



Appeal Decision

Site Visit made on 6 September 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2021

Appeal Ref: APP/C3620/W/21/3268987

6 and 7 Old Court, ASHTEAD KT21 2TS

- 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 Mr Richard Buzzoni against the decision of Mole Valley District Council.
 - The application Ref MO/2020/0669/PLA, dated 14 April 2020, was refused by notice dated 27 August 2020.
 - The development proposed is Erection of 3 dwellings, creation of new vehicular access from Old Court, alterations to Nos 6 and 7 and all associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of three dwellings, creation of new vehicular access from Old Court, alterations to Nos 6 and 7 and all associated works at 6 and 7 Old Court, ASHTEAD KT21 2TS in accordance with the terms of the application, Ref MO/2020/0669/PLA, dated 14 April 2020, and the plans submitted with it, subject to the conditions within the attached schedule.

Preliminary Matters

2. Planning permission¹ was granted earlier this year for the erection of two bungalows within the appeal site (the Approved Scheme). This places dwellings in a similar configuration as proposed in this appeal, albeit with a reduced scale of development and correspondingly greater retention of green space. This is a material consideration that I shall return to later in my decision.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the area,
 - The effect of the proposed dwellings on the living conditions of neighbouring occupiers, in particular 5 and 8 Old Court (Nos 5 and 8) with respect to outlook and the living conditions of future occupiers with respect to the provision of garden space, and
 - The effect of the proposal on biodiversity, especially in regard to the need, provision and quality of compensatory measures.

¹ Planning Application Reference: MO/2002/1932

Reasons

Character and appearance

4. Old Court is a residential cul-de-sac consisting of 1930s dwellings. This also provides access to a small estate of housing built in the 1990s. Old Court is arranged around a wide turning circle that includes mature tree planting and green space within. The site is within the 'West Ashtead' section of the Council's 'Built-up Area Character Appraisal'. This area includes 1930s dwellings with gardens of a good size and include mature trees that form a strong garden setting. The dwellings around Old Court are largely consistent with this assessment, within spacious plots. The more recent infill development at Chestnut Place includes significantly smaller plots. These plot sizes are also consistent in size with those noted within the wider area. They therefore illustrate that the area contains a diverse range of plot sizes. The site is enclosed by mature landscaping, around large plots. As a result, the site makes a positive contribution to the verdant character and appearance of the area.
5. The proposed development would place three detached dwellings within a second row of development behind established housing. This approach would be similar to the Approved Scheme that would also change the local pattern of development in a similar fashion. The Approved Scheme would further diffuse the original 1930s pattern development that has already been evolved through the addition of Chestnut Place and other local infill development. Furthermore, the size of the plots would be consistent many local examples of surrounding development. The proposal would be of greater density and scale, than the Approved Scheme. However, it would deliver required family housing that would be consistent in scale and design with local development. As a result, the proposed development would have a negligible effect on the sense of spaciousness of the area and would be consistent with the prevailing local character.
6. Moreover, the proposed dwellings would include generous gaps between them and to the side boundaries. This would enable the retention of existing landscaping around the perimeter of the site and space for additional planting. These gaps would be similar to those evident within the relatively tight configuration of dwellings around Old Court. Furthermore, the gap between No 6 and 7 would be increased through the creation of the access road, increasing the sense of spaciousness on the frontage. Therefore, the proposed scheme would not appear cramped in comparison to the existing context of local built form.
7. As a result, the proposed development would accord with the existing pattern of local development and thus would complement the character and appearance of the area. The proposal would therefore accord with policy CS14 of the Mole Valley Core Strategy (2009) (CS), policies ENV22, ENV23 and ENV24 of the Mole Valley Local Plan (2000) (LP) and policies AS-H5 and AS-En3 of the Ashtead Neighbourhood Development Plan 2015-2026 (2016)(NP) with respect to character and appearance considerations. These policies, among other matters, seek development to respect the character of an area whilst making best possible use of the available land and to integrate development with its surroundings.

