

---

# Appeal Decision

Site visit made on 8 December 2021

**by R J Jackson BA MPhil DMS MRTPI MCM**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 January 2022**

---

**Appeal Ref: APP/Z3635/W/21/3282159**

**Land to rear of 54 Bruce Avenue, Shepperton TW17 9DW**

- 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 Tony Thomas, Shell Construction Limited against the decision of Spelthorne Borough Council.
  - The application Ref 20/01217/FUL, dated 19 October 2020, was refused by notice dated 4 March 2021.
  - The development proposed is 2 x 2 bedroom bungalows with suitable amenity provisions following demolition of 14 redundant garages.
- 

## Decision

1. The appeal is allowed and planning permission is granted for 2 x 2 bedroom bungalows with suitable amenity provisions following demolition of 14 redundant garages at Land to rear of 54 Bruce Avenue, Shepperton TW17 9DW in accordance with the terms of the application, Ref 20/01217/FUL, dated 19 October 2020, subject to the conditions set out in the Schedule to this decision.

## Preliminary Matter

2. On 14 January 2022 the Government published the Housing Delivery Test Results for 2021. As I have found the proposal acceptable on its merits, the results make no difference to my conclusion on the appeal and consequently I did not need to refer back to the parties on this matter.

## Main Issue

3. The main issue is the effect on highway safety.

## Reasons

4. The appeal site consists of a piece of land with 14 unused garages upon it set to the west of some of the properties facing Bruce Avenue. The access is via a narrow track between two buildings; to the north one divided into two flats, Nos 54 and 54A, and to the south a chalet bungalow, No 56. A short way to the south the road undertakes a sharp greater than right angled turn into Grove Road. The footway on the western side of Bruce Avenue is some 2.5 metres wide.
5. To the south of Grove Road is a recreation ground, which also has a community centre and buildings for a nursery and youth groups, and there is a secondary school a short distance to the east. At the time of my site visit during a weekday morning there were a number of cars parked straddling the footway,

- and the evidence is that this is a frequent occurrence as the dwellings on the west side of Bruce Avenue do not have on-site parking.
6. On either side of the entrance are low boundary walls. That to the north is made of concrete while that to the south is made from brick. Both are around 1.0 metres in height.
  7. The parties agree that the two dwellings proposed for the site would generate approximately nine movements per day, with one movement during the morning (8:00 a.m. to 9:00 a.m.) peak. The Council's concern, which reflects that of the Highway Authority, is that this level of traffic would give rise to unacceptable highway risk, particularly during the morning peak when there are a significant number of pedestrians in the area, including children using the facilities in the area.
  8. Council guidance is that 2 metres by 2 metres visibility splays should be provided on either side of an access that crosses a footway. This allows those using an access such as this to see pedestrians using the footway and pedestrians to see vehicles exiting the site. Such visibility splays should be kept clear over 0.6 metres above ground level.
  9. Due to the height of the walls on either side of the access these visibility splays do not exist and this could be made worse if vegetation were to grow up.
  10. The parties have set out differing positions as to what should be considered to the potential traffic generation from the site as at present. The Council and Highway Authority take the view that it should be treated as zero, on the basis that the unused garages are not effectively capable of use, but the appellant puts forward two alternative scenarios of the site used for parking and storage.
  11. Parking and storage are different uses in planning terms, and it is not the purpose to this appeal to identify which, if either, is lawful. However, no party is asserting that any use has been abandoned within the strict criteria laid down by the Courts so that the site has a 'nil' use. Consequently, I consider that the site could be used and there could be some traffic generated to and from the site using the existing access with its lack of visibility splays.
  12. Vehicular speeds in the area are very low, occasioned by the tight bend and the parking on the highway. I have also not been directed to any accident records in the area. Furthermore, pedestrians will be aware of the various accesses to properties with associated vehicular movements and it can be reasonably assumed that they will take due cognisance of them.
  13. Taking all the above together I am satisfied that while the visibility splays do not meet the relevant criteria, given the low speeds in the area, that there are movements associated with other accesses in the area with no accidents reported to me and the existing use of the site, the proposal would not increase the risk to highway safety to an unacceptable extent.
  14. Therefore, the proposal would comply with Policy CC2 of Spelthorne Borough Council's Core Strategy and Policies Development Plan which requires development to take account of highway safety. It would also comply with paragraph 111 of the National Planning Policy Framework which indicates that development should only be refused if there would be an unacceptable impact on highway safety.

