



Appeal Decision

Site visit made on 17 January 2022

by **S Edwards BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal Ref: **APP/R3650/W/21/3277100**

Chapel Fields, Loxwood Road, Alfold, Cranleigh GU6 8HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Richard Cooke against the decision of Waverley Borough Council.
- The application Ref WA/2020/1602, dated 25 September 2020, was refused by notice dated 21 January 2021.
- The application sought planning permission for "erection of 8 dwellings and a building to provide a mixed use retail (Use Class A1) and café (Use Class A3) together with associated works; Provision of a village parking area and open space (as amplified by surface water strategy document submitted 24/07/2018)" without complying with conditions attached to planning permission Ref WA/2018/0977, dated 26 February 2019.
- The conditions in dispute are Nos 2, 3, 4 and 5 which state that:
- Condition 2: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other order revoking or re-enacting that Order with or without modification), no enlargement as defined within Part 1 of Schedule 2, Class A of that order (to any of the dwelling houses hereby permitted shall be constructed, without the written permission of the Local Planning Authority"*.
- Condition 3: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other order revoking or re-enacting that Order with or without modification), no alterations to the roof as defined within Part 1 of Schedule 2, Classes B and C inclusive of that order, shall be implemented on the site without the written permission of the Local Planning Authority"*.
- Condition 4: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other order revoking or re-enacting that Order with or without modification), no windows/dormer windows or other openings other than those expressly authorised by this permission shall be constructed in the side elevations of the dwellings hereby permitted and also the front elevations of plots 2, 3 and 4 without the written permission of the Local Planning Authority"*.
- Condition 5: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or alterations of the A1 and A3 use hereby permitted, as defined by Part 3, Class A, D, G, J, V and Part 7, Classes A-E inclusive shall be implemented on the site without the written permission of the Local Planning Authority"*.
- The reasons given for the conditions are:
- Condition 2: *"In the interest of the amenity and character of the area and in accordance with Policy TD1 of the Local Plan (Part 1) 2018 and retained Policies D1 and D4 of the Local Plan 2002"*.
- Condition 3: *"In the interest of the amenity and character of the area and in accordance with Policy TD1 of the Local Plan (Part 1) 2018 and retained Policies D1 and D4 of the Local Plan 2002"*.

- Condition 4: *"In the interest of the amenity and character of the area and in accordance with Policy TD1 of the Local Plan (Part 1) 2018 and retained Policies D1 and D4 of the Local Plan 2002"*.
 - Condition 5: *"In the interest of the amenity and character of the area and in accordance with Policy TD1 of the Local Plan (Part 1) 2018 and retained Policies D1 and D4 of the Local Plan 2002"*.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of 8 dwellings and a building to provide a mixed use retail (Use Class A1) and café (Use Class A3) together with associated works; Provision of a village parking area and open space (as amplified by surface water strategy document submitted 24/07/2018), at Chapel Fields, Loxwood Road, Alfold, Cranleigh GU6 7HW, in accordance with the application Ref WA/2020/1602, dated 25 September 2020, without compliance with condition numbers 2, 3, 4 and 5 previously imposed on planning permission Ref WA/2018/0977, dated 26 February 2019, but otherwise subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) published on 20 July 2021 sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The main parties have had the opportunity to comment on this matter as part of the appeal process, and I have taken account of the updated Framework in determining this appeal.
3. There is another appeal (APP/R3650/W/21/3270595) on this site, which raises different issues, and will therefore be the subject of a separate decision.

Background and Main Issue

4. Planning permission has previously been granted for the construction of eight dwellings and a mixed use café/retail building, together with associated works, and provision of a village parking area and open space. As part of my site visit, I was able to see that development has commenced and is nearing completion.
5. The Council's decision to grant planning permission for the development was subject to a number of conditions, several of which sought to restrict the use of permitted development rights. The appellant is seeking the removal of these conditions.
6. The main issues is whether the disputed conditions are reasonable and necessary, with particular regard to the character and appearance of the countryside and the Alfold Conservation Area, as derived from its setting.

