



Appeal Decision

Site Visit made on 29 November 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2021

Appeal Ref: APP/Y3615/W/21/3276190

Commercial Yard, Hereford Close, GUILDFORD GU2 9TA

- 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 BLOCC Investments Ltd against the decision of Guildford Borough Council.
 - The application Ref 20/P/00585, dated 31 March 2020, was refused by notice dated 7 December 2020.
 - The development proposed is the erection of a building containing 2 dwellings with bin & cycles stores.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a building containing 2 dwellings with bin & cycles stores at Commercial Yard, Hereford Close, Guildford GU2 9TA in accordance with the terms of the application, Ref 20/P/00585, dated 31 March 2020, and the plans submitted with it, subject to the conditions within the attached schedule.

Preliminary Matters

2. Planning Approval was granted¹ by the Council for the erection of one dwelling on the site in 2021 (The Approved Scheme). This was a similar form and scale to the proposed development, albeit marginally smaller. There is no evidence that the appellant would not implement the approved scheme if this appeal was declined. Therefore, the 'fallback' position is material in the consideration of the merits of the proposed scheme.
3. The proposed development was amended from three to two dwellings during the planning application consideration process. I note that the revised scheme was subject to public consultation. I have adjusted the description of development in recognition of this change. Consequently, I shall take the revised scheme into account without causing prejudice to any party.
4. A S106 Legal Agreement² has been submitted in support of the application. This makes provision for financial payments towards Strategic Access Management and Monitoring (SAMM) and Suitable Accessible Natural Green Spaces (SANG) sums. It also includes an obligation for the Council to use the contribution towards the cost of upgrading, maintaining and managing SANGS. The Council has identified that these sums would provide a satisfactory means to secure appropriate mitigation towards the Thames Basin Heath Special Protection Area (SPA).

¹ Planning Application Reference: 21/P/00117

² 106 Legal Agreement between Guildford Borough Council and BLOCC Investments Ltd dated 22 November 2021

Main Issues

5. The site is within the zone of influence of the SPA and protected under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's reasons for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the protected site. It is necessary to consider this matter as a main issue.
6. In light of the above, the main issues are:
 - The effect of the proposed development on the character and appearance of the area,
 - The effect of the proposal on the living conditions of future occupiers with particular respect to the provision of external amenity area, and
 - Whether the proposal would have a significant effect on the integrity of the SPA.

Reasons

Character and appearance

7. Hereford Close is a short cul-de-sac consisting of semi-detached housing. The dwellings are set close to the highway and create a close-knit and strong sense of enclosure. The appeal site is a small pocket of unused land at the head of the road. It is behind a fence and consists of largely self-seeded planting. The site therefore makes a neutral contribution to the character and appearance of the area.
8. The proposed dwellings would stand at the head of the cul-de-sac. The main two-storey element would be partially offset from the centre, affording views through the site to open space and buildings beyond. The proposed building would include pitched roofs and have single-storey and two-storey elements. These components would disaggregate the overall mass of the building to reduce its prominence. The use of brick and render would complement the materials found in local built form. Also, the proposal's two-storey bay window and overall traditional design would add an attractive and interesting addition to the street.
9. The proposal would occupy the majority of the site, with only small pockets of external space provided to the front of the building in three areas. However, the building would be set away from the highway, beyond the turning circle and frontages of 5 and 6 Hereford Close (No's 5 and 6). As a result, the proposal would be set back further from the highway than existing development. The proposal would also be lower than these neighbouring dwellings and would be partially screened by landscaping. For these reasons the proposed dwellings would not be obtrusive in the street scene.
10. Furthermore, whilst having limited gaps to its southwest and northwest boundaries, this would not be perceived from the street. Also, due to the separation distances the proposal would create acceptable relationships with neighbouring dwellings to the rear of the site. Consequently, the proposed development would not appear out of character with surrounding development or be cramped within the site. Moreover, the proposed dwellings would occupy

a footprint and have a similar scale to the recently approved scheme. This too would enclose the street having a similar effect on local built form. The proposed development would therefore suit the existing sense of enclosure evident within the street. Consequently, the proposal would complement the character and appearance of the area.

11. Accordingly, the proposal would accord with policy D1 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (2019) (LPSS), saved policies G5(2) and G5(3) of the Guildford Borough Local Plan 2003 (LP) and the National Planning Policy Framework (The Framework). These policies seek, among other matters, for development to achieve a high-quality design that responds to distinct local character and to be of an appropriate scale.

