



Appeal Decision

Site visit made on 12 October 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal Ref: APP/Q3630/W/21/3270822

Land off Rosemary Lane, Thorpe, Surrey TW20 8PH

- 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 outline planning permission.
 - The appeal is made by Simco Homes against Runnymede Borough Council.
 - The application Ref RU.20/1706, is dated 21 October 2020.
 - The development proposed is outline application for the erection of up to 36 dwellings.
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Decision

1. The appeal is dismissed, and planning permission refused.

Procedural Matters

2. The Council failed to give notice of their decision within the prescribed period. However, they have subsequently made clear in their appeal statement that planning permission would have been refused, giving reasons. The appeal has been considered accordingly.
3. The application has been submitted in outline with all matters reserved apart from access. It is clear from the description of development that the quantum of development is for up to 36 dwellings, and all plans showing matters apart from access have been treated indicatively under the appeal.
4. The appeal forms included an error in relation to the name of the appellant. This has now been clarified by the agent and is reflected in the banner heading of the decision letter.
5. The site is within the zone of influence of the Thames Basin Heaths Special Protection Area (SPA). Accordingly, the proposal needs to be considered in the context of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). I have addressed the matter later in my decision.
6. New evidence comprising an ecological enhancement plan was submitted by the appellant after the appeal had started. Consequently, not all parties would have had an opportunity to comment through standard appeal procedures. In this context, it would not be procedurally fair for me to take it into account when making my decision and it has not been accepted.
7. New evidence comprising elevation and floor plans of the proposed buildings, including a proposed street scene, was submitted by the appellant at the start of the appeal. Consequently, other parties would have had an opportunity to comment through standard appeal procedures. Moreover, it is indicative given the matters reserved for future approval and has been accepted on this basis.

8. New evidence comprising affordable housing and SPA related planning obligations were submitted under two unilateral undertakings as part of the appeal. As these are potentially legally binding documents, it is necessary for me to take them into account as far as they are relevant to the main issues at hand. Consequently, the Council was given an opportunity to comment on whether the planning obligations are necessary and suitably provided.
9. The Council has confirmed that at the time of the appeal submission, the Thorpe Neighbourhood Plan 2021 (NDP) had been through examination and was awaiting a referendum which took place in May 2021. The NDP was then formally adopted by the Council on 30 June 2021. The appeal has been considered accordingly.

Main Issues

10. The main issues are the effect of the proposal on:
 - (a) spatial strategy, character and appearance of the area;
 - (b) biodiversity;
 - (c) air quality and health of future occupiers; and
 - (d) housing mix, affordable housing and associated planning obligations.

Reasons

Spatial Strategy, Character and Appearance

11. The site forms part of an allocation within the NDP, where Policy TH2 (i) sets out detailed requirements for the provision of around 24 dwellings. This establishes the principle of development and spatial strategy within which future proposals should come forward.
12. The proposal is for a quantum of development comprising up to 36 dwellings and exceeds the allocation. Furthermore, the site does not take in the whole area of the allocation, omitting land to the south at Coltscroft. Consequently, a greater quantum of development would be delivered upon a smaller parcel of land than that established by the NDP allocation.
13. Therefore, and fundamentally, it would give rise to development that is of a much higher density, departing from the spatial strategy of the NDP and conflicting with Policy TH2 (i) as a result.
14. The wording of Policy TH2 (i) establishes that 24 dwellings is an approximation. However, the proposal in this case would result in a percentage increase of around 50%. This is a significant proportion of additional dwellings and is not an approximate number in my mind.
15. There is no evidence that leads me to a different conclusion or that it constitutes a number that would result from a reasonable rounding exercise. Consequently, it is clear that 36 dwellings is not a reasonable approximation of 24 dwellings and the proposal would conflict with Policy TH2 (i) on this basis.
16. Policy TH2 (i) of the NDP has a requirement that about 0.75ha of the land should also be publicly accessible green space. The proposal provides an area of green space to the south west totalling around 0.14ha.

