



Appeal Decision

Site Visit made on 31 August 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th October 2021

Appeal Ref: APP/Q3630/W/20/3259370

Land to rear of 299 - 311 Green Lane, access via 307 Green Lane, Chertsey, Surrey KT16 9QR

- 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 Green Lane Chertsey Developments Ltd against the decision of Runnymede Borough Council.
 - The application Ref RU.20/0104, dated 10 December 2019, was refused by notice dated 10 September 2020.
 - The development proposed is erection of 9 chalet bungalows to the rear of 299 - 311 Green Lane following the demolition of 307 Green Lane, and associated access drive, parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Green Lane Chertsey Developments Ltd against the decision of Runnymede Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The address of the appeal site on the application form is "307 Green Lane, Chertsey, Surrey KT16 9QR". However, I have used the form of address given on the decision notice and the appeal form in the banner heading above as more accurately describing the location of the proposed development.
4. The proposed development is described on the application form as "a development of 10 chalets to the rear of 299-311 Green Lane via access through 307 Green Lane, Chertsey, Surrey, KT16 9QR". However, during the course of the application the proposals were amended by the deletion of Unit 10. I have therefore used the revised description of the development from the decision notice (omitting superfluous information) and appeal form in the banner heading above and have determined this appeal on that basis.
5. The appeal site lies within 5 km of the Thames Basin Heaths Special Protection Area (TBHSPA). During the course of the appeal the appellant submitted an updated unilateral undertaking (UU) in respect of contributions towards Suitable Alternative Natural Greenspace (SANGS) and Strategic Access Management and Monitoring (SAMM) measures as mitigation for the likely significant effects of the proposed development on the TBHSPA. I return to this matter below.

Main Issues

6. The main issues are:

- i) whether there is a need to demonstrate that there are no sequentially preferable sites with regard to flood risk and, if so, whether this has been demonstrated; and
- ii) the effect of the proposed development on the character and appearance of the area, with particular regard to the layout and protected trees.

Reasons

Flood risk

7. The Environment Agency's (EA) Flood Risk Map shows the site as being within Flood Zones 2 and 3, defined by the Planning Practice Guidance (PPG) as having a medium and high probability of flooding respectively. The Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
8. Policy EE13 of the Local Plan, paragraph 167 of the revised Framework and paragraph 7-033-2014306 of the PPG therefore require a sequential test for 'more vulnerable' non-minor (as defined in footnote 56 of the Framework and the PPG) development proposals on unallocated sites. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The test should demonstrate that there are no reasonably available alternative sites appropriate for the proposed development in areas with a lower risk of flooding. If such sites exist, development should not be permitted.
9. No sequential test has been undertaken by the appellant as the appellant's Flood Risk Assessment contends that the site cannot flood due to an area of higher ground between the source of floodwater and the appeal site. The appellant has formally challenged the Flood Risk Map in this regard. However, I have no confirmation before me from the EA that it considers the appellant's evidence sufficient to demonstrate that its Flood Risk Map is incorrect.
10. The EA has no objections to the proposed development subject to a condition regarding flood risk mitigation measures were planning permission to be granted. However, such measures form only part of the requirements in paragraph 167 of the Framework for development to be allowed in areas at risk of flooding. Such development should also only be allowed in light of the sequential test. In the absence of this test, it has not been demonstrated that there are no reasonably available alternative sites appropriate for the proposed development in areas with a lower risk of flooding.
11. I acknowledge that flood risk was not a reason for refusal for the previous scheme on the western part of the appeal site for 3 chalet bungalows as the Council considered the lack of a sequential test to be outweighed by the then acknowledged lack of a 5-year housing land supply. Nor, I understand, was it an issue for another scheme for 7 chalet bungalows on the eastern part of the site¹, which the Council failed to determine but which was dismissed on appeal².