Reasons

7. The appeal site lies in an area of semi-rural character, on the edge of the village and within the setting of the Alfold Conservation Area. The special interest of this designated heritage asset derives primarily from its village setting which, I understand, was historically connected with the iron, charcoal and glass industry. The Conservation Area includes an attractive collection of

- historic buildings, including the Grade II* listed Alfold House, which is located within proximity to the appeal site, on the opposite side of Loxwood Road.
8. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The national Planning Practice Guidance (PPG) [Paragraph: 017 Reference ID: 21a-017-20190723] adds that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. It requires the scope of such conditions to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), so that it is clear exactly which rights have been limited or withdrawn.
 9. Conditions 2, 3 and 4 sought to restrict permitted development rights for the residential properties, but no clear justification has been provided to substantiate such limitations. I understand that the site forms part of an attractive area of semi-rural character and located within the setting of the Alfold Conservation Area. However, this context does not in itself provide clear justification for the removal of permitted development rights. Moreover, this creates a situation where the new properties are subject to even more stringent restrictions than properties located within the Conservation Area, which are subject to limitations affecting article 2(3) land.
 10. Moving to condition 5, it is noted that the Council has previously granted planning permission for a mixed use retail (Use Class A1) and café (Use Class A3), which does not benefit from certain permitted development rights. On this basis, the condition, which notably seeks to restrict permitted development rights afforded by Schedule 2, Part 3, Classes A, D, G and J is therefore unnecessary.
 11. Furthermore, it is of note that the GPDO and the Town and Country Planning (Use Classes) Order 1987 (The UCO) have been subject to significant changes since the determination of the original application. Shops and cafés, which previously fell respectively within Use Classes A1 and A3, now form part of a single, broader 'Commercial, business and service' Use Class, known as Class E. As the use of the premises as retail/café would fall within Class E, they would benefit from a number of permitted changes, which would not require planning permission. For these reasons, the recent changes to the GPDO and the UCO are important material considerations for the determination of this appeal.
 12. Condition 5 is also considered unnecessary, due to the fact that some of the rights which it sought to restrict are no longer relevant. This is because such restrictions are not applicable to the use permitted as part of the original consent (Part 3, Class A), and because some of the provisions within the GPDO have now been repealed (Part 3, Classes D and J).
 13. No clear justification has been presented to restrict the permitted development rights which the commercial building would now benefit from if the use of the premises was regarded as falling within Class E. Furthermore, the Council has provided no substantive information to explain why the restrictions in respect of Part 3, Class V and Part 7, Classes A-E of the GPDO are necessary. As noted above, the site's proximity to the Conservation Area and the surrounding

countryside are not considerations, which in themselves would provide sufficient justification for the removal of permitted development rights.

14. For the foregoing reasons, the disputed conditions are not considered reasonable and necessary to protect the character and appearance of the countryside and the Alfold Conservation Area, as derived from its setting. Accordingly, I find no conflict with Policies TD1 and RE1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (2018), and Saved Policies D1 and D4 of the Waverley Borough Local Plan (2002). These notably require new development to be of a high quality design that responds to the distinctive local character of the area in which it is located, whilst recognising and safeguarding the intrinsic character and beauty of the countryside.

Other Matters

15. The original permission was subject to a Section 106 Legal Agreement dated 19 February 2019. As the effect of allowing the appeal will be to create a new permission, a Deed of Variation dated 25 March 2022 which has been signed by the relevant parties was submitted as part of the appeal process. As stated in the Deed of Variation, the parties have agreed to vary the terms of the Principal Agreement upon the grant of planning permission.
16. Having regard to the available evidence, I am satisfied that all the matters to be addressed by the Deed of Variation in association with the Principal Agreement are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. As such the planning obligation is therefore in accordance with Regulation 122 of the Community Infrastructure Levy Regulations.

Conditions

17. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions for the original planning permission, unless they have already been discharged. As noted above, the development has been started, and there is therefore no need to impose a time limit condition.
18. However, as I have no information before me regarding the status of other conditions imposed as part of the original permission, I shall adopt a precautionary approach and impose all those conditions that I consider remain relevant and meet the advice provided by national planning policy and guidance. In the event that some or all pre-commencement and pre-occupation conditions have in fact been discharged, this is a matter which can be addressed by the parties.

Conclusion

19. For the reasons detailed above, I conclude that the appeal should be allowed.

S Edwards

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The plan numbers to which this permission relates are as follows:

18/1698/00 Rev J Site Layout Plan (April 2018)
1492 L90-250 Landscape Proposals (May 2018)
PL/001/B House 1 Elevations (April 2018)
PL/002/A House 1 Plans (April 2018)
PL/03/A Houses 2-4 Plans (April 2018)
PL/004/A Houses 2-4 Elevations – side (April 2018)
PL/005/A Houses 2-4 E/W Elevations (April 2018)
PL/006/A House 5 Floor Plans and Elevations (April 2018)
PL/007/A House 6 Elevations (April 2018)
PL/008/A House 6 Plans (April 2018)
PL/009/A House 7 Elevations (April 2018)
PL/010/A House 7 Plans (April 2018)
PL/011/B House 8 Elevations (April 2018)
PL/012/A House 8 Plans (April 2018)
PL/013/A Cafe Plans (April 2018)
PL/014/A Cafe Elevations – Front and rear (April 2018)
PL/015/A Cafe Elevations – Side (April 2018)
Street Scene Plans
Drainage Plans

The development shall be carried out in accordance with the approved plans. No material variation from these plans shall take place unless otherwise first agreed in writing with the Local Planning Authority.

