



Appeal Decision

Hearing Held on 24 March 2022

Site visit made on 31 March 2022

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2022

Appeal Ref: APP/Y3615/W/21/3272203

Land at Elmsleigh Farm, Send Barns Lane, Send, GU23 7BP

- 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 planning permission.
 - The appeal is made by Mr Dudley Mills (Kebbell Homes) against the decision of Guildford Borough Council.
 - The application Ref 20/P/01885, is dated 6 November 2020.
 - The development proposed is the erection of 8 no dwellings, together with associated works.
-

Decision

1. The appeal is dismissed and planning permission for the erection of 8 no dwellings, together with associated works is refused.

Procedural Matters

2. The appeal is against the non-determination of a planning application by the Council. Had it been in a position to do so, the Council would have refused planning permission. The main unresolved putative reasons for refusal relate to character and appearance, affordable housing and refuse and recycling servicing, having regard to local and national policy, and are detailed under the main issues heading below.
3. Prior to the hearing, an Ecological Technical Note (ETN), amended site layout and dwelling designs, including plots 3 and 4, and refuse and recycling plan (RRP) were submitted. The ETN details that the ecological conditions on the site have not changed since an earlier ecological report. The amended site layout and designs shows minor design changes, including the re-orientation and greater set-back of dwellings from a stream, and an 8m buffer zone with this watercourse. The RRP shows refuse vehicle turning areas and refuse collection points.
4. Such plans and details would not result in the substance of the scheme changing and also seek to address the Council's putative reasons for refusal based on ecology. These reasons for refusal related to a lack of up-to-date ecological site survey, having regard to Protected Species, inadequate biodiversity gain, and a poor riparian buffer zone between the development and the stream. Following consultations with Environment Agency and Surrey Wildlife Trust on these plans and details, the Council now raises no objections on ecology issues. Taking all these considerations into account, there is no

evidence to indicate harm to Protected Species and subject to planning conditions securing enhanced landscaping and the buffer, biodiversity objections would be overcome. Therefore, the putative reasons for refusal based on ecology have been overcome.

5. Additionally, a completed Climate Change, Energy & Sustainability Questionnaire and Standard Assessment Procedure energy calculations are submitted to address putative reason for refusal based on development sustainability. Following receipt of this information, the Council raises no sustainability objections to the proposal, and I concur with this.
6. A Unilateral Undertaking dated 18 January 2022 contains an obligation setting out Suitable Accessible Natural Green Space, and Strategic Access Management and Monitoring mitigation contributions in respect of the Thames Basin Heaths Special Protection Area (TBHSPA). This obligation will be commented upon later in my decision.
7. On the frontage of the site, planning permission has been granted for 6 dwellings in 2017 and 2018, the latter involved alternative house designs. On site, works to implement the 2018 permission comprise a widened access to achieve visibility and a small section of internal access road. A tree protection pre commencement condition has not been complied with. Based on the facts, both the appellant's and Council's Counsel opinions indicate that the works have established the commencement of the 2018 permitted development applying the *Whitley*¹ principles. In this respect, the works are not located near trees, it would be irrational for the Council to consider enforcement action. Therefore, I have concluded that this development has been lawfully commenced.

Main Issues

8. The main issues are (a) the effects of the proposal on the character and appearance of the area, (b) whether affordable housing should be provided, and (c) refuse and recycling provision.

Reasons

Character and appearance

9. The appeal site comprises a longitudinal parcel of land located to the rear of a similar shaped, albeit smaller frontage land at Elmsleigh Farm, which has the planning permission for 6 dwellings. The appeal site is mainly open land, with landscaping, but with no significant trees, and backs onto a stream. On either side of the site, there are gardens associated with residential development on Send Marsh Road and Elmsleigh House on Send Barns Lane.
10. The site and its surroundings are located within a designated inset boundary of Send, having been removed from the Green Belt following the adoption of the Guildford Local Plan 2019 (the 2019 LP). Within the surrounding village, development mainly consists of frontage housing, with short tributary roads serving housing off these in some instances. It has a loose-knit urban grain, with a variety of dwelling types, plot sizes and shapes within a spacious and landscaped context. Many properties have long rear gardens and are within a surrounding context of fields, paddocks and landscaped areas. Together with

¹ Whitley & Sons Co Ltd v Secretary of State for Wales (1992) 64 P & CR 296.

the countryside backdrop to the village, this results in a distinctive local semi-rural character and appearance.

