. The proposal here, even in outline form, fails to meet these objectives. I attach very significant weight to the harm that would arise, in consequence. On this occasion the balance is such that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when the proposal is considered against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does not therefore apply.

Other Matters

42. Both main parties and interested parties made reference to various other developments in the surrounding area. These were discussed in the hearing and I viewed them on my site visit. However, they are ultimately of little relevance to the acceptability of this proposal. The issues of concern are heavily localised and rooted in the existing appearance of the site and the relationship between the proposed development and neighbouring properties, given the proposed layout.

43. Reference was made at various points to inconsistencies in the Council's approach to the planning application, with the advice it gave at pre application stage. However, the appeal must be decided on its planning merits.

44. The appellant suggested conditions to overcome the various issues raised by the Council, which I have had regard to where relevant in my reasoning above. However, the principle of development is unacceptable due primarily to the layout that is being proposed, which poses issues of fundamental concern. Given the nature of this outline planning application, this would be fixed and not something that can be changed by way of reserved matters approvals or subsequent planning conditions. As such, the identified harm cannot be overcome by way of planning conditions.

Conclusion

45. The proposal would result in unacceptable harm to the character and appearance of the area and the living conditions of the residential occupant of No.15 Foxon Lane, specifically through additional noise and disturbance. In terms of all the other issues raised by the Council and interested parties it would be acceptable, subject to appropriate conditions. However, the identified harm means that the proposal conflicts with the development plan, when considered as a whole, and there are no other considerations, including national planning policy, that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR

APPEARANCES

For the Council:	
G Betts	Planning Officer
F Castle of Bruton Knowles	Viability Consultant
For the Appellant:	
A Bateman of Mohsin Cooper	Agent
C Maunders	Appellant
J Caldwell	Appellant
S Phillips of Affordable 106	Viability Consultant
Interested Parties:	
L Stott	Local Resident

DOCUMENTS SUBMITTED AT HEARING

1. Plan encompassing land to be acquired from the Council
2. Appeal decision APP/3645/W/19/3243184
3. Conditions schedule – 26th November 2020
4. Written Costs statement
5. Costs decision W/4000666
6. Costs decision APP/L3245/W/18/3200964