



## Appeal Decision

Site visit made on 12 December 2023

**by Stuart Willis BA Hons MSc PGCE MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 December 2023**

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**Appeal Ref: APP/Z3635/W/22/3311540**

**Land at 1-12 New Road, Shepperton TW17 0QQ**

- 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 and Mrs V Gamester against the decision of Spelthorne Borough Council.
  - The application Ref 22/00470/OUT, dated 28 March 2022, was refused by notice dated 23 May 2022.
  - The development proposed is erection of 9no. two storey dwelling houses, with associated amenity space, car-parking and access.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Spelthorne Local Plan 2022-2037 is at an early stage, and I am not aware of the extent of any unresolved objections to its policies. Therefore, its policies insofar as they relate to this appeal would only attract limited weight. In any event, the Council have not sought to rely on any policies from that plan in their reasons for refusal.
3. Outline planning permission is sought with only access and layout to be considered. Other than details relating to these matters, I have regarded all other elements as illustrative.
4. I have taken the address and description of development above from the decision notice. While different to the application form, it more accurately describes the scheme and was also that used on the appeal form and notification.
5. As part of the appellant's appeal submissions additional information was provided in relation to flooding, highway safety and biodiversity. While not before the Council at the time of their decision, they were provided at the outset of the appeal. As such, the Council and other parties have had opportunity to comment on them and would not be prejudice by my taking them into account in my reasoning.
6. The Council have confirmed that they are satisfied that the additional biodiversity information addressed their concerns in this regard and no longer wish to pursue that reason for refusal.

## **Main Issues**

7. The main issues of the appeal are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and any relevant development plan policies,
- The effect of the proposed development on the openness of the Green Belt,
- The effect of the proposed development on the character and appearance of the area,
- Whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding and avoid increased risks from flooding,
- Whether the proposed development would make appropriate provision for smaller sized dwellings:
- The effect of the proposed development on highway safety; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Whether Inappropriate Development*

8. The appeal site is in the Green Belt. The Framework outlines that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
9. One of the exceptions to inappropriate development in the Green Belt is 'limited infilling in villages'. No definition of any of these terms is given in the Framework. Any boundary of a village defined in a local plan may not be determinative for whether a site is within a village<sup>1</sup>. As with the terms limited and infill, a judgement is required as to whether a site is within a village.
10. Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 (Local Plan) states that development will not be permitted which would conflict with the purposes of the Green Belt and maintaining its openness. Certain development is considered appropriate. This does not include limited infilling in villages and the policy also does not make reference to very special circumstances. It is, therefore, inconsistent with the Framework.
11. The proposed properties would be located in, and infilling much of, the gaps between the existing properties. The number of them and their distribution in these gaps mean the scale of the scheme is limited.
12. The row of properties that the appeal scheme would be located within, which includes Littleton Old School Building, is not isolated or considerably physically distant from other buildings in the area. Moreover, there is a footway leading back towards the settlement, services and public transport.

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<sup>1</sup> Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

13. However, the land directly opposite, behind and either side of them is largely undeveloped open land without built form. Although historically the layout of the area would have been different, as you approach this row of buildings there is a feeling of them being outside and separate from the more continuous built-up form of the settlement. As such, regardless of the site's description in the Green Belt Assessment and Evaluation, even if Littleton were a village in itself, the appeal site would not be within it. As a result, it cannot be limited infilling in a village.
14. Consequently, the proposal would be inappropriate development in the Green Belt and conflict with the Framework where it states such development is by definition harmful to the Green Belt. It would also be contrary to Policy GB1 of the Local Plan. Given its inconsistency with the Framework, I give limited weight to the conflict with that policy.

### *Openness*

15. The scale and design of the proposed properties are not to be agreed at this stage and the site is overgrown at present. Nevertheless, the introduction of a number of properties and associated domestic paraphernalia and vehicles where there currently is none, would spatially reduce the openness of the Green Belt.
16. Despite the reservoir behind enclosing views from that direction, the appeal scheme would be clearly visible as you travel along New Road and from the existing properties. The proposed properties would be prominent in these views and would visually harm the openness of the Green Belt.
17. In both spatial and visual terms, the proposal would fail to preserve, and there would be greater impact on, the openness of the Green Belt. While the harm would be moderate, this would be contrary to the Framework where it states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence.

### *Character and Appearance*

18. The existing properties in the row where the appeal scheme would be located are widely spaced with generous gaps between them. The separation of built form this creates gives a spaciousness that contributes positively to the character and appearance of the area. While overgrown, and with some elements of hardstanding, the vacant areas between properties also adds to the verdancy of the area which is distinctly different to more dense and continuous development further along New Road.
19. The appeal proposal would introduce additional properties into and follow the existing linear pattern of development on this side of the road. The plot sizes, mostly semi-detached form and footprint of the proposed properties would be comparable to the existing ones.
20. Nevertheless, although the final design of the properties is not known at this stage, the proposed dwellings would largely fill the existing gaps. This would create a denser row of properties and erode the current spaciousness. As the properties and parking areas would occupy much of the plot width there would be limited opportunity to break up, what would become a mostly continuous row of development, with planting. The scheme would therefore erode the

verdant and spacious appearance of the existing row. This would be obvious when passing the site and from the existing properties.

