



Appeal Decision

Site visit made on 2 August 2022

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/M3645/W/21/3287524

268 Hillbury Road, Warlingham CR6 9TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Martyn Avery (Chartwell Land & New Homes (2) Ltd) against the decision of Tandridge District Council.
 - The application Ref TA/2021/428, dated 5 March 2021, was refused by notice dated 8 October 2021.
 - The development proposed is demolition of the existing dwelling and the erection of 10 flats with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing dwelling and the erection of 10 flats with associated access, parking and landscaping, at 268 Hillbury Road, Warlingham CR6 9TP in accordance with the terms of the application, Ref TA/2021/428, dated 5 March 2021, and the plans submitted with it, subject to the conditions in the schedule below.

Preliminary Matters

2. The planning application was in outline. When first submitted, the application form indicated that all matters except for landscaping were reserved. However, a revised application form was subsequently submitted, confirming that details of access, appearance, layout and scale were to be considered at outline stage and that landscaping is the only reserved matter. The Council considered the proposed development on that basis and so have I.
3. The Council has confirmed that the revised application form was submitted on 8 September 2021 and that it was published by the Council prior to determination of the application. However, it is dated 5 March 2021, which was the original application date. I have therefore used this earlier date in the banner heading and decision above.
4. The application was amended prior to determination, reconfiguring the proposed parking area and reducing the number of parking spaces from 15 to 13. Evidence from both parties confirms that these amendments were made prior to the Council's decision. I have therefore considered the appeal on the basis of these amended details, which are shown on proposed site plan PL20-533-03D and proposed block plan PL20-533-04D.
5. I have had regard to the proposed site plan and block plan listed above, as well as the proposed sketch views and street scene (PL20-533-05A, 06A and 07A). However, I have regarded all elements of these drawings which relate to landscaping as being indicative. I have also had regard to submitted drawing

20-1053-TPP-02A Tree Protection Plan, but I have treated this plan as indicative, since alternative details for the retention and protection of trees and hedges may be submitted as part of the proposed landscaping at reserved matters stage.

6. I have had regard to drawing 2006034-02 Rev A Proposed Access Arrangements, which is included in the Motion Transport Statement dated 20 January 2021, as Appendix C. This plan shows the proposed visibility splays and was considered at the time of the application, but was not mentioned in the Council's list of application plans.
7. My attention has been drawn to various policies in the emerging Tandridge District Council Local Plan, Our Local Plan:2033, which was submitted for examination in public in January 2019. However, the reasons for refusal do not identify any specific conflict with these emerging policies and I have been given little evidence as to their current status or the expected date of adoption of the emerging Plan. As such, I have given the emerging Local Plan limited weight in my consideration of this appeal.

Main Issues

8. The main issues are:

- the effect of the proposed development on the character and appearance of the area, with particular regard to its scale, design and layout and its height in relation to nearby buildings, and
- whether the proposed development would provide a satisfactory living environment for future occupiers, with particular regard to the proposed outdoor amenity space.

Reasons

Character and Appearance

9. The appeal site is on the edge of a predominantly residential area, comprising housing of various styles and periods. Most of the existing houses are detached and stand in mature and often generous gardens. There are a more limited number of flatted developments, including a retirement complex visible from the appeal site, across the intervening open field.
10. The site currently contains a detached chalet bungalow, sitting towards the centre of a substantial plot. There is extensive hedge and tree planting along all boundaries, particularly around the rear garden. The houses to either side of the appeal site are both two storey detached properties, of contrasting designs.
11. The number of proposed flats is well within the density range of 30 to 55 dwellings per hectare supported by Policy CSP19 of the Tandridge District Core Strategy adopted October 2008 (Core Strategy). Buildings containing flats are part of the established character of the area, with nearby flatted developments being generally of two to three storeys and interspersed amongst the surrounding detached housing.
12. The proposed flats would be set back from the front boundary, broadly in line with the neighbouring houses to either side. The front part of the site would provide two areas of car parking, separated by landscaping. Although all landscaping details are indicative at this stage, the plans demonstrate that

there would be space to retain and reinforce existing hedge planting along the front boundary, helping to screen views of parked cars. The ratio of hard to soft landscaping indicated would not be dissimilar to a number of nearby properties with extensive paved driveways.