## **Other Matters**

15. Local residents are concerned about various environmental effects. However, I am satisfied that the re-use of this previously developed land would not have any unacceptable such effects and that the design of the two bungalows would be appropriate to the area.

## **Conditions**

16. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the National Planning Policy Framework. The numbers given in brackets (X) refer to the condition being imposed, with the order being prescribed by the time when the condition needs to be complied with.
17. In addition to the standard timescale condition (1), I have imposed a condition specifying the relevant drawings as this provides certainty (2).
18. Due to the proximity of trees to the site and the need to protect them during construction an Arboricultural Method Statement needs to be submitted to and approved in writing and afterwards implemented before works commence (3).
19. Due to the previous active use of the site, there is the possibility that the land and groundwater of the site may be contaminated. Appropriate surveys need to be undertaken and, if necessary, remediation completed. A final validation report should be submitted prior to the dwellings being occupied in order to ensure that the amenities and health of the future residents are protected (4,8).
20. These conditions are required to be pre-commencement conditions to ensure that respectively the trees are protected throughout the construction period and to ensure any contamination is removed before any construction works take place.
21. In order to ensure that the external appearance of the building is appropriate for the area, details of the materials to be used need to be submitted and agreed (5).
22. To comply with development plan policies on renewable energy, a scheme to deliver at least 10% of the energy requirements of the development needs to be submitted, approved and implemented (6).
23. A landscaping and fencing scheme for the site needs to be submitted, approved and implemented in order to protect the living conditions of the occupiers of adjoining properties and in the interests of the visual amenities of the area. Rather than two conditions, this can be dealt with in a single condition (7).
24. In order to ensure sufficient facilities on site, the parking and refuse storage shown on the plans needs to be delivered and maintained (9), with the former provided with fast charging points to facilitate their use by non-internal combustion engine vehicles.
25. The Planning Policy Guidance makes clear that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It has not been shown in this case why such a removal is required and therefore I have not imposed a condition to this effect.

26. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

**Conclusion**

27. The development complies with the development plan as a whole and there are no material considerations sufficient to outweigh the presumption in favour of determining the proposal in accordance with the plan.

28. For the reasons given above I conclude that the appeal should be allowed.

*RJ Jackson*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

|        |                         |
|--------|-------------------------|
| BLP 01 | Existing Site Plan      |
| BLP 02 | Proposed Block Plan     |
| ELV 01 | Elevations              |
| ELV 02 | Elevations              |
| FLP 01 | Proposed Floor Plan     |
| FLP 02 | Proposed Floor Plan     |
| SEC 01 | Sections                |
| SLP 01 | Location and Block Plan |
- 3) No development shall commence on site until an Arboricultural Method Statement has been submitted to and agreed in writing by the local planning authority. The development shall take place in accordance with the approved Statement.
- 4) No development shall take place until:-
  - i) a desk-top study, carried out to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site, has been submitted to and approved in writing by the local planning authority;
  - ii) where any such potential sources and impacts are identified, a site investigation shall be carried out to fully characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until the extent and methodology of the site investigation has been agreed in writing with the local planning authority;
  - iii) a written method statement for the remediation of land and/or groundwater contamination affecting the site has been agreed in writing with the local planning authority. The method statement shall include an implementation timetable and monitoring proposals, and a remediation verification methodology.

The site shall be remediated in accordance with the approved method statement.
- 5) No development above damp proof course shall take place until details of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development above damp proof course shall take place until details of a scheme demonstrating how 10% of the energy requirements generated by the development as a whole will be achieved utilising renewable energy methods and showing in detail the estimated sizing of each of the contributing

technologies to the overall percentage. The agreed measures shall be implemented before the occupation of the building and thereafter retained.

- 7) No development above damp proof course shall commence until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. All hard landscaping, including fencing, shall be completed prior to the occupation of the dwellings. All soft landscaping, that is planting, seeding or turfing comprised in the approved details of landscaping, shall be carried out in the first planting and seeding seasons following the occupation of the building. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The development shall not be occupied until the agreed contamination remediation works have been completed and a validation report demonstrating the effectiveness of the remediation carried out has been submitted to and agreed in writing by the local planning authority.
- 9) The development shall not be occupied until the parking and refuse facilities shown on the approved plans have been laid out in accordance with those details and one parking space per dwelling provided with a dual fast charging point for electric vehicles. The parking, charging and refuse facilities shall thereafter be maintained.

END OF SCHEDULE