11. The proposed development would result in the built form extending from Send Barns Lane towards the river. Individually, the dwellings would be attractively designed in a local vernacular form and style, with first floor tile hanging, steeply pitched roofs and strong roof gables. The revisions to the dwellings and plots 3 and 4 would result in a riparian landscaped buffer alongside the stream.
12. However, many of the dwellings would be sited close to one another and where there is separation, this is dominated by hard surfaced carparking and turning, which would give rise to an overly dense form and layout of development. The overall coverage of building and hard surfaced areas, including the access road, would emphasise an overly developed nature of the proposal. Exceptions are the side gardens to the dwellings on plots 1 and 2, but their layout with dwellings with short or minimal back gardens, and wide side gardens accentuates a feeling of a development being 'squeezed-in'. Plot 3's dwelling, garden and boundary walls backing onto the estate road further emphasise a suburban estate style of development inappropriate to the identified character and appearance of the area.
13. The proposed 8 dwellings would be a continuation of the permitted dwellings on the frontage. Access would be through this development and the proposed dwellings would be similar in design. However, the proposed residential development would be in a more isolated and exposed position, being located away from the frontage housing and surrounded by landscaped gardens and a stream, with field/paddock beyond this. Furthermore, the proposal would cumulatively result in a marked densely developed finger within a semi-rural context. As a result, the density of overall built form would be far greater than the surrounding area.
14. On land off Send Hill, an appeal for 8 dwellings was allowed where there was two dwellings fronting the road and the remainder, behind, served by an estate road. However, the site is located in a different part of Send and the development has a less dense quality with a significant stretch of public open space and rear garden on one side of its estate road. The siting of dwellings close to one another and hard surfacing in between in some cases does though serve to illustrate the adverse over-developed impacts of the proposal before me. In any case, every proposal has to be considered on its particular planning merits.
15. Furthermore, there are no other examples of such dense linear extended residential developments with an associated long access drive and as such, the development would be incongruous when compared to the surroundings. For all these reasons, the development would lack an attractive and identifiable character and would have a significant urbanising harm on character and appearance in conflict with Policy D1 of Guildford Local Plan (the 2019 LP) 2015-2034, adopted 2019, Saved Policy G5 of the Guildford Local Plan (the 2003 LP), adopted 2003 and Send 1 of the Send Neighbourhood Development Plan (NP), made 2021.

Affordable housing

16. Policy H2 of the 2019 LP sets out affordable homes will be required on sites providing 11 or more homes and that 40% of these homes shall be affordable. If both the 6 dwelling permitted and proposed 8 dwelling sites had come forward as a single entity, this would have resulted in the need for affordable housing provision. The supporting text to Policy H2 states that developments that seek to avoid the requirements of this policy by failing to make the most efficient use of land or by artificially subdividing the land into smaller sites will not be permitted.
17. Since at least the time of the 2017 permission for six dwellings, the appeal and frontage site have been in the same ownership. The approved layout plans showed the future possibility of the continuation of the access to serve the appeal development. Irrespective of whether the 2017 /2018 permissions have been lawfully established, there has been a delay in fully building out the permitted dwellings.
18. The Green Belt designation of the appeal site was removed with adoption of the 2019 LP and the appeal site now sits within the designated inset boundary of Send. The proposal to remove the appeal site from the Green Belt has been in the public domain since 2014. It is understandable that the Council would want to guard against an attempt to avoid affordable housing obligations. However, any proposal to develop both sites together for housing would run the risk of refusal on Green Belt grounds until the local plan inspector had made his recommendations which would have been after the 2018 application was prepared and submitted. The 6 dwelling permitted scheme allowed for access to future development on the appeal site but this is understandable to take account of future changes in local and national policy when they formally take place. On this basis, there is no evidence before me that a cynical and contrived subdivision of land took place to avoid the affordable housing policy requirements.
19. For all these reasons, it has not been demonstrated that affordable housing provision should be made and therefore, there is no conflict with Policy H2 of the 2019 LP.