Living conditions

8. The garden area of No 5 includes some semi-mature tree planting within and along its boundary with the site. It also includes a hedge around three metres in height along the lower half of the boundary with a mature tree in the rearmost corner of the garden. The boundary therefore contains a variety of trees, hedging and shrubs that act as a partial screen to the development site. The nearest proposed dwelling, plot one, would be set away from the boundary with a reasonable gap to the shared boundary.
9. The garden of No 8 is a large area which is mostly enclosed by perimeter planting. The rear elevation of the dwelling is orientated slightly away from the boundary. It includes a large, raised patio area around one metre above the otherwise largely flat garden. Accordingly, the dwelling has a primary outlook over its own sizeable rear garden. The garden itself includes a formal lawn area in its middle, a small group of trees arranged close to the shared boundary and boundary planting along the nearest section to the house. Boundary planting affords substantial screening along most of the shared boundary. There would be significant separation between the nearest new dwelling, plot three, and No 8.
10. Due to the size of the neighbouring gardens and the distance of the dwellings from the boundaries, the proposed dwellings would not appear over-dominant when viewed from adjoining gardens. Consequently, although the development would be seen from the surrounding land, the effect would not be overt or overbearing. Moreover, existing landscape screening would substantially soften the majority of views into the site from neighbouring gardens. This relationship would be similar to that seen in Chestnut Place towards adjacent plots such as 11 Old Court. For these reasons, the proposal would have a negligible effect on the living conditions of occupiers of Nos 5 and 8 with respect to outlook from these dwellings and gardens.
11. The mature tree screen on the rear boundary of the site would provide some shading to the proposed rear gardens. However, most these garden areas would be away from the tree screen and not be overshadowed. The Council does not have garden size standards. However, the proposed gardens would be reasonably large and would be of similar size to many local examples. As such, the proposed gardens would be in character with local garden sizes and be of sufficient size to meet the expected requirements of future occupiers.
12. Accordingly, the proposed development would not demonstrably harm the living conditions of Nos 5 and 8 with respect to outlook or the living conditions of future occupiers with respect to the provision of garden space. Consequently, the proposal would satisfy policies ENV22, ENV23 and ENV24 of the LP with respect to living conditions. These policies, inter alia, seek development to not significantly harm the amenities of occupiers by reason of an overpowering effect or result in over development that would affect surrounding development.
13. However, policies CS14 of the CS and AS-En3 of the NP are silent with respect to effect on living conditions and therefore these are not relevant to this issue.

Biodiversity

14. The appellant's original Biodiversity Net Gain Assessment found a loss of 0.68 biodiversity units, resulting in a reduction of nearly 20%, based on a simple planting scheme. The Assessment found that 'no net loss' could be achieved with appropriate landscaping. The Surrey Wildlife Trust found the Report to have an appropriate methodology. However, the Trust sought further evidence of mitigation and details of the provision of Biodiversity enhancement measures through suitable landscaping and ecological measures. The revised Assessment², provided in support of the appeal, demonstrates the provision of native scrub areas, rough grassland buffer zones, a pond and enhancement to the tree line. This has calculated that the proposal would now result in a net gain of 1.96%. These measures would therefore enhance the Biodiversity of the site and result in a slight net gain.
15. The Surrey Wildlife Trust has not commented further. However, I am satisfied that the proposed development would now ensure that opportunities to improve Biodiversity could be adequately integrated into the design of the scheme. As a result, this would secure the measurable net gains for biodiversity as sought by the Framework. These measures could be secured by planning condition to ensure their delivery.
16. Consequently, the proposal would not result in a detriment to biodiversity interests within the site or the locality. Accordingly, the proposal would accord with policy CS15 of the CS which seeks all development to include planting and other schemes that promote Biodiversity.