17. Again, and similar to my previous assessment of dwelling numbers, the application of policy is based on an approximation, but it is clear that the amount of land provided for green space is significantly below what is indicated in policy terms. Consequently, for similar reasons, I cannot conclude that it is a reasonable rounding of policy requirements.
18. It may be the case that a policy compliant area of green space could potentially be achieved at reserved matters, pursuant to details relating to layout and landscaping. However, I need to be satisfied that the maximum number of dwellings proposed is also deliverable in principle.
19. Consequently, it would appear that the maximum number of dwellings proposed could not be delivered in conjunction with the necessary amount of green space. This is indicative of the constraints generated by the higher density proposal at the site, contrary to the lower density of the allocation.
20. I note the appellant's contentions about the evidence base that underpins the requirement for 0.75ha of green space. However, this has somewhat of a limited bearing on my assessment as it is an adopted requirement of the development plan irrespective of its origins. Similarly, there is no evidence that the NDP supports a smaller area of more intensive planting in lieu of the 0.75ha requirement.
21. The function of the green space is noted, but its community value is not limited to its accessibility. Indeed, even if its accessibility is limited, it can still provide a valuable green space buffer between existing residential development and the M25 Air Quality Management Area (AQMA), whilst also providing visual amenity. In any event, there is no evidence in front of me to suggest that even if the primary function was visual, that this should absolve proposals of meeting the 0.75ha policy requirement.
22. I acknowledge that the appellant contends improving the accessibility of the green space should be considered a significant benefit. However, given that the area of green space to be provided is significantly below that required by the NDP, any benefits would be limited in real terms.
23. Notwithstanding the phrase 'up to', there is no evidence in front of me, by way of case law or otherwise, that demonstrates the Council could resist the maximum number of dwellings if such a number was put forward under future reserved matters applications. For example, it is not clear that they could limit development pursuant to controlling scale, or any other matter so reserved in this case.
24. Therefore, it is clear that the site's ability to accommodate the maximum number of dwellings proposed needs to be established at outline stage, even if this is only done indicatively. Consequently, I cannot be confident that reserved matters approval provides a mechanism to secure a lesser number of dwellings if this was necessary to make other matters of detail acceptable.
25. Consequently, even if it was the case that a slightly higher density of development is required to deliver two and three bedroom dwellings at the site, the ultimate density must not be at the expense of satisfying other requirements.

26. The NDP allocation was subject to thorough examination, which would have considered the requirements for making effective use of the land and any visual distinction¹ between the site and surrounding land that may have informed the quantum of development.
27. Consequently, I am satisfied that the provision of around 24 dwellings and other requirements therein would make an effective use of the land in meeting housing needs. There is no evidence of material considerations that have emerged following the NDP's adoption that would change this conclusion. For example, there is no viability assessment demonstrating that a different configuration than that established by the development plan would be reasonable.
28. Altogether, the various elements of the development plan are relatively recent in their adoption and the only reasonable conclusion is that the development plan as a whole is very much reflective of the situation on the ground and the social, economic, and environmental needs of the area. The spatial strategy and any conflict established with it should carry significant weight in this context.
29. The site is located in Thorpe where Thorpe bypass, adjacent woodland and a private area of open space define its western and south western extent. Rosemary Lane and the gardens of several residential dwellings define its eastern extent, West End Farm which is a Grade II Listed Building² defines its northern extent, whilst Frank Muir Memorial field defines its southern extent.
30. Altogether, it is clear that the site is located in an area with a relatively lower density pattern of residential development with wide spacious plots and green spaces which create a sense of openness amongst the existing built form. Currently, the site is predominantly used as a builder's yard, with a number of associated structures on the land and set against a largely residential backdrop.
31. At its maximum, the proposal would deliver a density of development that is materially greater than the prevailing pattern of development. This is clear from looking at the indicative site layout plan, which to my eye shows dwelling to plot ratios that are significantly more constrained within the proposed development compared to the majority of other prevailing residential development in the area.
32. There is no quantitative evidence demonstrating that the dwelling to plot ratios are consistent in this context, or that I should reach a different conclusion in my qualitative assessment.
33. Going further, the maximum number of dwellings would require a layout of narrow plots with limited garden depths that are less than the standards set within the Adopted Supplementary Design Guide Design Standard 2021.
34. Altogether, this would create a cramped layout incongruous with the prevailing pattern of development and these findings reinforce my earlier findings on lack of compliance with the spatial strategy for the area.

¹ Recognised under appeal ref APP/Q3630/W/20/3253944

² Potential effects on heritage significance are considered later in the decision letter.

