



Appeal Decision

Site visit made on 22 November 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/Y3615/W/23/3315742

Orchard Walls, Beech Avenue, Effingham, Surrey KT24 5PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Claremont Finesse Group against Guildford Borough Council.
 - The application Ref 22/P/02045, is dated 5 December 2022.
 - The development proposed is development of 1no. single storey 2-bed dwelling house with access from The Crossroads.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023, and accordingly for the purposes of this decision I have referred to the latest version of the Framework. Chapter 12 of the revised Framework included updates and seeks to achieve 'well-designed and beautiful places'. Both main parties have had the opportunity to comment on the amendments to the Framework and I have considered the appeal on this basis.
3. The appeal submission includes a Heritage Statement and an additional section drawing which was not before the Council during the determination of the planning application. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
4. In this case, the sectional drawing and Heritage Statement provide additional information in relation to the effect of the proposal on nearby heritage assets, rather than any amendments to the proposal. The Council was provided with an opportunity to comment on the additional information. For this reason, I consider that there would be no prejudice to any party by considering the additional drawing and Heritage Statement. I have therefore determined the appeal on the basis of the additional documents.

Background and Main Issues

5. The appeal site is a small parcel of land which forms part of the site allocation identified as ENP-SA3 and known as Orchard Walls (the Orchard Walls development), within the Effingham Neighbourhood Plan (2018) (ENP). The entire site benefits from extant permission, which is currently under construction, for 8 dwellings with a new access provided onto Beech Close.

6. The proposal relates to an additional dwelling which would be located within the rear garden of Plot 8 of the approved Orchard Walls development. Rather than taking access from Beech Close, the appeal site would utilise an existing access route from The Crossroads to the north.
7. Although the appeal is against non-determination, the Council has given putative reasons why planning permission would have been refused had the application still been before them to determine.
8. Based on the statement submitted by the Council, and my observations on site, the main issues are whether the proposal would:
 - provide suitable measures for sustainability;
 - make suitable provision towards affordable housing;and the effect of the proposal on:
 - the character and appearance of the area, with particular regard to the effect that it would have on the wider allocated Orchard Walls development which is currently under construction;
 - the character and appearance of the local area with particular regard to the extent to which it would preserve or enhance the character or appearance of the Effingham Conservation Area (the CA) and the effect on a non-designated heritage asset (NDHA); and
 - the living conditions of the future occupiers of Plot 8 of the Orchard Walls development, with particular reference to outlook.

Reasons

Sustainability measures

9. Policies D14, D15 and D16 of the Guildford Borough Local Plan: Development Management Policies (2023) (DMP), identify the various measures relating to renewable and low carbon energy generation and climate change adaptation which proposals will be expected to implement. Policy D2 of the Guildford Borough Local Plan: Strategy and Sites, 2015-2034 (2019) (GLPSS) states that applications for development should include information setting out how sustainable design and construction practice will be incorporated.
10. The Council's Climate Change, Sustainable Design, Construction and Energy Supplementary Planning Document 2020 (SPD) requires the submission of a Climate Change, Energy and Sustainable Development questionnaire or an energy and sustainability information statement. No such questionnaire or statement was provided.
11. Consequently, insufficient information has been provided in respect of issues such as use of water harvesting, permeable surfaces and renewable energies. I conclude therefore that it has not been demonstrated that the proposal would make appropriate provision of measures to address climate change, sustainable design, construction and energy use.
12. The provision of such measures are fundamental to the development. The requirement to submit further information could not be conditioned as it needs

to be demonstrated, prior to any planning permission being granted, that the necessary measures could be adequately installed.

13. Overall, I find the proposal would conflict with Policy D2 of the GLPSS and Policies D14, D15 and D16 of the DMP and the Council's Climate Change, Sustainable Design, Construction and Energy SPD, the aims of which are outlined above.