¹ RU.18/0747

² APP/Q3630/18/3211421

12. However, even if I were to accept the appellant's contention that the Council is still unable to demonstrate a 5-year housing land supply, there is no exception within Policy EE13, the Framework or the PPG to the requirement for a sequential test in these circumstances, notwithstanding the Council's previous approach in this respect. I return to the matter of housing land supply below. The Framework is clear as to the need for a sequential test as noted by the EA in its email to the appellant of 14 August 2020. I must determine this appeal on the evidence before me, which does not include a sequential test.
13. A condition to secure adequate floodplain storage as suggested by the EA would not address this omission. I have no evidence to confirm that the works to the A320 Green Lane / Holloway Hill / Guildford Road junction would prevent potential flooding on the site. Therefore I cannot be certain that a condition preventing occupancy until these works are completed as suggested by the appellant would be effective or reasonable.
14. Consequently, I conclude that there is a need to demonstrate that there are no sequentially preferable sites for the proposed development with regard to flood risk and that this has not been done. Accordingly, in this respect, the proposals would conflict with Policy EE13 of the Runnymede 2030 Local Plan (2020) (the Local Plan) and the Framework.

Character and appearance

Layout

15. The appeal site comprises an area of land between Nos 299 - 311 Green Lane and properties on the north side of Gordon Close. The proposed revised layout shows five bungalows to the north of a central access road across the width of the site and four to the south, with an access from Green Lane through the plot of No 307 Green Lane, which would be demolished.
16. The deletion of Unit 10 from the proposed scheme would result in an undeveloped area of land adjacent to the access road in the approximate centre of the development. Whilst this open land would not allow an increase in the size of the remaining plots, it would create more open space in the proposed development as a whole. This area of land could be suitably landscaped, secured through a condition were planning permission to be granted, and thus contribute positively to the quality of the public realm and the character and appearance of the site.

Trees

17. The appeal site accommodates numerous trees of varying species and ages. Several of these trees are protected by Tree Preservation Order (TPO) 165, the majority specified by reference to an area along the southern boundary of the site. The appellant submitted an Arboricultural Report by dpa arboricultural consultants (DPA) dated June 2020 during the course of the application and a subsequent report by David Archer Associates dated September 2020 (DAA).
18. The tree on the site identified as T21 in both reports is specified individually in the TPO. Two trees, identified as T13 and T19, are outside but adjacent to the western boundary of the site and their canopies overhang the site. Tree T19 is within the area identified in the TPO. Although the DPA Report indicates that tree T13 is subject to the TPO, the DAA Report concludes that it is not. The

Council is uncertain but from my consideration of the TPO Plan and the Tree Survey, I am satisfied that this tree is not protected by the TPO.

19. The TPO recognises the positive contribution of tree T21, a substantial oak, to the character and appearance of the area. The two tree reports disagree on whether T21 should be graded as Category A or B, but even with the lower grading it is recognised that the tree is in such a condition as to be able to make a significant contribution to the local and / or wider landscape for the next 20 years or more.
20. The two reports also disagree on the grading of trees T13 and T19, with both graded as Category B by DPA but Category U and C respectively by DAA. Again, even with the lower grading, tree T19 could make a contribution to the local and / or wider landscape for the next 10 years or more. Trees T19 and T21 thus have the potential to continue contributing positively to the character and appearance of the area for many years to come and their retention and protection are therefore important. However, I have no reason not to accept that T13 is in such a condition that any existing value would be lost within 10 years.
21. Tree T21 would be sited in an area annotated as 'Ecology Zone' on the proposed Site Plan. There are discrepancies in the positions of trees T21 and T19 as shown on the Site Plan Issue Three and on the DPA Site Layout (Tree Protection) drawing but the latter appears to show the true full extent of the canopies of these trees. It also shows the central access road and one of the private parking spaces partially intruding into the Root Protection Area (RPA) of T21. The DPA Site Layout shows two visitor parking spaces at the western end of the road which would intrude into the RPA of T19.
22. The DPA Report sets out recommendations for the construction of the new and replacement hard surfaces on the appeal site to avoid harming any trees which could be incorporated into a method statement. Notwithstanding the Council's concern at the lack of a submitted method statement, I am satisfied that a condition requiring the submission of, agreement to and adherence to a method statement would provide adequate protection for trees T19 and T21 during construction works were planning permission to be granted.
23. I note that this approach was acceptable to the Council when determining an application for 3 chalet bungalows to the rear of 307 - 311 Green Lane with the same layout as the 3 units in the proposal before me³. Although refused by the Council with a subsequent appeal dismissed⁴, the effect on protected trees was not an issue in either the refusal of the application or the dismissal of the appeal.
24. Unit 1 would be under the canopy of T13 and encroach into its RPA. The construction of the foundations of this Unit could therefore be harmful to the health of the tree and its future occupation could lead to pressure to lop or fell the tree. However, given my conclusion that the tree is not subject to a TPO and its condition, I do not consider that these concerns would justify withholding planning permission.

