



Appeal Decision

Site visit made on 28 February 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2022

Appeal Ref: APP/D3640/W/21/3277695

45, and land to the rear of 43 and 47, Station Road, Frimley, Camberley, Surrey, GU16 7HE

- 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 Home County Properties Ltd against Surrey Heath Borough Council.
 - The application Ref 20/0913/OOU, is dated 5 March 2020.
 - The development proposed is described as the erection of a new building containing a mix of 1- and 2-bedroom flats together with associated parking, following the demolition of the existing house.
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Decision

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

Application for Costs

2. An application for an award of costs was made by Home County Properties Ltd against Surrey Heath Borough Council. This application will be the subject of a separate decision.

Preliminary Matters

3. The description of development in the application form does not specify the number of homes being applied for. Nevertheless, this is clarified in the submissions as being twenty-five flats. I have therefore considered the proposal on this basis.
4. Subsequent to the submission of the application, a revised version of the National Planning Policy Framework (the 'Framework') has been published. Similarly, the Surrey County Council Vehicular and Cycle Parking Guidance has been updated. The parties had an opportunity to address these changes through their submissions.
5. The planning application was submitted in outline with all matters of detail reserved for future consideration. However, drawings have been submitted showing the means of access, aspects of landscaping, the layout of the site and the footprint and floor plans of the proposed building. These drawings are not clearly annotated as being indicative or illustrative. As a result, some details are before me, and I have assessed the proposal on this basis.
6. During my site visit I was invited to view the appeal site from 47 Station Road, which I did. The merits of the case were not discussed. The site address is

given as 43 Station Road, but the building proposed for demolition is 45 Station Road (No 45). No 43 does not form part of the appeal site. The address is therefore better expressed as 45, and land to the rear of 43 and 47, Station Road. I have made this change accordingly.

Main Issues

7. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit this appeal. The Council has confirmed through putative reasons for refusal that, had it been able to do so, it would have refused the proposal due to concerns regarding the character and appearance of the area, living conditions, highway safety, biodiversity flood risk and affordable housing provision. As a result, these are the principal controversial matters that form the main issues.
8. Accordingly, the main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area, including trees;
 - The effect of the proposed development on the living conditions of the occupants of 41, 43 and 47 Station Road (Nos 41, 43 and 47), with particular reference to outlook, privacy and sun and daylight;
 - Whether the proposal would provide adequate living conditions for future occupants, with particular reference to outlook and amenity space;
 - The effect of the proposed development on highway safety, with particular reference to access and parking;
 - The effect of the proposed development on biodiversity;
 - Whether the appeal site is a suitable location for the proposal, having regard to policies relating to development in areas at risk of flooding; and
 - Whether the proposal would make adequate provision for affordable housing.

Reasons

Character and appearance

9. The appeal site encompasses No 45 and its large rear garden. The property is situated towards the end of Station Road, a residential street with properties set in rows behind modest front gardens. This results in discernible front and rear building lines. The street is a typical example of predominately pre-war housing. The properties exhibit a high degree of similarity in their scale, appearance, and layout. Glimpsed views of trees and gardens are possible between the properties, and this provides a softening effect to the street scene. Overall, the street has an intimate, legible, and pleasant composition despite the Frimley Flyover.
10. The Lyon Way Business Park wraps around Station Road and incorporates large commercial buildings of a utilitarian appearance. That said, the long rear gardens of the properties in Station Road (beyond the flyover) provide an important verdant buffer and sense of openness between the commercial

business park and Station Road as a neighbouring residential street. As a result, these two-character areas are quite distinct.

