



Appeal Decision

Site visit made on 14 November 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Appeal Ref: APP/M3645/W/23/3316608

Land to the rear of 10 Westerham Road, Limpsfield RH8 0ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Deryck Mourton against the decision of Tandridge District Council.
 - The application Ref 2021/2067, dated 29 November 2021, was refused by notice dated 28 September 2022.
 - The development proposed is the erection of a single detached three-bedroom house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published by the Government on 19 December and updated on 20 December 2023 and accompanied by a written ministerial statement (WMS). All references to the Framework hereafter in this decision are to the 20 December version.
3. The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.
4. There is another appeal¹ at the same site made by the same appellant also against the refusal of planning permission by Tandridge District Council. This appeal is described as the lowering of bank to front of the dwelling and formation of single parking space with retaining wall and is the subject of a separate decision.

Main Issues

5. The main issues are the effect of the proposal on:
 - Character and appearance;
 - Living conditions for existing nearby occupants;
 - Highway safety; and
 - Ecology and biodiversity.

¹ PINS Ref: APP/M3645/D/23/3327122

Reasons

Character and appearance

6. The appeal site is located on green wooded land within the former rear garden of the donor property at 10 Westerham Road (A25). The topography is very steep with the land sloping up and away from the A25. Access to the site is via a narrow accessway (Broom Hill) close to the junction of Westerham Road and Snatts Hill. The area is mainly residential consisting of detached and semi-detached properties, although the site is located within walking distance of the more commercial area of Oxted which provides a range of services and facilities and Oxted train station.
7. There is an eclectic appearance to the built-up area, with significant variation to the properties in terms of density, height, bulk, mass, detailing and materials providing an ad hoc character to the built environment. Nevertheless, the properties on the southern side of the A25 have a more open and suburban nature, whilst the development pattern becomes tighter and more developed as one approaches Oxted.
8. The rear of the site is located within a verdant and leafy area designated as 'wooded hillside'. Policy CSP18 of the Tandridge District Core Strategy (TCS) adopted October 2008 seeks to protect the wooded hillsides in the built-up areas by ensuring that new development does not adversely affect the character of these areas and that there is no overall loss of tree cover. Whilst it is acknowledged there are several detached properties located on the eastern side of Broomhill, the opposite side is largely devoid of development and plays an important role as a buffer to the sparse suburban development beyond, including the Oxted Fire Station. As such, it plays a significant part in defining the character of the area.
9. The proposal seeks to provide a three-bedroom detached dwelling house, designed with a traditional appearance, utilising the design cues and similar materials found in the surrounding area. Given the steep topography of the site the proposal will be cut into the landscape in an attempt to reduce the visual mass of the development. The incorporation of the crown roof further seeks to reduce the visual appearance of the scheme. In this regard the crown roof of the proposal would be in keeping with the host property and neighbouring property at No 8 Westerham Road.
10. The footprint of the proposal is L-shaped and has been designed around a courtyard terrace to ensure sufficient outdoor living space for potential occupants, whilst attempting to limit impacts to the wooded area at the rear of the site. However, the submitted Arboricultural Implications Assessment² highlights that seven trees will be removed from the site to enable development. Consequently, the introduction of a built form into the appeal site would reduce tree cover and erode the site's relatively undeveloped nature and its positive contribution to the area as part of the wooded hillside. Further, given the position of the development amongst the retained trees and its overall footprint the proposal would appear cramped and would have an awkward relationship within the plot.

² Arboricultural Implications Assessment and Method Statement Revision A – Canopy Consultancy January 2022