13. The plans also indicate that the existing boundary planting would be retained, around all boundaries, along with the larger mature trees. This would maintain a mature garden setting around the proposed flats, consistent with the character of the area, with details to be secured through the submission of reserved matters.
14. The appeal site has a wider than average frontage to Hillbury Road, with the planning history confirming that it is capable of sub-division to provide two substantial detached houses. By incorporating contrasting but complementary features on each wing of the proposed building, the design alludes to the individually-designed detached houses which are characteristic of the wider area. The elevational treatment incorporates external materials and features such as steeply-pitched clay tiled roofs and front gables which are typical of the established street scene.
15. While the overall height of the proposed building would be greater than that of the adjoining properties, particularly 270 Hillbury Road, the design incorporates a number of features to break up its bulk. The parts of the building closest to the side boundaries would have lower roofs and the glazed link would break up the mass of the roof in the centre of the building. While the proposed building would be of significantly greater massing than the existing chalet bungalow, there would remain sufficient space around it to off-set its scale. It would not be unduly imposing or prominent, in the context of what is currently a varied street scene.
16. For the reasons set out above, I conclude that the proposed development would not harm the character and appearance of the area. As such, it would comply with Policy CSP18 of the Core Strategy and Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014-2029, adopted July 2014 (Part 2 Local Plan). These policies, amongst other things, require that development should respect the character and appearance of the area in which it is located, avoiding overdevelopment or unacceptable intensification.

Outdoor Amenity Space

17. No specific local standards for outdoor amenity space have been brought to my attention and the Council acknowledges that none are included in Policy DP7 of the Part 2 Local Plan.
18. The plans indicate a variety of private and communal amenity areas, with some of the proposed flats having a private garden or balcony and all future occupiers having access to communal gardens to front and rear. Although landscaping details are indicative, the submitted information demonstrates that the communal amenity areas would be large enough to provide a flexible range of uses for future occupiers. The rear communal amenity area would be readily accessible to all occupiers, via double doors at the rear of the entrance hall.
19. While not all flats would have private outdoor space, there would be sufficient space for individual households to use different areas for quiet or more active purposes. During my site visit, I noted that there are also a number of green

spaces and formal recreational facilities in the surrounding area, to support more active enjoyment of the outdoors.

20. For the reasons set out above, I conclude that the proposed development would provide a satisfactory living environment for future occupiers, in terms of the proposed outdoor amenity space. As such, it would accord with Policy DP7 of the Part 2 Local Plan, which requires amongst other things that amenity and garden areas are proportionate to the size of the residential units and appropriate for the intended occupiers.

Other Matters

21. I have considered the relationship between the proposed development and adjoining properties, taking account of specific concerns raised by interested parties. Having carefully examined the evidence before me, I consider that the proposed development would not cause any unacceptable harm to living conditions in nearby properties and note that the Council raised no concerns in this regard. While the proposed flats would be more visible than the existing chalet bungalow, there would be sufficient space to either side of the building to prevent the obstruction of sunlight and avoid any unduly overbearing impact.
22. The orientation of window openings, together with retention of planting along the site boundaries, would maintain an acceptable standard of privacy for occupiers of adjoining properties. The proposed balconies at second floor level would be recessed within the rear gables and would also be some distance from all site boundaries, preventing any unacceptable loss of privacy. A condition to prevent additional side-facing window openings on the upper floors would, however, be justified to maintain the immediate neighbours' privacy in the long term and this is included below.
23. Given the way in which the layout would support a range of smaller outdoor areas, as outlined above, the outdoor areas need not be excessively noisy in normal use. The bin store and car park would not materially impact on the use of neighbouring habitable rooms, given their location and the level of intervening landscaping.
24. I have noted various issues raised about highway safety, including the site's proximity to a tight bend further along Hillbury Road. No highway safety concerns have been raised by the County Highways Authority. Having observed the level of visibility during my site visit, and noted that the proposed two accesses would be provided with appropriate visibility splays, I do not consider that the proposed development would result in any unacceptable highway safety issues. However, effective management of heavy vehicle movements during construction would be advisable, given the proximity of the bend, and suitable requirements are included in the conditions below.
25. The Council confirms that the proposed number of parking spaces is considered acceptable against local standards, taking account of the proximity to local services and public transport and the balance between providing on-site parking and maintaining areas of soft landscaping. Based on the evidence before me, I have no reason to reach a different conclusion.
26. While a number of interested parties expressed a preference for detached housing, that is not the development before me. The Council has not suggested

that the proposed flats would be inconsistent with any relevant policies relating to housing mix or the extent and quality of internal accommodation. The development would make a contribution to local housing supply. In terms of any effect on local services, I note from the Council's Officer Report that a CIL regime is in place to help fund infrastructure and local services to support new homes.