Refuse and recycling facilities

20. All the dwellings would be provided with storage facilities for both waste and recyclable materials and the revised servicing details show refuse vehicle turning area and tracking. The latest tracking plan, FD 19 -1701 056 D, shows manoeuvring for a standard dimensioned service vehicle. The shown storage points for resident's refuse/recycling bins for plots 3, 4 and 5 would not be within the required 5m collection zone of an operating vehicle. However, such requirements are guidance, and some minor changes could be made to improve the accessibility of the collection areas to bin collectors. A suitably worded planning condition could be imposed to secure this.
21. The distance that these residents would have to trail their bins to the collection points would also be beyond the 5m collection limit but if they did not, their bins would not be collected and therefore, there is strong motivation for residents to place bins in the designated area. There are two vehicle parking spaces at the end of one limb of the refuse vehicle manoeuvring area and there would be a need for private vehicles not to be parking within the manoeuvring

area shown on the tracking plan. However, residents would be wanting their bins to be collected and therefore, similarly self-policing should avoid any problematic car parking.

22. For all these reasons, there would be acceptable refuse and recycling facilities to serve residents in compliance with Policy D1 of the 2019 LP.

Other matters

23. The proposal, for 8 dwellings, would make a small boost to housing supply early in the plan period of the 2019 LP and would provide a mix of six 3-bedroom and two 4-bedroom dwellings. The local plan inspector for the 2019 LP placed significant weight on the early delivery of housing within the first five years of the plan period. Residents would be within reasonable walking distance of Send Village centre with its range of facilities and services, including convenience store, school and medical centre. Such considerations would modestly weigh in favour of the proposal.

Planning Balance

24. The proposal would boost housing supply, in a small way, in the early period of the 2019 LP, in a location with reasonable access to services and facilities and would provide a mix of different residential units meeting housing requirements of the development plan. However, there would be harm to the character and appearance of the area in conflict with design policies of the 2019 LP, 2003 LP and NP. Such harm would be significant and overriding for the reasons previously indicated, and there would be conflict with the development taken as a whole.
25. There are economic and social benefits in favour of the proposal. However, the National Planning Policy Framework indicates that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. The proposal would fail to achieve this because it would not be visually attractive due to poor architecture and layout and would be being unsympathetic to local character. The Council has a 5 Year Housing Land Supply (5YHLS), although this is not a maximum target to be achieved. For all these reasons, there are no material considerations of sufficient weight or importance to determine that the decision should be taken otherwise than in accordance with the development plan. Therefore, planning permission should be refused.
26. In relation to the mitigation of the impact of the development on the TBHSPA, there has been no objections from the Council. As there are substantive reasons to dismiss the appeal, there has been no need to consider the acceptability of it within this decision.

Conclusion

27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed and planning permission is refused.

Jonathon Parsons

INSPECTOR

APPEARANCES

FOR THE APPELLANT

P Barry

NOVA Planning

FOR THE LOCAL PLANNING AUTHORITY

J Task

Guildford Borough Council

B Mitchell

Guildford Borough Council

S Riddle

Guildford Borough Council

THIRD PARTIES

P Oven

Send Parish Council

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Appellant's revised Counsel Opinion, Landmark Chambers, dated 22 March 2022.
2. Suggested conditions, submitted 24 March 2022.
3. Statement of Common Ground, submitted 24 March 2022.
4. Send Neighbourhood Plan Full and Outline Policies, submitted 24 March 2022.
5. Approved site layout plan for planning permission, 19/P/00721, for land off Send Hill.
6. Appeal decision APP/Y3615/W/21/3267871, including indicative plan, for land to the rear of 5 Send Barns Lane, Guildford, Surrey GU23 7BT.
7. Council's Counsel Opinion, Francis Taylor Building, Inner Temple, dated 30 March 2022.
8. Appellant's comments on Council's Counsel Opinion, submitted 4 April 2022.