Other Matters

17. The proposed development would provide three family houses. The Framework seeks to significantly boost the supply of housing. This is an important point in favour of the appeal scheme especially as the Council cannot demonstrate a 5-year Housing land supply.
18. Local residents have concerns about on street parking potentially blocking access points. However, as the proposed access would be adjacent to the existing drive for No 6 access onto the site would be safe and clear with a minimal impact on local on-street parking provision. Further, the proposal would provide three parking spaces per dwelling with some space within the site for 'ad hoc' visitor parking. The parking provision would meet the Council's requirements as established by policy AS-H6 of the NP. Also, adequate parking would be retained within the frontages for occupiers of No's 6 and 7. As a result, the overall parking provision would be sufficient to prevent overspill parking on the highway.
19. Furthermore, the evidence before me does not indicate that this minimal increase of traffic would cause significant harm to highway safety, and I note that the Highway Authority takes a similar view.
20. The proposal would result in a limited number of vehicle movements, travelling at low speeds along the access drive. Occasional larger delivery vehicles may need to attend the site, but such activity would be limited and infrequent. The modest scale of the proposal would be unlikely to result in significant vehicular

² Biodiversity Impact Assessment, by Darwin Ecology, February 2021

- disturbance to adjacent occupiers in terms of either noise, light spill or pollution.
21. The moderately constrained location could result in some temporary disturbance from construction vehicles. However, the Construction Transport Management Plan could specify this to take place in the daytime during weekdays.
 22. The proposed dwellings would be to the east of housing on Taleworth Road, potentially effecting morning light levels. The houses would also be to the west of 5, 6 and 7 Old Court, which could affect afternoon/evening sunlight. However, due to the separation distances, and the scale of existing tree cover on the rear boundary, sunlight and daylight levels would be unlikely to be appreciably affected.
 23. In consideration of the privacy concerns raised, the proposal would offer limited oblique views from the proposed dwellings towards rear windows of Taleworth Road and Old Court, over a sizeable separation distance. The privacy of the patio and seating area of No 5 would be adequately protected by the existing boundary fence. Furthermore, overlooking in many cases would be further mitigated by existing intervening plant screening. Accordingly, views from the site towards the properties of No's 5 and 8 and Taleworth Road would be limited, having a minimal impact on privacy.
 24. Concerns have been raised with respect to refuse bins being left on the street on collection days in large numbers. A bin store would be provided within the site which would reduce the provision on street. This provision and arrangement has been accepted by the Council's Joint Waste Services Department.
 25. The existing boundary trees to the sides and rear would be retained. The majority of these are a sizeable distance from the footprint of the proposed dwellings and there is no clear indication that they would be affected by the proposed development.
 26. In consideration of the impact on wildlife, the appellant's Bat and Badger Report³ found some evidence of bat activity within the roof voids of No's 6 and 7. These were found to have a high potential to accommodate roosting bats as day roosts. Bat activity on site was found to be moderate with trees offering commuting and foraging opportunities rather than roosting sites. Limited badger activity was found on site, although a sett was found within close proximity of a boundary. As such, the site is considered to have moderate ecological interest. The proposed development would therefore be acceptable subject to the mitigation measures set out within the Report. The mitigation measures have been agreed by the Surrey Wildlife Trust and could be secured by a planning condition.
 27. The proposal would deliver a housing mix that would be in accordance with Policy AS-H3 of the NP, requiring the majority of dwellings to have a maximum of three bedrooms. Furthermore, given that I have concluded that the proposal would be acceptable, I can see no reason why it would lead to harmful developments on other sites in the area. Moreover, none of the other matters

³ Phase 2 Bat and Badger report, by Darwin Ecology August 2020

raised by interested parties raise considerations that would strongly weight against allowing the proposal.