³ RU.18/0175

⁴ APP/Q3630/W/18/3202330

Findings

25. I therefore conclude that the proposed development would not be harmful to the character and appearance of the area due to the open area within the layout and would not have a harmful effect on trees covered by the TPO, subject in both instances to conditions were planning permission to be granted. Accordingly, in this respect, the proposals would comply with Policies EE1, EE9 and EE11 of the Local Plan. These policies set out, amongst other things, that all development proposals will be expected to achieve high quality design and that trees subject to TPOs will be protected.

Other Matters

Housing Land Supply

26. The appellant contends that the Council cannot demonstrate a 5-year supply of deliverable housing sites due principally to uncertainty over the delivery of infrastructure improvements to the A320, on which the delivery of a number of housing allocations in the Local Plan are dependent. The Council disputes this contention as the Local Plan was adopted in July 2020, having been found sound by the Inspector that examined the Plan. The Examination included a specific session to discuss the A320 issue. I am aware of the appellant's disagreement with that finding but it is not the purpose of this appeal to rerun the Local Plan Examination.
27. Even if I were to accept the appellant's contention on this matter so that paragraph 11 d) of the Framework would be engaged, the application of the Framework's policies for areas at risk of flooding would provide a clear reason for refusing the application in accordance with paragraph 11 d) i) and footnote 7 of the Framework. Furthermore, even if the Housing Delivery Test measurement for Runnymede was 97% as suggested by the appellant instead of the published 2020 measurement of 135%, this would still not invoke the presumption in favour of sustainable development. There is therefore no need for me to consider this matter further or to conclude on whether or not the Council can demonstrate a 5-year housing land supply.

The Thames Basin Heaths SPA

28. The TBHSPA is designated for its internationally important habitat which supports breeding populations of three rare species of bird; Nightjar, Woodlark and Dartford Warbler. The conservation objectives for the TBHSPA are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitat and the birds that depend on it. The birds are vulnerable to disturbance from recreational activities.
29. However, as I have found the proposed development to be unacceptable for another reason, there is no need for me to consider the implications of the development on the integrity of the TBHSPA or the provisions of the Conservation and Habitats and Species Regulations 2017 (as amended), notwithstanding the appellant's updated UU.

Other considerations

30. I acknowledge that the scheme as originally submitted was based on the two previously submitted schemes noted above. Both of these were dismissed on appeal on the basis of harm to the integrity of the TBHSPA, a matter now

potentially resolved. However, the requirement for and lack of a sequential test has been raised in the appeal before me which distinguishes it from those previous appeals.

31. The proposed development would provide a net gain of 8 dwellings, with associated modest and social and economic benefits. However, the potential flood risk outweighs these benefits. I note the objections of local residents to the proposed development on a range of grounds including, in addition to the matters considered above, loss of privacy, parking, traffic and the capacity of local services. However, these were not concerns of the Council and as I am dismissing this appeal for another reason, they have not been determinative in this appeal.

Conclusion

32. I have found above that the proposed development would conflict with the development plan taken as a whole. There are no material considerations that indicate that a decision should be made other than in accordance with the development plan.
33. For this reason, and having regard to the other matters raised, I conclude that the appeal should be dismissed.

Martin Small

INSPECTOR