



Appeal Decision

Site visit made on 14 December 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2022

Appeal Ref: APP/Q3820/W/21/3270552

Land to the Rear of 98 Three Bridges Road, Crawley RH10 1JL

- 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 Trevor Harman, Barclays Developments Ltd against the decision of Crawley Borough Council.
 - The application Ref CR/2020/0371/FUL, dated 30 June 2020, was refused by notice dated 29 October 2020.
 - The development proposed is the erection of a 4 bedroom detached dwelling with a detached double garage.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's fourth reason for refusal refers to an agreement not being in place to ensure appropriate infrastructure contributions would be secured in relation to affordable housing and trees. As part of their appeal submissions the appellant submitted a copy of a Unilateral Undertaking (UU) dated 8 February 2021 which seeks to provide a mechanism for financial contributions to be paid towards affordable housing provision within the borough, which the Council has been given the opportunity to comment on.
3. There are conflicting statements within the main parties' submissions with regard to a group of trees at the rear of the appeal site, identified as 'TG1' within the Arboricultural Impact Assessments¹ (AIAs). All trees forming part of TG1 within the appeal site are shown to be removed on the proposed site plan² and the AIAs also refer to this, but the Council's officer report and the appellant's statement of case suggest otherwise. The appellant's final comments³ clarify that all trees within the appeal site forming part of TG1 are proposed to be removed and I have therefore assessed the appeal on this basis.
4. During the course of the appeal the Council received a position statement from Natural England (NE) in respect of all planning applications within the Sussex North Water Supply Zone (SNWSZ)⁴. The position statement outlines NE's concerns about groundwater abstraction within the SNWSZ. It explains that NE

¹ BS5837 Arboricultural Impact Assessments 03062Rv4 and 03062Rv5 by Tamla Trees Ltd, dated June 2020 and February 2021

² D18124_A_1103 P1

³ Statement of final comments by Tamla Trees Ltd, dated September 2021

⁴ Natural England's Position Statement for Applications within the Sussex North Water Supply Zone, September 2021 – Interim Approach

cannot, with certainty, conclude that further groundwater abstraction within the SNWSZ will not have an adverse effect on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. The advice of NE is that no new developments should add to this impact, which means that any new residential development within the SNWSZ should demonstrate water neutrality. As the appeal site is located within the SNWSZ, the appellant was provided an opportunity to comment on the position statement and representations were made.

Main Issues

5. Taking the above into account, the main issues are: i) the effect of the proposed development on a protected Oak; ii) whether appropriate infrastructure contributions have been secured; iii) the effect of the proposed development on the SNWSZ, with particular regard to the integrity of the Arun Valley SAC, SPA and Ramsar site; and iv) the effect of the proposed development on the living conditions of neighbouring residents, with particular regard to privacy and outlook.

Reasons

Protected Oak

6. The appeal site forms part of the rear garden of a detached house in a suburban setting. Trees are a common feature of the surrounding area, within domestic gardens and lining roadside verges, and they make a positive contribution to the character and appearance of the area by softening the impact of the built environment.
7. There is a mature Oak ('T1') in the rear garden of 96 Three Bridges Road which the Arboricultural Impact Assessments confirm is a Category A tree, subject to a Tree Preservation Order. This high-quality tree makes a substantial positive contribution to the character and appearance of the surrounding area on account of its size and form, which can be appreciated in wide views along Haslett Avenue East and Three Bridges Road, and from neighbouring residential properties. Both main parties agree T1 appears to be in good health and the proposal would not have any adverse effects on its Root Protection Area.
8. The proposed dwelling would be located 8.6m to the east of T1 and the Council advise that prior to the crown reduction of T1, its canopy would spread approximately 10m to the east. Crown reduction works of 2.5m were authorised by the Council in 2019⁵ on the understanding that it would be a one-off reduction to set T1 up for several years, followed by smaller reductions of 1 – 1.5m every 2 – 5 years to avoid overly stressing the tree. The appellant claims that there is no reason for the Council to refuse pruning works back to those points authorised in 2019.
9. Without future pruning of T1, branches would substantially overhang the garden of the proposed dwelling and spread close to the proposed dwelling. This would create an unsatisfactory relationship between the proposed dwelling and T1 on account of the level of overshadowing, leaf drop and risk of damage to the proposed dwelling. I do not consider it likely that any unacceptable levels of overshadowing would be caused by T1 to Bedrooms 3 and 4 of the proposed dwelling on account of the positions of those windows. However,