Conditions

28. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I shall take the Council's suggested conditions into consideration and impose these with some amendments and adjustments for clarity.
29. It is necessary for details relating to a sustainable drainage strategy and construction management plan to be submitted prior to the commencement of development. I consider these pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. These are required prior to construction commencing because drainage works may occur within the footprint of the buildings and construction details relate to the initial setting out of the site. These measures ensure the development would be suitably drained and that the construction process would have a limited impact on the living conditions of adjacent residential occupiers and highway safety [conditions 8 and 11].
30. I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty [conditions 1 and 2]. Conditions are necessary with respect to the provision of, planting and materials/hardstanding in the interests of the character and appearance of the area and to ensure the delivery of a net gain to Biodiversity [3 and 5]. It is necessary to require boundary details to ensure the privacy of neighbouring occupiers would be maintained [4]. It is also necessary for the access and on-site hardstanding provision to be laid out in the interests of highway safety [10]. Furthermore, a condition is necessary to satisfy the ecological interests of the site [9]. It is also necessary for the provision of electric car charging points and for the development to deliver to reduce carbon emissions, to accord with paragraph 112(e) of the Framework and policy CS19 of the CS respectively, in the interests of sustainable development [12 and 13].
31. The Council has suggested that permitted development (PD) rights, conveyed by Schedule 2, Part 1, Classes A, B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, are removed and the addition of further windows are prevented. The Framework advises that conditions should not be used to restrict PD rights unless there is clear justification to do so. However, the effect of PD works could result in adverse privacy and outlook impacts for neighbouring occupiers due to the orientation of the proposed dwellings. Consequently, I am satisfied that these rights should be removed in the interests of the protection of living conditions of neighbouring occupiers [6 and 7].

Conclusion

32. The proposal would accord with the development plan, when taken as whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission granted subject to the attached conditions.

B Plenty (INSPECTOR)

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 6923-06, 6923-07, 6923-08, 6923-09, 6923-10a and 6923-11a.
- 3) Before above groundworks commence, details of a landscaping scheme shall be submitted to and approved by the Local Planning Authority detailing measures to deliver biodiversity net gains, such as bat and bird boxes and log piles, and incorporating the planting of native species of trees, shrubs, herbaceous plants and areas to be grassed. The landscaping shall be carried out in the first planting season after commencement of the development unless agreed otherwise in writing by the Local Planning Authority and shall be maintained for a period of 5 years. Such maintenance shall include the replacement of any trees and shrubs that die.
- 4) No occupation of the development hereby permitted shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected/retained. The boundary treatment shall be carried out in accordance with the approved details and completed prior to the first occupation of the development and thereafter permanently retained as such.
- 5) Before any above ground works commence, details of the materials to be used in the construction of the external surfaces of the development and details of all hard surfacing shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions within Schedule 2, Part 1, Classes A, B, or C to the dwellings hereby permitted shall be erected.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no dormer windows, roof lights and other openings other than those shown on the approved plans shall, be constructed.
- 8) Prior to the commencement development, surface water drainage details shall be submitted for the approval in writing by the Local Planning Authority. Such details shall include an assessment of the potential for the disposal of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework. The assessment shall provide information of the design storm period and intensity (typically a 1 in 100 year storm of 30 minutes duration with an allowance for climate change), the method employed to delay and control the surface water discharged from the site and the means to prevent pollution of the receiving groundwater and/or surface water. Where applicable, the details shall include infiltration tests,

calculations and controlled discharge rates. If the development is to discharge water into the ground in any form, then a full BRE Digest 365 infiltration test (or falling head test for deep bore soakaways) will have to be submitted to the Local Planning Authority prior to commencement of any works on site. The suitability of infiltration methods should be verified (i.e. possible contaminated ground). The approved drainage scheme shall be implemented prior to the first occupation of the development.

- 9) The applicant shall obtain a European Protected Species (EPS) licence from Natural England or undertake works under the brief of a Registered Consultant who holds a Low Impact Class Licence for bats, prior to commencement of any works which may affect bats. All works and actions shall be undertaken, as detailed in the Phase 2 Bat and Badger Report by Darwin Ecology dated August 2020 paragraphs 6.15 - 6.27, before the development is occupied.
- 10) No part of the development hereby approved shall be first occupied until the proposed vehicular access and the approved parking and manoeuvring of vehicles have been constructed in accordance with the approved plans. Thereafter, the access shall be kept clear of any obstruction and permanently maintained to the satisfaction of the Planning Authority.
- 11) No development shall commence until a Construction Transport Management Plan, to include details of: (a) parking for vehicles of site personnel, operatives and visitors; (b) loading and unloading of plant and materials; and (c) storage of plant and materials, has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented during the construction of the development.
- 12) The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
- 13) Prior to any above ground works commencing, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority and be implemented prior to the first occupation of the development.

End of Conditions