35. The Council argue that the scale and bulk of the apartment building would be incongruous, however it is not a matter of quantum or principle and cannot be considered at this stage. Furthermore, it would appear that the design of the building could change within the constraints of the maximum proposed quantum to achieve a character and appearance that was in keeping with the design of other dwellings in the area.
36. Similarly, although the site omits part of the allocation to the south, and notwithstanding quantum, matters of layout to ensure sensible future opportunities and connectivity could also be dealt with at reserved matters.
37. Overall, the proposal would generate harmful effects on the spatial strategy, character and appearance of the area. It would therefore conflict with Policy EE1 of the Runnymede Local Plan 2020 (LP), Policy TH2 (i) of the NDP and Paragraph 130 of the Framework. Among other things, these set out an appropriate quantum of development for the site and other requirements pursuant to an effective use of the land.

Biodiversity

38. Policy SD7 of the LP seeks to protect existing biodiversity and include opportunities to achieve net gains. The proposal is supported by a preliminary ecological assessment, bat assessment and arboricultural assessment. These identify that some of the buildings have the potential for roosting bats and for nesting birds and there are opportunities for mitigation measures such as bat boxes to be installed and for high quality trees to be retained.
39. Notwithstanding the appellant's efforts exploring conservation credit schemes, I am mindful of guidance³ which requires measurable improvements pursuant to net gain. Consequently, there is not a biodiversity net gain metric calculation in front of me demonstrating that the proposal would provide such a measurable improvement. Accordingly, given that the presence of protected species is not in question, it is reasonable to take a precautionary approach in preserving and enhancing their habitat.
40. Surrey Wildlife Trust has commented that some of the surveys are time expired, however a planning condition could potentially secure updated surveys if it could be demonstrated that nothing has materially changed on the ground. Therefore, I do not necessarily see this being a reason weighing against the proposal in and of itself.
41. Overall, there is insufficient evidence to demonstrate that a measurable biodiversity net gain can be achieved at the site. Consequently, the proposal would conflict with Policy SD7 and EE9 of the LP, Part viii of Policy TH2 (i) of the NDP and Paragraph 174 of the Framework. Among other things, these seek to secure appropriate biodiversity net gains.

Air Quality

42. The site is adjacent to the Thorpe bypass which is also adjacent to the M25 Motorway. The AQMA covers the western extent of the allocated site and restricts the location of dwellings to the eastern extent of the allocated site.

³ Planning Practice Guidance; Paragraph: 022 Reference ID: 8-022-20190721

43. Indicatively, in order to deliver the maximum number of dwellings, the proposal would need to locate some of them along the periphery of the AQMA. Indeed, the rear garden areas of some dwellings would extend within the AQMA and this could have a harmful effect on the health of future occupiers by exposing them to poor air quality.
44. In this context, I note the Council has confirmed that their Environmental Health Officer has reviewed the evidence submitted and remains concerned about the potential effects on the health of future occupiers, including the lack of mitigation.
45. Given the already high density nature of the proposal, and previously identified implications around the Council's ability to resist the maximum number of dwellings put forward at reserved matters, I cannot be confident that there is sufficient flexibility in the layout of the proposal to relocate the dwellings and rear garden areas outside of the AQMA.
46. However, the Council acknowledge that the emissions from vehicles have reduced since the AQMA was put in place and it appears that this is validated within the latest air quality assessment. It demonstrates that despite being located on the periphery of the AQMA, the limited number of dwellings in question would not be exposed to harmful levels of air quality.
47. Furthermore, even though the proposal is relatively high density, the total number of dwellings is relatively modest in general terms and therefore would not give rise to concerns about increased levels of human driven emissions. This is also set out in the latest air quality assessment.
48. Overall, there is sufficient evidence to demonstrate that the proposal would avoid the harmful effects of poor air quality and protect the health of future occupiers. Consequently, the proposal would accord with Policy EE2 of the LP. Among other things, this policy sets out that where an adverse impact on sensitive receptors is found, planning permission will only be granted where abatement or mitigation measures to reduce impacts to acceptable levels can be secured and implemented.