11. It is acknowledged that the scheme seeks to retain the established hedge along the boundary with Broom Hill, however it is unclear how this important screen will be safeguarded during the construction phase of the development. I also appreciate the proposal has been designed around the existing trees and seeks to retain as many as possible. However, I do not consider that this compensates for the loss of the undeveloped nature of the site or its function as a buffer, and it would not prevent the proposed development from harming the character and appearance of the area.
12. The appellant's Arboricultural Method Statement highlights the methods employed and the extent of the protection measures incorporated on the root protection areas of the retained trees. Whilst seven trees are proposed to be removed, the trees subject to the Tree Preservation Order are to be retained and protected. I recognise that trees may be able to withstand some pruning to enable the proposal to be constructed. However, due to the close positioning and cramped nature of the proposal between the trees, in particular T7, T8, T9, T13 and T14, it seems to me that there would be an inevitable need for more regular and extensive pruning, to maintain sufficient clearance. In addition, there is likely to be increased pressure to prune due to the degree of shading that would be experienced within the proposed development and its garden area.
13. I have given careful consideration as to whether these concerns can be adequately addressed by condition. However, the need for more extensive and regular pruning would diminish the contribution the trees make to the character and appearance of the area and could decrease their life expectancy. As such, the imposition of conditions would not mitigate the likelihood of further harm to the character and appearance of the area arising from the development's effect on trees in the long term.
14. For the reasons above, the proposal would have an unacceptable effect on the health and life expectancy of the trees and would not compliment the qualities of the surrounding area or respect the important wooded hillside landscape feature. Furthermore, the appeal scheme would provide a cramped form of development at odds with the natural and verdant locality, and thus would significantly harm the character and appearance of the surrounding area. Accordingly, it would be contrary to TCS Policies CSP18 and CSP21 and Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014 (TLP) which amongst other things, seek development that integrates with its surroundings, respects the setting and local context, protects the landscape and conserves landscape character. The proposal would also conflict with the Framework insofar as it requires development to be sympathetic to local character and seeks to safeguard significant trees due to their contribution to character and quality of environments.

Living conditions

15. It is acknowledged that the proposal has been specifically designed to be inward facing to reduce impacts on amenity for nearby occupants. The orientation coupled with the separation distance and the use of obscured glazing could collectively mitigate impacts of overlooking and loss of privacy. This could be secured by condition. However, as the site is located in an elevated position there is a concern in respect to the overbearing nature of the

- development proposed, with particular regard to the donor property at No 10 and the neighbouring property at No 8.
16. In respect to No 10 the proposed dwelling would be offset to the rear providing a substantial increase in height and mass in an elevated position. Whilst the proposal would be sunk into the slope, the proposed relationship would nevertheless provide an oppressive presence, looming over the boundary fence, resulting in a poor outlook. The presence of a new dwelling in this location would be overbearing in its relationship with No 10, due to a heightened sense of enclosure and the dominance of the proposal, to the detriment of their living conditions.
 17. In respect to the outlook of the residents at the adjoining property of No 8 the distance between the proposal is offset at an angle, and over 25m away approximately. As such, given the separation distance, acute angle and intervening vegetation any visual impact of the proposal would be minimised. In this respect I do not find any overbearing harm on this property.
 18. Overall, for the reasons above, the proposal would unacceptably harm the living conditions of the occupiers at the donor property of 10 Westerham Road due to an overbearing presence and the impact on outlook. Therefore, the proposal would conflict with the objectives of TCS Policy CSP18 and TLP Policies DP7 and DP8 which collectively seek the size and scale of development to avoid any adverse impact on the amenity of neighbouring properties by reason of overbearing effect, amongst other things. It would also be contrary to Paragraph 135 f) of the Framework insofar as it seeks a good standard of amenity for all existing occupants of buildings. However, I do not find conflict with TCS Policy CSP21 which relates to the character and distinctiveness of landscapes and countryside in the district and is therefore has limited relevance to this main issue.

Highway safety

19. The proposed access would utilise the existing access from Westerham Road (A25) via Broom Hill. The A25 is subject to 40mph speed limits. The access to the appeal site is separated from the roadside by large stone walls and well-established vegetated boundaries. Concern has been raised regarding the adequacy of the visibility splays of the proposed access at the junction with the public highway by Surrey County Council as County Highways Authority (CHA).
20. The Manual for Streets (MfS) and Manual for Streets 2 (MfS2) set out nationally accepted standards for visibility. However, the CHA highlights given the A25 is a 40mph road the Design Manual for Roads and Bridges (DMRB) provide more appropriate visibility distances. The DMRB recommends that on a visibility splay of 2.4m (X distance) x 120m (Y distance) are applied. This cannot be achieved due to the curvature of the road.
21. The appellant contends that a lesser distance should be applied, if the requirements of the MfS are applied instead of the DMRB. The MfS recommends that the Y distance should be based on the recommended Stopping Sight Distances (SSD) values, unless there is local evidence that shows a reduction in visibility below recommended levels will not necessarily lead to a significant problem. The appellant relies on local evidence and Personal Injury Accident (PIA) data, in that during the years between 2000 and 2020, a total of 36 accidents have been recorded in the study area. The

majority of which occurred at the Snatts Hill/East Hill/Westerham Road junction, with the appellant further highlighting that no PIAs have been recorded as a result of the access.