- 2) *Deleted*
- 3) *Deleted*
- 4) *Deleted*
- 5) *Deleted*
- 6) No development shall take place until samples of the materials and surface finishes to be used in the construction 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.
- 7) No machinery or plant shall be operated, no demolition/construction activities shall be carried out and no deliveries made to the site except between the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturday, and not at any time on Sundays, Bank or Public Holidays.
- 8) No dwellings shall be occupied until a detailed scheme of sensitive external lighting has been submitted to and approved in writing by the Local Planning Authority. Any external lighting installed on this development should comply with the recommendations of the Bat Conservation Trusts' document entitled "Bats and Lighting in the UK – Bats and The Built Environment Series". The development should be carried out in strict accordance with the approved details. The scheme shall be maintained and shall not be altered without the prior written approval of the Local Planning Authority. The lighting shall be installed,

- maintained and operated in accordance with the approved details unless the local planning authority gives its written consent to the variation.
- 9) No floodlights or other forms of external lighting shall be installed at the premises without the prior permission in writing of the local planning authority.
- 10) No development shall take place before a scheme has been submitted to and approved in writing by the Local Planning Authority, which specifies the provisions to be made for the control of noise emanating from the site. Thereafter, the use shall not commence until the approved scheme has been fully implemented.
- 11) No development shall take place, including any works of demolition, until a Construction Environment and Transport Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
- An indicative programme for carrying out of the works (including measures for traffic management)
 - Measures to minimise the noise (including vibration) generated by the construction process to include hours of work, proposed method of piling for foundations, the careful selection of plant and machinery and use of noise mitigation barrier(s)
 - Details of any floodlighting, including location, height, type and direction of light sources and intensity of illumination
 - The parking of vehicles of site personnel, operatives and visitors
 - Loading and unloading of plant and materials
 - Storage of plant and materials used in constructing the development
 - The erection and maintenance of security hoarding, behind any visibility zones, including decorative displays and facilities for public viewing, where appropriate
 - Wheel washing facilities
 - Measures to control the emission of dust and dirt during construction and deposit of materials on the highway
 - A scheme for recycling/disposing of waste resulting from demolition and construction works
 - HGV deliveries and hours of operation
 - Vehicle routing
 - Before and after construction carriageway condition surveys
 - On-site turning for construction vehicles
- 12) There shall be no burning of any waste or other materials on the site.
- 13) If the residential properties are to be completed and occupied prior to the development being finished, a scheme to protect those occupants from noise and vibration should be submitted.

- 14) All vehicles, plant and machinery used on site and those under the applicant's control moving to and from the site that are required to emit reversing warning noise, shall use white noise alarm as opposed to single tone "bleeping" alarms throughout the operation of the development hereby permitted.
- 15) Details, including acoustic specifications, of all fixed plant, for the café/shop machinery and equipment associated with air moving equipment [(including fans, ducting and external openings)], compressors, generators or plant or equipment of a like kind, installed within the site which has the potential to cause noise disturbance to any noise sensitive receivers, shall be submitted to and approved by the local planning authority before installation.
The rating level of noise emitted from the use of this plant, machinery or equipment shall not exceed the background sound level when measured according to British Standard BS4142: 2014, at any adjoining or nearby noise sensitive premises.
- 16) Prior to the commencement of development, a scheme detailing the provision of Electric Vehicle Charging Points (EVP's) within the development in accordance with Surrey County Council Vehicular and Cycle Parking Guidance (January 2018) shall be submitted to and agreed with the Local Planning Authority, implemented as approved and maintained thereafter.
- 17) Prior to the commencement of development, a detailed landscape and ecological management plan (LEMP) should be submitted to, and approved in writing by the Council. The LEMP should be based on the recommendations of the submitted Ecology Letter of Report (ACD Environmental Ltd) and its Appendix 1 'Ecological Enhancement Plan' and should include adequate details of the following;
 - Description and evaluation of features to be managed and created including measures to compensate for loss of protected tree and hedge removal, and ensure a net gain in provision.
 - Confirmation of design, numbers and location of bat and bird boxes, including provision integral to the design of the new buildings.
 - Precautionary working methodologies to avoid adverse impacts on reptiles.
 - Precautionary working method statement to avoid adverse impacts, including disturbance, on Great Crested Newts in line with best practice guidelines.
 - Aims and objectives of management.
 - Appropriate management options to achieve aims and objectives.
 - Prescriptions for management actions.
 - Preparation of a work schedule for securing biodiversity enhancements in perpetuity.
 - Details of the body or organisation responsible for implementation of the LEMP.
 - Ongoing monitoring and remedial measures.