⁵ Council ref: CR/2019/0296/TPO

there would be high levels of overshadowing to the proposed garden and kitchen, and the close proximity of branches to the proposed dwelling would be likely to result in requests to substantially prune or remove T1, notwithstanding it being located outside of the appeal site.

10. The appellant's submissions indicate it would be necessary to carry out pruning back to the points approved in 2019 every 5-7 years, one reason being that there is an elevated risk of detachment from the tree as pruning wounds potentially decay. I have not been made aware of any consents for further works to T1 and the Council have explained that repeated reductions back to the pruning points approved in 2019 would have a detrimental impact on the health of T1. The Council also advise that regular pruning back to the points approved in 2019 would not be essential, as Oaks tend to be more resistant to decay, meaning it is unlikely that regrowth would become over-extended.
11. Regular pruning of T1 back to the crown reduction points approved in 2019 would therefore only be necessary if the proposed development would be constructed, to protect the dwelling and the living conditions of future residents, rather than to protect the future health or amenity value of T1. I have not been presented with sufficiently detailed evidence to demonstrate this would not harm the long-term health, amenity value and protection of T1. The proposal would therefore conflict with Policies CH2 and CH3 of the Crawley Borough Local Plan 2015-2030 (2015) (LP) and guidance set out in the Framework⁶. These require, amongst other things, development to respond to and reinforce landscape character and demonstrate how attractive features which make a positive contribution to the area, such as trees, would be integrated, protected and enhanced, sympathetic to local character.

Infrastructure Contributions

12. The copy of the UU seeks to confirm the owner of the appeal site is committed to making a financial contribution of £15,750 towards the provision of affordable housing within the borough, which the Council has confirmed accords with their Affordable Housing Supplementary Planning Document (2017), based on the floorspace of the proposed dwelling. I have not been provided with a detailed breakdown of how that figure has been calculated to convince me it would meet the statutory tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 57 of the Framework.
13. The UU makes no provisions in respect of trees. Policy CH6 of the LP requires landscape proposals for new residential development to include at least 1 new tree for each new dwelling and at least 1 replacement tree for each tree removed, depending on the size of any trees removed. The planting of trees within the appeal site could be required by condition if there was sufficient certainty that the requisite number of trees could reasonably be planted within the appeal site. Commuted sums will be sought in lieu of on-site trees where it is not feasible or desirable for additional and replacement tree planting to be provided on-site.
14. All trees within the appeal site that form part of TG1 would be removed, in addition to a Tamarisk ('S1'). The proposed site plan shows 5 new trees would be planted to the front of the proposed dwelling, but the Council has suggested

⁶ National Planning Policy Framework (2021)

a total of 8 trees would be removed from TG1 in addition to S1, which would result in at least 10 trees needing to be planted within the appeal site. As the appellant's submissions propose the removal of all trees within the appeal site forming part of TG1, and in the absence of sufficient details confirming how many trees would be removed and their sizes, it is unclear whether there would be sufficient space within the appeal site to comfortably accommodate the number of new trees required by Policy CH6. I am therefore unable to conclude that a condition requiring the planting of the necessary additional and replacement trees would meet the tests set out at Paragraph 56 of the Framework.