22. In using the MfS visibility figures, it is preferable to use actual recorded 85th percentile figures of traffic speeds on existing roads when generating an accurate design of visibility splay. MfS provides guidance on visibility requirements and SSDs for streets where 85th percentile speeds are up to 37mph. At speeds above this, the recommended SSDs in the DMRB are more appropriate. During my site observations I noted vehicles travelling at some speed in both directions along the A25, and I have limited evidence of speed surveys, in order to justify any reduction in the 40mph visibility splay requirement. As such I have adopted a precautionary approach and consider that the visibility requirements of the DMRB are more appropriate in this case.
23. I appreciate that there is an existing access currently used by existing residents, and that any intensification in its use would be limited given the scale of the development proposed. I further acknowledge that the current circumstances have given rise to a modest number of PIAs and conflict between road users, nevertheless the data still highlights that conflict does exist. Given that the proposal would intensify the use of the junction and the volume of traffic entering and exiting the A25, which whilst limited, would increase the risk of conflict. Therefore, based on the information before me, it has not been demonstrated that the reduced visibility splays would not be detrimental to highway safety.
24. The CHA raises further highway safety concerns in respect to the provision of the off-street parking and ability to enter and exit the site in a forward gear. The proposal would provide two off-street parking spaces for the development and I have been supplied with evidence in respect to the provision of swept path analysis to ensure safe access and egress and the ability to turn on site. Based on the evidence before me and my on-site observations I accept there is restricted space for vehicles to turn in order to exit in forward gear. The relatively tight parking area requires vehicles to access land which is not under the ownership of the appellant in order to turn, and it is unclear from the submitted information whether the manoeuvres are possible on land wholly within the red line.
25. Given that the turning area appears to be outside the control of the appellant, it cannot be relied upon to provide the required off-street car parking provision. There is no evidence before me that suggests that the use of areas outside the appellants' control have been secured through a legal agreement, which would be necessary to make the development acceptable in respect to parking. I therefore cannot be certain that either parking provision or access arrangements would be safe and meet the required standards and allow vehicles to enter or leave the site in forward gear, as reversing out of the site would have a negative impact on highway safety.
26. For the reasons set out above, I cannot be satisfied that the scheme would not increase the risk of conflict between road users which would be harmful to highway safety. I therefore find that it would conflict with TCS Policy CSP12 and TLP Policy DP5 which requires development to be designed so they do not create hazards to traffic and other road users, and have regard to adopted highway design and parking standards.

Ecology and Biodiversity

27. Paragraph 99 of Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
28. Paragraph 186 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
29. The appellant has provided a Preliminary Ecological Appraisal (PEA) as part of the initial submission. Concerns have been raised in respect to whether the PEA is valid, whether it is up-to-date and the results of its findings. The appellant has submitted an updated PEA survey as part of the appeal along with an Ecological Impact Assessment (ECIA) in order to address these concerns. The updated evidence highlights that no significant change has occurred on site in relation to foraging and commuting bats, hazel dormice, hedge hogs or nesting birds. Surveys also confirmed the likely absence of roosting bats and badger setts, and confirmed the presence of a small population of slow worm.
30. I have no evidence of any further comments received from either the Council or Surrey Wildlife Trust in respect to the updated findings of the PEA and the ECIA, however, as I am dismissing the appeal on other matters, I have not found it necessary to go back to the parties to seek their further views.
31. In conclusion, in the absence of sufficient evidence to the contrary, there is a lack of certainty that adequate mitigation is proposed to avoid unacceptable harm to protected species. This would be contrary to TCS Policy CSP17 and TLP Policy DP19 which collectively seek to protect biodiversity and where alternative locations are unfeasible the proposal includes measures to avoid the harmful impacts arising, sufficiently mitigate their effects, or, as a last resort, compensate for them.

Planning Balance

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
33. It is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, the presumption in favour of sustainable development contained in the Framework is engaged whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.
34. I have found the proposed development would harm the character and appearance of the area, would provide harm in respect to the living conditions of nearby residents, would negatively impact on highway safety and has insufficient evidence in respect to ecology and biodiversity, which collectively attract substantial weight against the scheme.

35. Weighed against this are the potential benefits of the proposed development in terms of providing a new dwelling to the Council's housing stock. Taking into account the current shortfall, 1 dwelling would provide a limited contribution to housing supply. There would be social benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. The development would also give rise to some economic benefits and provide limited support to local services.
36. Nevertheless, the identified adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, including its presumption in favour of sustainable development.

Conclusion

37. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

Robert Naylor

INSPECTOR