



Appeal Decision

Hearing held on 18 October 2022

Site visits made on 17 and 18 October 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/Q3630/W/22/3290930

Milland, Thorpe Lea Road, Egham, TW20 8JL

- 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 Turnbull Land against the decision of Runnymede Borough Council.
 - The application Ref RU.21/0626, dated 1 April 2021, was refused by notice dated 7 December 2021.
 - The development proposed is the “demolition of existing dwelling and the erection of a total of 10 new dwellings comprising 2 detached three bedroom, 6 terraced three bedroom and 2 detached four bedroom houses with associated access and parking”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with approval sought for access and layout. Appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. Plans were submitted showing the access and proposed layout of the site.

Main Issues

3. The main issues are whether or not the proposal
 - would result in an acceptable form of development having regard to the requirements of Policy SL8 of the Runnymede 2030 Local Plan (the Local Plan),
 - would secure appropriate levels of affordable housing,
 - would deliver a quality landscape having regard to tree cover, and
 - provide good, safe, attractive connectivity and legibility for cyclists and pedestrians.

Reasons

4. Policy SL8 of the Local Plan allocates land at Thorpe Lea Road West for housing. It sets out minimum requirements for the delivery of C3 dwellings and Gypsy/Traveller pitches.

5. The inset map and text of the policy, and indeed, the local plan evidence base¹ make clear that parts of this allocation are in a number of different ownerships and that at the time of producing, examining and ultimately adopting the Local Plan, the availability of them for development was unknown. These parts are hatched on the inset map and the text of the policy clearly sets out specific requirements for a minimum of 55 net additional dwellings and 1 net additional pitch for those areas taken together.
6. The appeal site is one part of one of those hatched areas. The proposal seeks to deliver 10 dwellings, that is 9 net-additional dwellings and no additional pitches.

Form of development

7. As noted above, Policy SL8 requires that the hatched areas on the inset map deliver a minimum of 55 net additional dwellings and 1 pitch. Although I accept the point made by the appellant that it is not for them to come up with development proposals for other sites, the policy is clear about the minimum amount of development which the hatched areas must deliver taken together.
8. Given that, I find it entirely reasonable for the Council, and indeed now me, to seek assurance that the remainder of that minimum requirement can be delivered on the remainder of the hatched areas.
9. The appellant acknowledges that their proposal is towards the lower end of the range of densities tested by the Council in their Site Capacity Analysis, and that if this site were delivered as proposed, it would mean that the rest of the hatched areas would have to be developed towards the higher end of that range in order to achieve the minimum aims set out in Policy SL8.
10. However, in considering those density ranges and their effect on the proposal before me, I am conscious that those ranges are not, in themselves part of the policy or development plan. They were produced as part of the evidence base which led to the policies in the plan. As such, whilst they have some weight in explaining and helping me to understand the issues on this site, I do not consider that they are of such weight to allow me to set aside the need, clearly expressed within the four corners of Policy SL8, for the hatched areas to deliver a minimum of 55 net additional dwellings and 1 net additional pitch.
11. It was discussed at the hearing that for the appeal proposal to be acceptable in terms of the amount of development required on the hatched areas, it relies on others bringing forward development on the remainder of the hatched areas at a density substantially higher than is proposed here. The proposal also relies on others to deliver the pitches required by the policy. In considering that, I note the comments of the appellant around the compatibility of substantially higher density proposals with the character and appearance of the area. However, given the strong sense of enclosure to this site and to nearby existing surrounding residential development, I do not consider that differences in density would be so obvious as to be unacceptable.