21. Therefore, the proposed development would substantially harm the character and appearance of the area. It would be contrary to Policy EN1 of the Core Strategy<sup>2</sup> where it requires proposals to make apposite contribution to the streetscene and character of the area. The scheme would also fail to accord with the Framework where it requires proposals to be sympathetic to local character.

### *Flooding*

22. The Site is located adjacent to the Queen Mary Reservoir and the site is located mainly within fluvial Flood Zone 3 with small parts in Zone 2. Flood zone 3 is classed as having a high probability of flooding.
23. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is achieved by steering development to the lowest flood risk areas through the application of a sequential test. Consequently, planning applications, such as the appeal proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding.
24. Planning Policy Guidance (PPG) states that this approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas. The Sequential Test should go on to compare reasonably available sites, within medium risk areas (Flood Zone 2); and then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas (Flood Zone 3). PPG goes on to clarify that reasonably available sites could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. In addition, lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.
25. Policy LO1 of the Core Strategy seeks to reduce flood risk and its adverse effects on people and property. This includes by not permitting residential development or change of use or other 'more vulnerable' uses within Zone 3a or 'highly vulnerable uses' within Zone 2 where flood risks cannot be overcome. It also makes reference to maintaining flood storage capacity within Flood Zone 3 by refusing any form of development on undeveloped sites which reduces flood storage capacity or impedes the flow of flood water. The supporting text refers to applying a sequential approach which aims to steer new development to Flood Zone 1 unless there are no reasonably available sites in areas of a lower probability of flooding that would be appropriate for the type of development or land use proposed.
26. A Flood Risk Assessment was submitted with the application confirming that the likelihood of a breach occurring at the reservoir is low and that no historical flood events have been recorded at the site. Nevertheless, although there are some flood defences in the area, this does not alter that the site remains

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<sup>2</sup> Core Strategy and Policies Development Plan Document Adopted 26 February 2009

mostly within Flood Zone 3 with the proposed use constituting a 'More Vulnerable' use.

27. The Sequential and Exceptions Test document states that any alternative Sites in Flood Zones 2 or 3 have been discounted. However, a site within Flood Zone 2 would be sequentially preferable than the appeal site which is predominantly in Flood Zone 3. Alternative residential sites within the Spelthorne Borough Council's Strategic Land Availability Assessment 2021 have been considered. However, unlike with commercial land, no land search, using information from online searches has been carried out.
28. The maximum site size is limited to the developable area of the appeal site and has not looked at any larger ones. The search also excluded sites not considered to be comparable value, although this is not clearly defined, and those with potential for a greater number of dwellings than proposed. There is no compelling evidence as to why sites of even a marginally greater size should be excluded or why comparable value would prevent a site being reasonably available. Moreover, that the appellant does not own other sites, does not prevent it being reasonably available.
29. Therefore, I cannot be certain that the search has considered all reasonably sequentially preferable locations and that there are no other sites that could accommodate the proposed development in areas of lesser flood risk.
30. PPG states that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. As the sequential test has not been passed, I would not need to consider the acceptability of the scheme with regard to the exception test. In any event, given the compensatory floodplain storage relates to the removal of stored materials, this would not be appropriate.
31. Shallow groundwater is identified in the SuDSmart Pro document. Surface water would potentially need to be drained to a river with attenuation within flood zone 3. But from the evidence before me, it has not been shown that this is feasible or any other method of dealing with surface water can be accommodated, or that sufficient land is contained within the appeal site, to do so. Given this it would not be appropriate to impose a condition requiring additional information were the appeal to be allowed.
32. Consequently, the proposal would not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding or avoid increased risks from flooding. This attracts significant weight and it would be contrary to Policy LO1 of the Core Strategy where it aims to maintain, and prevent development that reduces, flood storage capacity. Furthermore, it would be contrary to the Flooding SPD 2012 where it states decisions about where development should go are to be made on the basis of a 'sequential approach' where areas of no flood risk or lower risk should be considered before areas of greater flood risk.
33. The scheme would also fail to accord with the Framework where it states that development should be steered to areas with the lowest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