27. Any effects from the construction period would be short-term and could be mitigated by careful construction management, in line with the conditions below. Suitable conditions are also included to ensure that surface water drainage is properly handled and that the detailed design of the photovoltaic panels is subject to approval. While landscaping is a reserved matter, the plans demonstrate a realistic intention to retain existing hedges and trees of public amenity value.
28. Given that I have concluded that the proposal would be consistent with the development plan, it would not set a precedent for future harmful developments in the surrounding area. In any event, the circumstances surrounding individual sites are rarely identical and any future proposed development would be considered on its merits.
29. While consultation at the time of the application is a matter for the Council, I note that the Officer Report confirms consultation was undertaken in line with statutory requirements.
30. With regard to the potential impact on property values, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conditions

31. The Council has suggested a number of conditions which I have considered against advice in the National Planning Policy Framework July 2021 (the Framework) and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity and have omitted others.
32. Conditions relating to tree protection and proposed landscaping are not required at this stage, since landscaping is a reserved matter. Further conditions can be imposed by the Local Planning Authority, if justified, when the detailed landscaping proposals are approved.
33. Following the required conditions setting out timescales for approval of reserved matters and commencement of development, I have imposed condition 4 specifying the approved plans to provide certainty. I have included drawing 2006034-02 Rev A – Proposed Access Arrangements, which was not listed in the Council's recommended condition, for reasons explained above.
34. I have imposed condition 5 requiring submission of a construction transport management plan, as this is required in the interests of highway safety, having regard to the site's proximity to a bend in Hillbury Road. This condition is also required to manage construction-related activity in the interests of living conditions for neighbouring residents. Approval of these details is required prior to commencement of development, in order to support effective management of construction traffic from the outset. The appellant has provided formal agreement for this pre-commencement condition, if the appeal is allowed.

35. In condition 5, I have not included the Council's suggested restriction on HGV movements in Whyteleafe Hill and Hornchurch Hill, as I have no evidence to justify this specific restriction.
36. A proposed sustainable drainage strategy is included with the application and was described in the Council's Officer Report as being acceptable in principle subject to the imposition of appropriately worded conditions. However, I am not clear whether it fully addresses all the detailed technical requirements highlighted by the Council and the Lead Local Flood Authority. I have therefore imposed condition 6 requiring submission and approval of drainage details, together with implementation and management of the approved scheme.
37. I have omitted the technical details in the Council's suggested condition 6, since these details can be secured through approval of the submitted scheme. I have also omitted the Council's suggested condition 21, which related to consent for the infiltration of surface water drainage into the ground. Any such infiltration would be included in the details submitted pursuant to condition 6, so a separate condition is not required.
38. Approval of surface water drainage details is required prior to commencement of development, since the nature of the condition is that these details need to be confirmed prior to the commencement of groundworks on site. The appellant has provided formal agreement for this pre-commencement condition, if the appeal is allowed.
39. I have not imposed a condition requiring submission of a verification report for the drainage system, as was suggested by the Council, since inspection of construction works is covered by other regulatory regimes. Arrangements for verification of any matters which are not so covered could be incorporated in the approval of drainage details as above.
40. I have imposed conditions specifying external materials (condition 7) and requiring approval of the detailed design of the proposed photovoltaic panels (condition 8), bin store and cycle store (condition 9). These elements of the proposed development are not fully detailed in the application drawings and could potentially have an adverse visual impact on the character and appearance of the area if not appropriately designed.
41. With regard to the photovoltaic panels, I have amended the wording proposed by the Council as the BRY Energy Services Energy Statement provided with the application makes clear that the 20% reduction in emissions required to comply with the development plan is not solely attributable to the photovoltaic panels. I have also specified that the photovoltaic panels should be installed prior to occupation of the development, to secure timely implementation of this part of the development, in accordance with the relevant development plan policy.
42. I have imposed condition 10 to secure closure of the existing access prior to occupation, to ensure that the proposed access and parking areas can operate as intended. Since no details are provided about how this would be achieved, I have added a requirement for submission and approval of details. This will ensure that any new boundary treatment is consistent with the character and appearance of the area, including any elements which are not incorporated in the proposed landscaping scheme.

43. I have imposed conditions 11 and 12 to secure the implementation of the proposed access arrangements in accordance with the approved plans, and retention of the required visibility splays, since these are necessary in the interests of highway safety. I have imposed conditions 13 and 14 to secure implementation of on-site parking areas, so that these facilities are provided prior to occupation and maintained in the long term. This includes parking for cycles, to support active travel to local services, which is part of the justification for the level of proposed parking provision.
44. I have not been provided with any specific policy justification for the Council's suggested condition regarding provision of electric vehicle charging points. Therefore, based on the evidence before me, this condition does not meet the required tests, since it has not been demonstrated that it is necessary in order for the development to be permitted.
45. The Environment Agency recommended conditions to secure remediation of any unexpected ground contamination and to prevent contamination of groundwater as a result of piling or other penetrative foundation design. These are necessary to maintain control over unforeseen sources of pollution during construction. I have therefore imposed conditions 15 and 16 which cover these issues, but I have amended the wording to avoid fettering the Local Planning Authority's ability to consider any submitted details on their merits at the time of submission.
46. Finally, I have imposed condition 17 preventing insertion of side-facing windows without permission, in order to protect the privacy of neighbouring occupiers. However, I have amended the Council's suggested wording to apply to the first and second floor only and to specify the appropriate elevations. No such restriction is necessary on the ground floor, since the boundary screening would sufficiently safeguard privacy at this level.
47. A condition suggested by the Council to secure implementation of measures specified in the submitted ecology report¹ does not meet the tests in the Framework, since the report in question makes clear that such measures are recommendations only and are not essential to ensure the development complies with policies for protection of biodiversity. Any proposed measures to mitigate impacts on biodiversity can be incorporated in the proposed landscaping details. Measures recommended in the ecology report to avoid disturbance of nesting birds are covered by other legislation.