11. The appeal scheme would introduce a block of flats into a 'back land' position behind the frontage development in Station Road. The intrusion of the appeal scheme into this area would severely impact the pleasant open buffer currently evident between the Business Park and Station Road.
12. Moreover, the siting and layout would be at odds with the prevailing urban grain of the street, which is characterised by a strong frontage building line. The block of flats would also entirely fail to respond to the prevailing plot sizes or the widths or depths of the buildings in Station Road. The height would likely be noticeably taller as well. There would be very little harmony or integration and therefore the proposal would appear strident. The demolition of No 45 would leave a discordant gap in the row of properties and exacerbate the incongruous presence of the appeal scheme. This would be at odds with the Western Urban Area Character Study¹ and Residential Design Guide², which seek to secure development that pays particular regard to historic plot size, massing and scale with contextually appropriate design.
13. The Council states that the density of the development would be around 280 homes per hectare. The appellant has not disputed this, or the Council's proposition that the existing prevailing density in the area is 15-20 homes a hectare. The extent of the proposal would therefore leave any developer with little option but to push the building close to the boundaries of the site with a relatively large footprint or significantly increase its height over and above those buildings nearby. Either way, the building would dominate its plot and appear out of place. Consequently, the Council has justifiably stated that the proposal would be an over development.
14. It may be possible to break the building up into elements, thereby reducing the perception of its massing. The elevations could also be attractive and well-articulated. However, this would not overcome the intrinsic failing that the proposal would simply be far too large and discordantly sited. There is a large warehouse building directly to the rear of the appeal site, but this is beyond the rear boundaries of the properties in Station Road and thus outside the discernible residential area formed, in part, by the back gardens. Therefore, its massing and scale is not a template to be followed in this instance.
15. There are several trees in the vicinity of where the proposed building is intended to go. These trees are visible from several locations including the business estate and nearby gardens. In this respect they contribute positively to the amenity of the area, especially the verdant buffer described above. The proposal would likely result in the loss of some trees. There may also be post development pressure from future residents to fell others in order to maintain adequate levels of light and outlook and minimise the inconvenience caused by branch shedding and leaf litter. As a result, I share the view of the Council that an arboricultural assessment should have been undertaken and submitted. This would have assessed the value of the trees and considered measures to protect valuable specimens during construction and subsequent occupation. Without this, there is a risk of further harm to the amenity of the area.

¹ See Guiding Principles VS1 and VS3

² See Principles 4.1, 6.2, 6.6, 7.1 7.4, 7.5, 7.8 and 7.9

16. In conclusion, the proposal would significantly harm the character and appearance of the area. This would be at odds with Policies CP2 and DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012 (CSDMP). These policies seek to secure proposals that are of a high-quality design, contextually respectful and protect trees worthy of retention. The policies are consistent with Paragraph 130 of the Framework.

The effect on living conditions

17. Given the number of flats proposed, it is highly likely the appeal building would be a tall structure, probably three storeys, with elevations facing towards the rear of Nos 43 and 47 at close proximity. The proposed building would also need to be close to the boundary with No 41 for a considerable distance. As a result, the appeal scheme would have a looming close-range presence that would dominate and enclose these properties. The impact would be different to the existing warehouse structure to the rear of Nos 41, 43 and 47, which is further away and softened by landscaping. Consequently, the proposal would have an unreasonable overbearing impact on the outlook from Nos 41, 43 and 47, thereby harming the living conditions of the occupants of these properties.
18. The proposed building would be located to the west of the existing homes and therefore some loss of sun light could occur in the later parts of the day. However, the Council has not demonstrated that this would be unreasonable. Similarly, the Council has not provided any technical guidance or rule of thumb assessment that would indicate the proposal would harmfully reduce the level of daylight penetrating nearby properties. Moreover, as the final appearance of the proposed block of flats is not before me, I cannot conclude categorically that the proposal would harmfully erode privacy.
19. In conclusion, the proposal would significantly harm the outlook from Nos 41, 43 and 47, contrary to Policy DM9 of the CSDMP, which seeks to secure development that respects the amenities of occupiers of neighbouring properties. This policy is consistent with Paragraph 130(f) of the Framework.

The adequacy of the living conditions of future occupants

20. The proposed building, as shown on the submitted plans, would be close to the site boundaries. This would inevitably result in some of the flats having windows with an outlook, at close range, to boundary treatment or the tall neighbouring warehouse. This would provide a very oppressive and enclosed outlook and thus inadequate living conditions.
21. The layout plan shows little room for outside amenity space. The Council suggests that what is shown amounts to around 92sqm, which would be around 4sqm per home and thus very modest. The appellant has not disputed this. It is unlikely future residents would wish to sit out or play in such a small space given the close proximity of some flats to the open space and thus the potential for disturbing their occupants. Moreover, being communal space there would be no where to store outdoor items or dry washing. The playground at Burrell Road would have the same limitations. The layout seems to indicate some space around the proposed building, but this would be narrow, dark, and cramped. As a result, the outdoor amenity space would be small and impractical and thus harmfully inadequate.