¹ Notably, the Runnymede 2030 Site Capacity Analysis

12. In considering the reliance on others for the policy to deliver as a whole I note that there is clear development interest and intent on other land covered by the Policy SL8 allocation. I also note that some of this interest relates to some of the hatched areas. I further note that the totality of the other development interest referred to by the appellant exceeds the overall minimum number of net additional dwellings and pitches required by the policy.
13. However, from the evidence before me, no other planning permissions are in place for other parts of the allocated site, and indeed, one of the largest proposals has been refused by the Council.
14. Furthermore, I do not consider that the level of that other developer interest, even if it were all to be granted planning permission would make this proposal comply with the simple requirement of Policy SL8. The wording of the policy, which has been recently examined and adopted, is quite clear that *"in the event that the areas shown cross hatched... do not come forward at the same time as the remainder of the allocation they will together be expected to provide a minimum of 55 net additional C3 residential units and 1 net Gypsy/Traveller pitch"*. The appeal proposal is not coming forward at the same time as the remainder of the allocation, and as such, the minimum requirements for the hatched areas are clear.
15. In addition, the policy does not explicitly allow for less development on the hatched areas should the minimum overall requirement be exceeded elsewhere on the allocated site.
16. I accept that the policy does not require a masterplan be produced for the whole allocated site, nor does it explicitly require the whole allocated site be designed or delivered comprehensively. However, to my mind, the wording and construction of the policy make clear that the expectation of the Council is that there must be at the very least, an element of analysis, if not coordination in order to ensure the delivery of the required minimums, or some other clear demonstration that proposals on one part of the allocation would not prejudice the ability either of the allocation as a whole, or the remainder of the hatched areas to deliver its minimum requirements.
17. The appellant suggested, in their written evidence, and at the hearing, that any shortfall in the housing which may arise as a result of the appeal proposal could and probably would be made up by other parts of the allocation, both within and outwith the hatched areas. However, as noted above and as the Council points out, the policy does not allow for that. It only sets out the minimum number of dwellings and pitches required of the hatched areas where they do not come forwards at the same time as the remainder of the allocation.
18. Without analysis of the ability of the remaining hatched areas to deliver their remaining minimum requirements I am therefore concerned that this proposal would prejudice the overall delivery of the policy, and by extension, the aims of the Local Plan.
19. The appellant has demonstrated that 10 units could be delivered on the appeal site. They have also demonstrated that on the basis of other applications submitted, but either refused or not yet determined, there is developer interest in other parts of the allocated site. However, I find that in doing so, they have not sufficiently demonstrated that the balance of the requirements for the hatched areas, would or could be delivered.

20. As such, although the issue is finely balanced, I do not find that the proposal would result in an acceptable form of development and would therefore conflict with Policy SL8 of the Local Plan, by failing to ensure either that the hatched areas are, or the allocated site as a whole is, capable of delivering a high-quality development with the minimum required number of dwellings and pitches. The proposal would also therefore conflict with the requirement in Policy EE1 to make efficient use of land, and the requirement in Policy SL22 to meet the needs of Gypsies, Travellers and Travelling Showpeople.
21. Following on from these conclusions, I also find that the proposal would conflict with guidance in the National Planning Policy Framework (the Framework) on making effective and efficient use of land.

Affordable housing

22. Policy SL20 of the Local Plan sets out the requirements around affordable housing delivery, required from proposals which provide 10 or more net additional dwellings. The Runnymede 2030 Local Plan Affordable Housing Supplementary Planning Document, April 2022 (the AH-SPD) helps to deliver the aims of the Local Plan and Policy SL20 around affordable housing. It contains fundamentally the same tests and requirements as the policy.
23. It is the main case of the appellant that their proposal, being for 9 net additional dwellings simply falls below this threshold and is not therefore required to deliver any affordable housing.
24. However, the policy further requires that where a site has been sub-divided or is not being developed to its full potential so as to fall below that threshold, the Council will seek affordable housing to reflect what would have otherwise been achieved. Given the number of landowners within the Policy SL8 allocation, acknowledged on the policy inset map, I do not find that the appeal site has been artificially sub-divided from the wider allocation or indeed, the hatched areas within the allocation.
25. However, to my mind, the test in the policy and the AH-SPD has two stages. The first, addressed above, around sub-division, and then the second, around developing the site to its full potential. From the Council's decision on the application, and my first main issue above the Council does not consider, or at least, is not satisfied that the proposal would necessarily develop the site to its full potential. As my reasoning above has shown, I agree with that position. It therefore follows that I find the appeal site should meet the affordable housing requirements set out in Policy SL20.
26. The policy and the AH-SPD allow for and recognise the difficulty of delivering affordable housing on smaller sites, or parts of sites, and sets out relevant approaches and processes. Fundamentally, these rely on the satisfactory demonstration that on-site provision is neither feasible or viable.
27. The appellant submitted a Financial Viability Appraisal (FVA), although this was not ultimately independently assessed on behalf of the Council, nor was there further engagement on its appropriateness. In discussion at the hearing, the appellant explained how the figures and assumptions within it show that the proposal would be unviable as submitted if the developer were to seek to achieve a typical 18% profit on the Gross Development Value.