Living conditions

12. The Council's Residential Design Guide (2004) states that it is important to retain the privacy and amenity of adjoining properties and new residents. To do this it advises that boundary treatment should provide screening to prevent overlooking and small front gardens be included to provide privacy. However, the Council's policies and the Guide do not stipulate any parameters that might advise on the orientation, positioning, shape or size of residential gardens.
13. The footprint of the proposed dwellings would occupy most of the site. Unit 2, a 1 bed two-person dwelling, would have access to two small triangular pockets of external space. One would be adjacent to the driveway and the other would be alongside the access path to unit 1. Unit 1 would have access to one small area of external space, adjacent to its front door. Although limited, the space provided would allow for occupiers to sit outside and enjoy an external area. Accordingly, the external areas for both units would be of sufficient size for future occupiers.
14. Moreover, these would be southeast facing and would not be overlooked by adjacent properties, offering a reasonable level of privacy. Also, due to the size of the units, the properties would have low occupancy, with a resulting limited number of occupiers requiring access to the external space. Furthermore, the appeal site is within close proximity to open spaces and the open countryside, providing occupiers with convenient access to local recreation areas if desired. As a result, the proposal would include adequate external amenity space to provide acceptable living conditions for future occupiers.
15. Consequently, the proposed development would accord with saved policy G1(3) of the LP and the Framework. These policies seek, among other matters, for development to protect the amenities of occupiers of buildings and create a high standard of amenity for future users.

Special protection area

16. The Council's SPA Avoidance Strategy (2006) identifies that recreational pressure is having a detrimental effect on the nightjar, woodlark and dartford warbler species of birds within the SPA. Circular 6/2005 sets out the approach to be taken in considering a development proposal that might affect a SPA in order to fulfil the requirements of the Habitats Regulations. The appeal proposal is not directly connected with nature conservation. However, I have no evidence to assure me that visits to the SPA, would not have a significant effect on the internationally important features of the site. In such

circumstances, the Circular requires that I undertake an Appropriate Assessment (AA) to consider the implications of the proposal in view of its conservation objectives.

17. I concur with the Council that in the absence of mitigation measures, there is the potential for residents of the proposal to visit the SPA. The Circular requires me to consider whether compliance with conditions or other restrictions, such as a planning obligation, would enable the proposal to not adversely affect the integrity of the SPA. Furthermore, standing advice of Natural England identifies that it would not object to an AA which finds 'no adverse effects' if mitigation has been secured in accordance with the Avoidance Strategy and the Council's policy.
18. The Council's Avoidance Strategy explains that residential development between 400m and 5km, can mitigate its adverse effects through developer contributions. The Council has identified that appropriate financial contributions can be directed towards access to existing SANG's, and through a SAMM contribution, to provide suitable mitigation. I am therefore satisfied that these measures would provide the necessary mitigation to ensure that the development would have no adverse effects on the integrity of the SPA.
19. Paragraph 57 of the Framework and the CIL Regulations³ require planning obligations to be necessary, directly related to the development and fairly and reasonably related to it in scale and kind. I am content that these contributions would satisfy the required tests of the CIL Regulations. As such, subject to the provision of the required mitigation, the proposal would have no impact on the integrity of the SPA.
20. As such, the proposal would satisfy policy P5 of the LPSS, saved policy NRM6 of the South East Plan (2009) and the Council's SPA Avoidance Strategy (2019). These seek proposals to provide mitigation measures to off-set development that would be likely to affect the integrity of the SPA.

Other Matters

21. The proposal includes parking for one vehicle. Although, this is less than that sought by the County's parking standards, the site is close to local shops and public transport. Also, the parking demands of this small development would be limited. Most nearby dwellings include driveways. Parking provision is supplemented by unrestricted on street parking. During my visit, while offering only a snapshot in time, I noted that on street parking was readily available. Consequently, based on the anticipated limited demand for off-site car parking the proposal would have a minimal impact on on-street parking or traffic levels. Also, although manoeuvring a vehicle off-site could be slightly awkward, this arrangement would be similar to that seen for several properties within the street. For these reasons, the scheme would not result in highway safety concerns, I note that the County's Highway Authority takes a similar view.
22. Neighbouring development to the south of the site consists of bungalows, set on slightly lower land to the appeal site. Proposed 'unit one' would be single-storey. The taller 'unit two' would be set some distance to the north of the boundary with these neighbouring dwellings. As a result, the scheme would not

³ Community Infrastructure Levy Regulations 2010, Regulation 122(2)

result in a loss of sunlight or daylight to the occupiers of neighbouring dwellings.

23. Interested parties have raised concerns that the scheme would attract further student accommodation into the area and would not accommodate a family. The Council has not identified a policy that would exclusively seek family accommodation. Furthermore, a variety of different sized dwellings assists in the delivery of a mixed and balanced community as sought by the Framework.
24. The proposal includes provision for refuse bin storage. This would be within designated storage areas per plot. The Council's recycling and waste team have raised no objection to the position of the storage areas and would be able to undertake suitable collection of these. I am therefore satisfied that refuse storage and collection would be suitably managed on site.
25. The moderately constrained location of the site could result in some temporary noise and general disturbance from construction vehicles. However, a Construction Transport Management Plan could specify how the site is serviced during construction to ameliorate these effects. Furthermore, noise would generally take place in the daytime only and noise at unsociable times would be controlled by existing noise regulations. This would result in limited harm to the living conditions of existing occupiers.