Housing Mix

49. The Council argues that the proposed mix would not be consistent with the requirement to provide an emphasis on two and three bedroom dwellings. However, this is something that could be dealt with at reserved matters, and I am not clear on the purported relationship between quantum and mix and the constraints therein.
50. For example, some of the dwellings are currently proposed as one bedroom apartments. However, notwithstanding the acceptability of the quantum of development, it is unclear why these apartments could not potentially be reconfigured into two or three bedroom dwellings.
51. Logically, a two or three bedroom dwelling would occupy more land than a one bedroom apartment and would not increase the quantum. Consequently, without more exploratory evidence demonstrating that the relationship between quantum and mix cannot be successfully dealt with at reserved matters I cannot conclude that the proposal would be inappropriate in this context.

52. Notwithstanding, it is clear that a significant proportion of the units indicatively proposed are configured as two or three bedroom dwellings. Indeed, more than 50% of the proposal would be configured as such, and it would be unreasonable to conclude that this did not place an emphasis on such provision.
53. In relation to affordable housing and associated planning obligations, in accordance with Paragraph 57 of the Framework and pursuant to the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, directly, fairly, and reasonably related in scale and kind to the development.
54. Affordable housing planning obligations are necessary to ensure that the affordable housing proposed and advanced as a benefit in favour of the development is appropriately secured. They are directly related to the development having been advanced pursuant to Policy SL20 of the LP, which states that for proposals of ten or more (net additional) dwellings the Council will seek to deliver 35% as affordable units of which about 70% will be provided as affordable or social rent, 30% provided as other forms of affordable housing and 10% for affordable home ownership.
55. The Council can demonstrate a five year housing land supply of market housing, a component of which would comprise affordable housing in accordance with the policy requirements of the LP. Consequently, the benefits associated with the provision of additional market and affordable housing, over and above the provision that would come forward through five year housing land supply commitments, would be tempered and only carry moderate weight.
56. Overall, an appropriate housing mix could be secured, and the proposal secures the appropriate level of affordable housing planning obligations, which are necessary and directly, fairly, and reasonably related in scale and kind to the development. Consequently, the proposal would accord with Policy TH2 (i) and TH4 of the NDP and Policy SL20 of the LP, which among other things requires an emphasis on the provision of two or three bedroom dwellings.
57. The original submitted unilateral undertaking was flawed for a number of reasons outlined by the Council, including but not limited to incorrect title numbers. It therefore carries no weight under the appeal. The appellant submitted a second unilateral undertaking in response, which addresses the Council's comments and appears to be effective in all other respects. It has therefore carried full weight under the appeal.

Other Matters

58. The site is within the zone of influence of the Thames Basin Heaths SPA. However, as I am dismissing the appeal for other reasons, it is not necessary for me to consider the potential for likely significant effects under the Habitats Regulations or any planning obligations advanced to provide mitigation in this context.
59. The site is directly opposite West End Farm, which is a Grade II listed building deriving most of its heritage significance largely from its architectural and historic interest as a 16th century former farmhouse.

60. The access would increase traffic movements within its setting, but the limited number of dwellings associated with the proposal, in conjunction with an already residential context, would not generate movements to the extent where the character of the listed building's setting would be materially affected.
61. Furthermore, the nature of an outline proposal means that there is flexibility in how the final scheme would interact with the listed building's setting. Consequently, landscaping measures to soften the built form and help it assimilate into the existing residential context would mitigate any harm to the appearance of the listed building's setting. Altogether, the proposal would preserve the heritage significance of the listed building.
62. Whilst the other appeal⁴ is noted, I am mindful that the full details on which the inspector made their decision are not in front of me. Consequently, I am unable to verify that their conclusions are based on evidence that is similar to this case. Furthermore, I note that their decision was predicated on avoiding prejudice to the NDP, which has subsequently been adopted and therefore the development plan has changed, and my decision has been taken accordingly.
63. The presumption in favour of sustainable development is only triggered in specific circumstances in accordance with Paragraph 11 of the Framework. It has not been demonstrated that it has been triggered in this case.

Conclusion

64. The benefits associated with providing market housing and affordable housing in accordance with the development plan have been reduced to carrying moderate weight in light of the Council's ability to demonstrate a five year housing land supply, whilst satisfying air quality standards would be a neutral matter. The proposal would conflict with the development plan in relation to several of the main issues, including spatial strategy, character and appearance, and biodiversity. Cumulatively, these would carry significant weight that would outweigh the benefits which carry only moderate weight. As a result, the proposal would conflict with the development plan as a whole. Consequently, for the reasons given, the appeal is dismissed, and planning permission refused.

Liam Page

INSPECTOR

⁴ APP/Q3630/W/20/3253944