- Details of legal / funding mechanisms.
- 18) Prior to commencement of development, an updated survey of the site and the badger setts identified shall be undertaken by a suitably experienced and qualified consultant to confirm that they have not come into reuse or new setts created. The results of this survey shall be submitted in writing by the Local Planning Authority prior to development commencing, together with details of measures to be taken to ensure that no active setts are damaged, destroyed or otherwise interfered with.
 - 19) The development hereby approved shall not be commenced unless and until the proposed vehicular access to Loxwood Road has been constructed and provided with visibility splays in accordance with the approved plans. Thereafter the visibility splays shall be kept permanently clear of any obstruction over 0.6m high.
 - 20) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking / turning areas shall be retained and maintained for their designated purpose.
 - 21) The development hereby approved shall not be first occupied unless and until secure bicycle parking facilities have been provided for each dwelling, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.
 - 22) Prior to the commencement of the development a Travel Plan Welcome Pack shall be submitted for the written approval of the Local Planning Authority in accordance with the sustainable development aims and objectives of the National Planning Policy Framework and Surrey County's Council's "Travel Plans Good Practice Guide". The approved Travel Plan Welcome Pack shall be issued to the first-time occupier of each dwelling prior to first occupation.
 - 23) The retail/café building shall be completed prior to occupation of more than three of the residential units hereby permitted.
 - 24) Prior to the commencement of development above ground level a scheme for the management and maintenance of the two public parking areas shall be submitted to and agreed in writing by the Local Planning Authority. This shall be implemented as approved and shall be retained thereafter unless and otherwise agreed in writing by the Local Planning Authority.
 - 25) The dwellings hereby permitted shall not be occupied until such time that the Local Planning Authority is satisfied that there is adequate waste water capacity available to adequately drain the development, details of which shall be submitted to and approved in writing by the Local Planning Authority. The occupation of the dwellings shall be phased to align with the delivery by Southern Water of any sewerage network reinforcement required.
 - 26) Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been

submitted to, and approved in writing by the Local Planning Authority in consultation with Southern Water.

- 27) A wastewater grease trap should be provided on waste pipe or drain installed within the A1/A2 building hereby permitted and maintained by the owner or operator of the premises.
- 28) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the Local Planning Authority in consultation with the Surrey County Council Archaeological Officer.
- 29) The development hereby permitted shall not commence until details of the design, management and maintenance of a surface water drainage scheme have been submitted to and approved in writing by the Planning Authority in consultation with the Local Lead Flood Authority. The approved plan shall be implemented thereafter as approved unless otherwise agreed in writing with the LPA.
The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include
 - a) The results of full infiltration testing completed in accordance with BRE Digest: 365 and confirmation of groundwater levels.
 - b) Evidence that the proposed solution will effectively manage the 1 in 30 & 1 in 100 (+40%) allowance for climate change storm events and 10% for urban creep, during all stages of the development (Pre, Post and during), associated discharge rates and storages volumes shall be provided using a maximum Greenfield discharge rate of 2 litres/sec (only if infiltration is considered unsuitable) (as per the SuDS pro-forma or otherwise as agreed by the LPA).
 - c) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (sill traps, inspection chambers etc.).
 - d) Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational.
 - e) Details of drainage management responsibilities and maintenance regime for the drainage system for the lifetime of the development including the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
 - f) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected.

- g) Details of a timetable for implementation.
 - h) Specify the responsibilities of each party for the implementation of the SuDS scheme.
- 30) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
 - 31) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any phase of the development. The landscape management plan shall be carried out as approved.
 - 32) No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
 - 33) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
 - 34) Prior to commencement of any works on site, a detailed tree survey (species, locations and condition) and schedule accurately showing all trees to be retained and giving details of any tree removal and surgery required, shall be submitted to and approved by the Local Planning Authority in writing. No retained tree shall be cut down, uprooted or destroyed nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - 35) Prior to the occupation of any of the dwellings hereby permitted, details of bin collection locations shall be submitted to and approved in writing by the Local Planning Authority.
 - 36) The first floor of the A1/A3 use hereby permitted shall be retained for storage and ancillary purposes only and shall not be used as primary accommodation for retail or for seating for the café.
 - 37) Prior to the commencement of development a scheme for pedestrian access to the car parking areas from Loxwood Road and from within the development itself shall be submitted to, and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved

and retained thereafter unless otherwise agreed in writing with the Local Planning Authority.

- 38) Prior to the commencement of development a scheme detailing the equipment, layout, design proposed for the Play Area together with details of management and maintenance for that area shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented as approved and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority. The Play Area shall be fully completed prior to the occupation of any of the residential units hereby permitted.

END OF SCHEDULE