Conclusion

48. For the above reasons, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the schedule below.

Jane Smith

INSPECTOR

¹ Kevin Morgan – Wildlifesurveys.co.uk, Preliminary Ecological Survey and Ecological Impact Assessment, January 2021

Schedule of Conditions

1. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
2. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
3. Details of the landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - PL20-533-01A - Site Location Plan Existing Site Plan and Survey
 - PL20-533-02A - Demo and Tree Removal drawing
 - PL20-533-03D - Proposed Site Plan
 - PL20-533-04D - Proposed Block Plan
 - PL20-533-05A - Sketch Views 1
 - PL20-533-06A - Sketch Views 2
 - PL20-533-07A - Street Scene
 - PL20-533-10A - Ground Floor GA Plan
 - PL20-533-11A - First Floor GA Plan
 - PL20-533-12A - Roof Space Floor GA Plan
 - PL20-533-13A - Roof Plan
 - PL20-533-14A - Front and Left Flank Elevation
 - PL20-533-15A - Rear and Right Flank Elevation
 - PL20-533-16A - Sections
 - PL20-533-17A - Sketch Views – Front
 - PL20-533-18A - Sketch Views – Rear
 - 2006034-02 Rev A – Proposed Access Arrangements
5. No development shall commence until a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) programme of works (including measures for traffic management)
 - (e) provision of boundary hoarding behind any visibility zones
 - (f) HGV deliveries and hours of operation
 - (g) measures to prevent the deposit of materials on the highway
 - (h) use of banksmenhas been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
6. No development shall commence until details of the design of a surface water drainage scheme have first been submitted to and approved in writing by the Local Planning Authority. The design must satisfy the sustainable drainage hierarchy and be compliant with Defra's Non-Statutory Technical Standards for sustainable drainage systems (or any subsequent version). The required

- drainage details shall include arrangements for the implementation, maintenance and management of the drainage system, which shall be implemented and thereafter managed and maintained in accordance with the approved details.
7. No works above ground level shall commence until samples of all external facing materials have been submitted to and approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved sample details.
 8. No works above ground level shall commence until details of the siting, design and technical specification of the photovoltaics have been submitted to and approved in writing by the Local Planning Authority. The photovoltaics shall deliver at least the energy efficiency performance detailed in the BRY Energy Services Energy Statement provided with the application and shall be installed prior to the first occupation of the development hereby permitted, in accordance with the approved details, and thereafter retained.
 9. No works above ground level shall commence until details of the design of the bin store and cycle store have been submitted to and approved in writing by the Local Planning Authority. The bin store and cycle store shall be completed prior to the first occupation of any dwelling, in accordance with the approved details, and thereafter retained.
 10. No part of the development shall be first occupied unless and until the existing vehicular access to Hillbury Road has been permanently closed in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority.
 11. No part of the development shall be first occupied unless and until the proposed vehicular accesses to Hillbury Road have been constructed and provided with visibility zones in accordance with the approved plans and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.
 12. No part of the development shall be first occupied unless and until pedestrian inter-visibility splays of 2m by 2m have been provided on each side of both accesses, the depth measured from the back of the footway and the widths outwards from the edges of the access. No fence, wall or other obstruction to visibility between 0.6m and 2m in height above ground level shall thereafter be erected within the area of such splays.
 13. No part of the development shall 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 and turning areas shall be retained and maintained for their designated purpose.
 14. No part of the development shall be first occupied unless and until secure parking for bicycles within the development site has been provided in accordance with the approved plans. Thereafter the cycle parking facilities shall be retained and maintained for their designated purpose.
 15. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a

remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

16. No piling or other foundation design using penetrative methods shall take place other than in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority, which demonstrates that there is no resultant unacceptable risk to groundwater.
17. No windows shall be inserted at first or second floor level in the south eastern or north western flank elevations of the building hereby permitted apart from those shown on the approved plans.