### *Provision for smaller sized dwellings*

34. Policy HO4 of the Core Strategy states that the Council aims to ensure that the size and type of housing reflects the needs of the community. The supportive text indicates that on all developments of four or more dwellings, a minimum of 80% 1 and 2 bedroom dwellings will be required. This requirement was based on the findings of the Housing Needs Assessment (December 2006), a Housing Market Assessment (January 2007).
35. The SPD<sup>3</sup> was informed by the Provision of Smaller Dwellings' (January 2012) which showed that there was a continuing need for smaller dwellings overall but there is a specific need for affordable dwellings which can accommodate families. Where there is a predominance of larger dwellings a mix with less than 80% 1 and 2 bedroom dwellings may be appropriate with a greater proportion of 3 bedroom dwellings. However, the majority should still have one and two bedrooms.
36. The Strategic Housing Market Assessment (SHMA 2015) suggests that there is a strong need for 3 bed dwellings. While this assessment is more recent, it does not alter the wording of Policy HO4 and the SPD or make them out of date. As 5 of the proposed 9 units are said to be 3 bedroom or more, the proposal would be contrary to the above requirements of Policy HO4 and the SPD.
37. The Spelthorne Borough Council Authority Monitoring Report 2021 highlighted a small supply of affordable units in the pipeline. Nonetheless, although the current or proposed dwellings at the site would be rented out at a price which may be considered affordable, there is no clear evidence before me to indicate they meet the definition of affordable housing set out in the Framework or development plan or that there is a mechanism to secure them as such.
38. Therefore, the proposed development would fail to make appropriate provision for smaller sized dwellings. The scheme would fail to accord with Policy HO4 of the Core Strategy and the SPD.

### *Highway Safety*

39. Most of the appeal site and visibility splays would be located within the 40mph zone and there is no clear evidence that this stretch of New Road is lightly trafficked or what actual speeds are. Therefore, it has not been shown that both speeds and flows are low and, although not a trunk road, in this instance DMRB<sup>4</sup> standards for stopping sight distances would be appropriate.
40. DMRB states that the minimum distance to locate 'X', the set back for stopping sight distances for direct access, should be a minimum of 2m<sup>5</sup>. From the details before me, 2m is as far as practicably can be provided. Plans provided in the Lanmor Consulting Appeal Statement demonstrate that 2m x 120m visibility splays can be provided. From my observations on site and the evidence before me, sufficient visibility would be provided at the proposed accesses.
41. At my site visit, which was around midday on a weekday, there was a reasonably steady flow of traffic in both directions passing the site but with

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<sup>3</sup> Housing Size and Type Supplementary Planning Document

<sup>4</sup> The Design Manual for Roads and Bridges

<sup>5</sup> 3.8 CD 123 Geometric design of at-grade priority and signal-controlled junctions

frequent breaks. While the traffic flows may change at different times and days, there is no compelling case that this is untypical. Vehicles would need to reverse on or off the road and the turning facilities within the plots would be limited, particularly when one space is already occupied and may require vehicles to cross lanes.

42. Notwithstanding this, given the sight lines that can be provided, road users would be able to see vehicles leaving or entering the appeal site and adjust their speed or stop accordingly. That there are no accesses opposite those proposed reduces the prospect of conflicts. Existing access points have more limited ability to turn within the site than those proposed. As such, vehicles emerging onto the road, including reversing would not be unexpected along this section of New Road given the existing properties park in front of the buildings and do not have space to turn clear of the road.
43. Although there would be more access points and movements, the nature of the movements would be comparable to the existing arrangements. Any interruptions to the flow of traffic would not be prolonged or significant in number given the scale of the scheme. In addition, no evidence of the existing arrangements leading to frequent traffic accidents near the site have been put before me to indicate this currently causes problems with safety or traffic flows.
44. Consequently, the proposed development would not harm highway safety. Therefore, it would accord with Policy CC2 of the Core Strategy where it requires account to be taken of the number and nature of traffic movements and highway safety. It would also comply with the Framework where it states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

#### *Other Considerations*

45. The Council accepts that they do not have an up-to-date 5 year housing land supply and that their housing delivery test result was less than 75%. The Framework seeks to significantly boost the supply of housing and small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. The scheme would also be a more efficient use of land, have reasonable access to services and facilities in a location with likely employment demand. In light of this, the shortfall and the scale of the scheme, along with the findings of the SHMA 2015, the contribution towards housing supply attracts moderate weight.
46. Any economic benefits associated with the construction works would be short term. Those and benefits from the future occupation of the properties nearby would be limited by the size of the proposal and attracts little weight. For the same reason, benefits to biodiversity, including the net gain would also be small.
47. That there are no refusal reasons relating to living conditions and that I have found no harm with regard to highway safety are neutral factors. While the scheme has been altered from the previous submission, I have found harm from the proposal before me.
48. The Bugle Nurseries appeal related to a far greater number of units, including affordable ones and a different Green Belt exception. Those at Stroude Road,

Cinnamon Tree and Cecil Lodge Cottage related to different locations and therefore the characteristics of whether it formed part of a village. While these other appeals have elements common with this scheme, they are materially different.

## **Conclusion**

49. The proposal would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. It would also lead to a moderate loss of openness to the Green Belt. Moreover, there would be harm to the character and appearance of the area, with regard to flooding and the provision of smaller sized dwellings. The other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
50. The scheme is contrary to the policies of the Framework and provides a clear reason for refusing the development in relation to the protected areas of Green Belt and areas at risk of flooding. The presumption in favour of sustainable development as set out in paragraph 11d)ii therefore does not apply.
51. The proposed development conflicts with the development plan when considered as a whole, and the Framework, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
52. Therefore, for the reasons given I conclude that the appeal is dismissed.

*Stuart Willis*

INSPECTOR