Conditions

26. 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 most of these with some amendments and adjustments for clarity.
27. It is necessary for conditions seeking details relating to a decontamination strategy and a Construction Transport Management Plan to be submitted prior to the commencement of development [conditions 3 and 5]. 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 commencement as decontamination works may be required within the footprint of the building and off-site construction activity may result in disturbance to other road users. These measures would ensure that the development is suitably remediated, and that the construction activity is regulated, in support of living conditions of future and existing occupiers respectively.
28. 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 car parking, bicycle storage, refuse stores and materials in the interests of highway safety and the character and appearance of the area [6, 11 and 12]. It is necessary to require obscure glazing to be installed to the side of unit 2 to protect neighbouring occupiers from overlooking [10]. It is also necessary for the provision of electric car charging points to be installed to address the requirements of paragraph 112e of the Framework [13]. Furthermore, water saving measures and an energy statement are required to satisfy Policy D2 of the LPSS [7 and 8]. It is also required for a verification report to be submitted to ensure the decontamination work has been satisfactorily completed [4].

29. The Framework advises that the removal of permitted development rights should only be undertaken where there is clear justification to do so. Due to the constrained nature of the plot, it is necessary to prevent new windows being installed in the proposed dwellings to avoid overlooking towards neighbouring dwellings [9].

Conclusion

30. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed, and planning permission granted subject to the submitted Legal Agreement and 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: P20-010-P-001 REV A, P20-010-P-002 REV B, P20-010-P-101 REV B, P20-010-P-102 REV C, P20-010-P-103 REV B, P20-010-P-301 REV B, and P20-010-P-302 REV B.
- 3) Before development commences, a detailed Phase One survey, including historic investigation and detail on ground conditions shall be submitted to ascertain whether the site supports any soil or water contamination. If the Local Planning Authority consider that further investigation of the site is necessary, a detailed site investigation must be carried out by a suitably qualified and accredited consultant/ contractor in accordance with a Quality Assured sampling and analysis methodology. The investigation shall include relevant sub-surface, soil gas and ground water sampling together with the results of analysis and a risk assessment of the impact to receptors. Any remediation required shall be fully detailed to restore the site to a standard suitable for use, including works to address any unsuspected contamination.
- 4) Any remediation scheme submitted in accordance with Condition 3 shall be carried out as detailed in the applicants submission. Documentary proof shall be provided to the Local Planning Authority together with a quality assurance certificate to show that the works have been carried out in full accordance with the approved remediation strategy. Details of any post remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste material has been removed from the site before the development hereby permitted is occupied by any person not directly involved in constructing the development.
- 5) No development shall commence until a Construction Transport Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of: (a) parking for vehicles of site personnel, operatives and visitors, (b) loading and unloading of plant and materials, (c) storage of plant and materials, and (d) measures to prevent the deposit of materials on the highway. The approved plan shall be fully implemented during the construction of the development.
- 6) 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.
- 7) Before any above ground works commence, details of an energy statement shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of how energy efficiency is being addressed, including benchmark data and identifying the Target carbon Emissions Rate TER for the site or the development as per

Building Regulation requirements (for types of development where there is no TER in Building Regulations, predicted energy usage for that type of development should be used) and how a minimum of 20 per cent reduction in carbon emissions against the TER or predicted energy usage through the use of on-site low and zero carbon technology shall be achieved. The approved details shall be implemented prior to the first occupation of the development and retained as operational thereafter.

- 8) Before any above ground works commence, details of water saving and efficiency measures, to ensure that a maximum of 110 litres of water is consumed per person per day, shall be submitted to an approved in writing by the local planning authority. Before occupation, a copy of the wholesome water consumption calculation notice shall be provided to the planning department to demonstrate that this condition has been met.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, dormer windows, rooflights, doors or other form of openings other than those shown on the approved plans, shall be inserted in any elevation.
- 10) The first-floor windows in the side elevation of the development hereby approved shall be glazed with obscure glass and permanently fixed shut, unless the parts of the window which can be opened is more than 1.7 metres above the floor of the room in which the window is installed and shall thereafter be permanently retained as such.
- 11) The bin storage as shown on Drawing No P20-010-P-103 Rev B shall be implemented prior to the first occupation of the development and thereafter maintained for the duration of the development.
- 12) The development hereby approved shall not be first occupied unless and until a driveway space, and space for the secure parking of bicycles, has been provided within the site in accordance with Drawing No.P20-010-P-101 Rev B. Thereafter the parking and bicycle store area shall be retained and maintained for their designated purposes.
- 13) The development hereby approved shall not be occupied unless and until the proposed dwelling is 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.

End of conditions