15. The appellant has failed to cover the Council's legal costs to review the UU, and the Council has therefore declined to comment on the legal basis of the document. No documents have been attached to Schedule 1 and Schedule 2 of the UU and no evidence has been provided to confirm the land ownership of the appeal site set out in the UU. I am therefore unable to conclude all relevant parties have entered into the agreement and that the UU provides legal certainty that appropriate financial contributions towards affordable housing provision would be secured.
16. It has not been demonstrated that appropriate infrastructure contributions have been secured in respect of affordable housing and tree mitigation requirements, contrary to Policies H4 and CH6 of the LP. Policy H4 of the LP requires 40% affordable housing from all residential developments, with a commuted sum towards off-site affordable housing provision being sought for sites of 5 dwellings or less. Policy CH6 of the LP requires the planting of 1 additional tree per new dwelling and replacement trees or a commuted sum based on the size of any trees removed.

Arun Valley SAC, SPA, and Ramsar site

17. The appeal site is located within the SNWSZ and the appellant would therefore need to demonstrate the proposal achieves water neutrality for me to conclude it would not be likely to adversely affect the integrity of the Arun Valley SAC, SPA or Ramsar site. In the absence of a strategic approach, NE's position statement outlines an interim approach for projects to achieve water neutrality which includes the minimisation of water use by demonstrating new dwellings would consume no more water than 85 litres/person/day in addition to sufficient offsetting.
18. The appellant has put forward a water efficiency calculator spreadsheet to show water reducing measures would be built into the development, relying on the use of water recycling and low flow rate fixtures and fittings. The water efficiency calculator lacks detail to corroborate its figures, but it shows the proposal would result in 52.97 litres/person/day total water consumption. No water offsetting measures are proposed, as outlined in NE's position statement, and the proposal would therefore result in an increase in the use of water supply in the SNWSZ. The proposal would not achieve water neutrality and is therefore likely to have an adverse impact upon the Arun Valley SAC, SPA and Ramsar site.
19. I would need to undertake an Appropriate Assessment in accordance with the Habitats Regulations⁷ if I was minded to grant planning permission. However,

⁷ The Conservation of Habitats and Species Regulations 2017 (as amended)

as I have found the proposal would result in harm contrary to the development plan in respect of the first and second main issues, there is no need for me to consider this matter further.

Living conditions

20. The first floor front elevation windows of the proposed dwelling would be located at least 21m from the rear facing first floor windows of 96 Three Bridges Road, at an acute angle. They would be further from the rear facing windows of 98/98A Three Bridges Road. The Council have referred to their Urban Design Supplementary Planning Document (2016) (UDSPD) which advises that minimum first floor window separation distances should be 21m. The proposal would therefore accord with the UDSPD guidance, but the Council claim it would result in perceived overlooking of those properties.
21. Considering the existing layout of dwellings and the low garden fence between 96 and 98/98A Three Bridges Road, there is already a degree of mutual overlooking between properties which is typical for the residential location. In this suburban setting, on account of the proposed dwelling's positioning in relation to neighbouring properties, I do not consider the proposed dwelling would result in any perceived overlooking likely to cause material harm to the living conditions of neighbouring residents.
22. The proposed double garage would be located close to the northern and western boundaries of the appeal site, where 1.8m high timber close boarded fences are shown to be installed. It would be single storey in height and would have a pyramidal roof, which would be of appropriate scale and appearance for its suburban location. It would be located adjacent to open garden spaces and at sufficient distances from the rear elevations of 96 and 98/98A Three Bridges Road to avoid having an unacceptable impact on the outlook enjoyed by occupants of those properties.
23. The proposed development would not therefore cause any harm to the living conditions of any neighbouring residents with particular regard to privacy and outlook, in accordance with Policy CH3 of the Council's LP and the UDSPD. These require, amongst other things, development to provide a good standard of amenity for all existing occupants, which should not cause unreasonable harm by way of overlooking or dominance.

Conclusion

24. The proposal would have an adverse effect on the long-term health and protection of a protected Oak and is likely to contribute towards harm to the integrity of the Arun Valley SAC, SPA and Ramsar site. It would also fail to secure appropriate infrastructure contributions in relation to affordable housing and trees. The proposal would not cause unacceptable harm to the living conditions of neighbouring residents, but it would conflict with the development plan taken as a whole. There are no material considerations that indicate my decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

L Douglas

INSPECTOR