28. The inference of this, set out by the appellant at the hearing, was that the proposal could be made viable if a lower profit percentage was sought, and that as a result of this finely balanced viability case, there would be insufficient scope within the financial context of the proposal to deliver any affordable housing.
29. Whilst I understand that reasoning and the position set out, I am conscious that the FVA only tests a single scenario, with a single set of figures and desired profit level around wholly market housing.
30. I note the comments from the appellant around the limitations of this FVA given the lack of detailed engagement by and with the Council on this point. However, the FVA fails to assess any other scenarios, including any costs of delivering, operating, transferring or potential returns from affordable housing. As such no clear comparison could be made between the FVA of the appeal proposal or any FVA of a policy-compliant proposal or range of alternative scenarios. To my mind, this failure is such that I cannot know whether or not the proposal could viably deliver any affordable housing.
31. As a result, I therefore find that it has not been satisfactorily demonstrated that on-site provision of the affordable housing (which I have concluded is required) is neither feasible nor viable.
32. I turn now to the criticism by the appellant of the high-level financial viability testing of the Local Plan, particularly around the assumed Existing Use Value of the residential parts of the Policy SL8 allocation. Whilst I understand these criticisms, I do not consider that in themselves they outweigh the overall, established need for affordable housing at the level set out in the policy, nor do they satisfactorily demonstrate why the allocation as a whole should not meet its affordable housing needs. Like the Site Capacity Analysis discussed above, the testing was carried out at a high-level in order to support the plan-making process, and I do not find that criticisms of it are sufficient to outweigh the policy conflict I have found.
33. As I have found above with regard to the form of development proposed, it appears that this proposal could only be made acceptable within the wider Policy SL8 allocation by reliance on others to deliver the required affordable housing.
34. Whilst I acknowledge the argument of the appellant that this issue, like the first, is finely balanced, I conclude that the proposal would not secure appropriate levels of affordable housing. It would therefore be contrary to Policies SL8 and SL20 of the Local Plan which seek to ensure that new development secures appropriate levels of affordable housing. It would also conflict with guidance in the AH-SPD and the Framework around provision of affordable housing.

Landscape and tree cover

35. Although landscape is a reserved matter in this proposal, approval is sought for layout. It is the view of the Council that the layout of the site which would harm the ability of the proposal to deliver a quality landscape having regard to tree cover, owing to the limited space available for planting.

36. It is clear that a significant number of trees would be removed in this proposal, notably those on the non-roadside boundaries and those within the garden of the existing dwelling. The Council Arboricultural Officer acknowledges that the loss of these trees and groups should not be a constraint to development. Despite this, the proposal would retain most of the substantial trees to the front of the site as well as the front boundary vegetation and there is no suggestion that these cannot be appropriately protected.
37. I acknowledge the position of the Council, that a more comprehensive set of proposals for the whole of the Policy SL8 allocation could deliver a more cohesive landscaping and planting strategy. However, in allocating the site for development, it is clear that there would have to be change. Coupled with that, even if the appeal site were to be developed as part of a comprehensive overall proposal for the whole allocation, the large, numerous trees along the northern and western boundaries would likely still be removed.
38. Given the size of the site and the relatively small amount of built-form proposed, I am satisfied that a more detailed, effective and policy-compliant landscaping and planting scheme could be designed and implemented on the site, secured either through an appropriate condition or the submission of applications for the approval of reserved matters.
39. I therefore find that as the development proposals have taken account of the site boundary vegetation, and as there is nothing before me to suggest that a high-quality landscape and planting design could not be brought forwards in later applications for reserved matters, the proposal would not conflict with Policies SL8 or EE1 of the Local Plan.