22. Accordingly, the proposal would provide significantly inadequate living conditions for future residents, and this would be at odds with Policy DM9 of the CSDMP, which seeks to secure sufficient private and public amenity space.

The effect of the proposed development on highway safety

23. Policy CP11 of the CSDMP requires all new development to adhere to the Council's car parking standards. When applying the local standard of one parking space per 1-2-bedroom property, the development has a parking requirement of 25 spaces.
24. The submitted drawings demonstrate that the proposal would accommodate 16 parking spaces, which is a shortfall of nine spaces contrary to Policy CP11. The appeal site is located close to a train station and the town centre and can therefore justifiably be described as a 'sustainable location'. However, this is unlikely to validate a reduced parking requirement as the need to own a car should not be conflated with the desire to have one. In this respect, I have not been provided with substantive evidence to demonstrate car ownership is generally low in the area. As a result, it is necessary to accommodate 25 parking spaces.
25. On street parking is possible and common place in Station Road. Therefore, accommodating the residual parking requirement of the development in the street would not be out of character or harmful in principle. That said, I observed during my site visit that Station Road has apparently high levels of on street parking. Nothing of substance is before me to indicate my observations are untypical or can be solely attributed to commuters.
26. This situation has narrowed the carriageway and thus limited opportunities for two cars to pass safely or for emergency vehicles to use the street and enter the site. The awkward access arrangements are exacerbated by the absence of a turning head in the street. There is also evidence of pavement parking, which would hamper the movement of pedestrians. The indications are that further on street parking would prejudice highway safety.
27. In this context, it would be prudent to first establish whether the area currently suffers from demonstrable parking stress and can provide an adequate access to emergency vehicles before permitting further on street parking. Nine additional vehicles parking on street would not be insignificant in the context of Station Road and could significantly exacerbate existing problems.
28. As a result, the appellant has failed to demonstrate that it would be unnecessary and inappropriate to apply the parking standards. Nor has adequate access for emergency services been established. As a result, the proposal would be at odds with Policies DM11 and CP11 of the CSDMP. These policies are consistent with Paragraph 111 of the Framework.

The effect of the proposed development on biodiversity

29. In referring to advice from the Surrey Wildlife Trust, the Council suggest the appeal site and its environs include features such as woodland and water courses that could support protected species such as bats and breeding birds. Accordingly, there is a reasonable likelihood of protected species being present and affected by the development, especially as it is very overgrown and flanked by verdant gardens. The appellant has therefore undertaken a survey, but the author concluded that no protected species are present.

30. However, the report does not disclose who undertook the survey, there level of experience and when it was undertaken. In the absence of these details, there is considerable doubt over the report's findings.
31. Circular 06/2005³, states that it is necessary to identify the presence or otherwise of protected species before granting planning permission so that any impacts and potential mitigation can be identified and fully understood. The absence of a robust assessment is therefore a significant omission. Without it, there is an unacceptable risk that the proposal could harm protected species. The circular also states that ecological surveys should only be left to a planning condition in exceptional circumstances, which do not apply in this case. As such, I cannot be certain the development would conserve and enhance biodiversity and thus adhere to Policy CP14 of the CSDMP. This policy is consistent with Paragraphs 174, 179 and 180 of the Framework.

Flooding

32. The Environment Agency (EA) maps identify the site as being in Flood Zones 2. The site is also at high risk of surface water flooding. The appeal scheme would be more vulnerable development and therefore can be appropriate in flood zone 2. However, the relevant compatibility table⁴ establishing this does not show the application of the sequential test, which comes first. As a material consideration, the Framework states that a sequential approach should be taken to flood risk from all sources through a sequential test. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The sequential test is to be applied first, and then the exception test only if the former is passed.
33. The sequential approach to sites at risk of flooding is set out in Policy DM10 of the CSDMP. It states that in fluvial flood risk areas, the sequential test must be applied and passed. This approach is not consistent with the Framework which, as we have seen above, refers to all sources of flooding. The appellant has not provided details to enable a sequential test to be undertaken. This would have included a robustly defined and justified sequential test area and an analysis of whether there are sites within this area that are reasonably available for development and at a lower risk of flooding. As a result, the sequential test cannot be passed and therefore the exception test pursuant to Paragraph 163 of the Framework, including any possible drainage strategy or flood mitigation as referred to in Policy DM10, is not relevant at this stage.
34. I therefore conclude that the proposal would be at risk of flooding. And this risk has not been adequately justified through an absence of sequentially preferable sites in a logical and robustly identified sequential test area. The proposal would therefore be contrary to Policy DM10 of the CSDMP, and the paragraphs of the Framework referred to above, which aim to sequentially direct relevant development away from areas at risk of flooding.

Affordable housing

35. Policy CP5 of the CSDMP requires development schemes proposing 15 or more homes to provide 40% affordable housing on site. This level of provision is based on evidence from the North West Surrey and North East Hampshire Strategic Market Assessment 2009 and a 2008 viability study. The evidence is

³ Biodiversity and Geological Conservation – see footnote 61 of the National Planning Policy Framework

⁴ Paragraph: 067 Reference ID: 7-067-20140306

now very dated but there is nothing before me to demonstrate 40% is unnecessary or would be unviable and thus unreasonable.

36. For affordable housing to be provided effectively, arrangements must be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and enforced, and to ensure that it remains affordable to first and subsequent occupiers. The legal certainty provided by a planning obligation makes it the best means of ensuring that these arrangements are effective. A planning obligation has not been submitted.
37. There is no substantive evidence before me to indicate the Council and appellant have discussed the need for the planning obligation or that the heads of terms have been agreed. Moreover, the circumstances around the absence of a planning obligation are not exceptional. As a result, a negatively worded condition as discussed in the Planning Practice Guide⁵ would not be appropriate in this instance. A positively worded condition would not meet the test of enforceability as there would be nothing to prevent commencement.
38. Consequently, an appropriate mechanism to secure the adequate provision of affordable housing is not before me and therefore the proposal would be contrary to Policy CP5 of the CSDMP. This policy is consistent with Paragraph 63 of the Framework.

Other Matters

39. The appeal site is located sufficiently close to the Thames Basin Heaths Special Protection Area to result in a likely adverse effect on its integrity, due to recreational pressure, when considered in combination with other projects. Accordingly, an appropriate assessment under the 'Habitat Regulations'⁶ is required before permission could be granted. Given my overall conclusion it is unnecessary for me to undertake the appropriate assessment as the appeal would fail regardless of the outcome of such a process.
40. Various concerns have been raised by interested parties including reservations regarding odour and construction traffic. However, given my findings above it has not been necessary for me to specifically address these matters further as the appeal has failed on the main issues. The appellant has suggested that there are similar new developments nearby. But has not specifically identified them. As a result, I have not considered this point further.

Planning Balance

41. The Council are currently unable to demonstrate a five-year housing land supply, but the shortfall is modest at around 4.85 years. Nevertheless, in such circumstances Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
42. For the reasons set out above, the proposal would result in significant harm in respect of several matters ensuing multiple conflicts with relevant development plan policies. These offended policies are consistent with the Framework. As a result, the adverse impacts carry considerable weight.

⁵ Paragraph: 010 Reference ID: 21a-010-20190723

⁶ The Conservation of Habitats and Species Regulations 2017

43. The appeal scheme would deliver several benefits as it would be a windfall development of smaller flats that would moderately support the local economy through construction jobs and the circulation of funds. In addition, the proposal would make a more efficient use of land in the urban area close to public transport nodes and local services and facilities. The proposal would also moderately increase the supply of housing at a point in time when the Council are currently unable to demonstrate a five-year housing land supply. The benefits of the scheme cumulatively carry middling weight.
44. Thus, the adverse impacts of the proposal would significantly and demonstrably outweigh its overall benefits. This does not indicate that the appeal should be determined otherwise than in accordance with the development plan.

Conclusion

45. The proposed development would be contrary to the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed.

Graham Chamberlain
INSPECTOR