Connectivity

40. I note the criticisms of the Council that the proposed connections from the site to potential development of other parcels within SL8 do not necessarily align with current development proposals on those other parcels. However, the Council has, in addressing other main issues within this appeal, sought to reduce the weight which should be placed on those development proposals. Applying a consistent approach to the relationship of this site to others, I cannot reasonably find this proposal unacceptable for that reason.
41. Policy SL8 requires development to “maximise opportunities” to provide safe and attractive links. The proposal shows the potential for pedestrian and cycle links from all four of its boundaries, as well as a detailed layout showing connection to the existing footway on Thorpe Lea Road, which in turn, connects to the wider network of footways and public rights of way.
42. In light of the above, I am satisfied that the appeal proposal does that, providing good connectivity and legibility for non-car means of transport, as well as linkages to the existing public rights of way network. In this regard, I am therefore satisfied that the proposal would not conflict with the requirements of Policy SL8 of the Local Plan, the Framework, national or local design guides.

Other Matters

43. The site lies within the 5-7km buffer zone of the Thames Basin Heaths Special Protection Area (the SPA). The SPA is heathland which supports important breeding bird populations. The conservation objectives for this SPA are to ensure that the integrity of the SPA is maintained or restored as appropriate.
44. Parties have agreed, through a Statement of Common Ground and the submission of a unilateral undertaking (UU) under section 106, that payments can be made towards the Council's Strategic Alternative Natural Greenspace and Strategic Access Management and Monitoring initiatives, in line with the April 2021 Thames Basin Heaths Special Protection Area Supplementary Planning Document. They agree that as a result, the proposal would have no likely significant adverse effect on the integrity of the SPA.
45. However, notwithstanding the submission of the UU, there is no need for me to consider further the implications of the proposal on the protected site because I have found that the proposal is unacceptable for other reasons.
46. The appellant has suggested that approval of this appeal would kick-start housing delivery on this allocated site, which is currently behind schedule. Whilst Policy SL8 does identify delivery of this site between 2019 and 2024, the Runnymede Strategic Land Availability Assessment 2021, published in 2022 sets out that the site is expected to deliver its first 25 units in 2024. However, the overall housing land supply position in the Borough is sufficient and no parties seek to suggest otherwise. As I have found that the proposal is in clear conflict with the development plan, whilst the timing of housing delivery is important, I do not find that it is a consideration of such weight to outweigh the development plan conflict I have found.

Conclusion

47. For the reasons given above I conclude that the proposal does not conflict with the development plan insofar as it could deliver a quality landscape having regard to tree cover, and could provide good, safe, attractive connectivity and legibility for cyclists and pedestrians.
48. However, I have found significant, substantial and fundamental conflict between the proposal and the development plan having regard to the requirements of the site allocation policy and the provision of affordable housing. The weight of this conflict leads me to conclude that the proposal is contrary to the development plan as a whole.
49. In light therefore of the significance of the development plan conflict I have found, and the lack of material considerations of such weight to indicate that a decision be taken other than in accordance with the development plan, the appeal should be dismissed.

S Dean

INSPECTOR

Appearances

FOR THE APPELLANT:

Caroline Wilberforce MRTPI	Verve Planning
Rob Turner	Turnbull Land
Sean Phillips BA (Hons)	Affordable 106 Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Adam Jackson MRTPI	Runnymede Borough Council
Christine Ellera BA MA MRTPI	Runnymede Borough Council