Affordable housing

14. Policy D8 of the DMP identifies that where individual applications are submitted for development across a larger developable area, the proposal will be required to provide appropriate infrastructure contributions commensurate with what would have been required on the larger site. Both the main parties agree that a contribution towards affordable housing is required.
15. Policy H2 of the LPSS states that in Designated Rural Areas, for developments of between 6 and 10 dwellings a financial contribution in lieu of on-site provision of affordable housing will be sought. The appellant has agreed to provide the necessary affordable housing contribution. The appeal submission includes a formal Legal Agreement made under section 106 of the Act, dated 7 December 2023 and signed on behalf of the Appellant. I consider that the measures in the agreement are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
16. However, I have some concerns about the document itself, its execution and thus whether the Council could rely on it to secure the contributions. For example, it is not signed by the Council and the plan referred to in Schedule 1 is not included.
17. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. Nonetheless, as it stands, and for the reason given in the previous paragraph, I am not satisfied that the submitted agreement would ensure adequate provision through a financial contribution in lieu of on-site provision of affordable housing to meet the additional needs arising from the development in accordance with Policy D8 of the DMP, Policies H1, H2 and ID1 of the GLPSS and Policies ENP1-H1, ENP-H2 of the ENP. Collectively, these require that developments make adequate provision for affordable housing.
18. The proposal would also not comply with the Council's Planning Contributions SPD (2017) and principles of the Framework which outline that where a need for affordable housing is identified, planning policies should expect affordable housing to be met on-site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified.

Character and appearance

19. The development consists of a mix of eight traditionally designed two storey detached and semi-detached houses, and chalet bungalows with first floor dormer windows, currently under construction as part of the Orchard Walls development. The development is laid out within a cul-de-sac accessed from Beech Close. Other properties on Beech Close are two storey detached dwellings of varying designs which front the public highway.

20. The appeal site is accessed from The Crossroads, which is defined by small rows of two storey, terraced properties which are architecturally uniform with hanging tiles at first floor level. The site would be accessed from a narrow road which is lined by single storey garages which are used by properties on The Crossroads. The rear gardens of properties on Manor Gardens abut the site to the north east.
21. Of the dwellings under construction as part of the Orchard Walls development, Plot 8's rear garden is noticeably the largest. The terraced properties on The Crossroads generally have smaller plots than the existing properties on Beech Close and those within the Orchard Walls development. Consequently, whilst there may be lower density housing to the south of the site, I find that the appeal proposal would allow a transition in density from these dwellings to the terrace properties on The Crossroads. Despite the sub-division of Plot 8, neither this property nor the appeal proposal would have a plot or rear garden which would be noticeably small or uncharacteristic.
22. Overall, the proposal would be located within an amply sized plot, and would have a suitably sized external amenity area. It would be sufficiently spaced from the nearest neighbouring properties, and would not amount to overdevelopment. Overall, the spacing between the proposal and adjoining existing properties, would not appear unusually tight or cramped.
23. As a result of its location at the bottom of a narrow access, which is screened by the adjoining garages, the appeal proposal would not have a prominent street frontage. However, I do not find that the limited visibility of the dwelling would cause any harm to the character of the area. When viewed from The Crossroads, the dwelling's roof would be visible above the garages. At present the roofs of dwellings fronting Beech Close can be seen from this viewpoint and the proposal would be viewed in the context of these roof forms beyond.
24. The dwelling would be smaller in size and scale than the neighbouring dwellings within the Orchard Walls development, Beech Close, Manor Gardens and The Crossroads. This would reflect its location as a backland development which would be subservient to the dwellings fronting the street, which I consider to be an appropriate design response in this location.
25. The dwelling would have a traditional design with a hipped roof, and would be constructed using traditional materials which would relate to the materials used within the Orchard Walls development. The final materials could be controlled by planning condition. Consequently, I find that the proposed dwelling would be finished in a style that would complement the existing housing nearby and would not be out of keeping with the residential character of the area.
26. Consequently, the proposal including the subdivision of Plot 8 would not have an unacceptable impact on the character and appearance of the allocated Orchard Walls development and wider area. Therefore, in this respect it would not be contrary to Policy D1 of the GLPSS, Policies D4, D7, D8 of the DMP, Policy ENP-G2 of the ENP and Chapter 12 of the Framework and the National Design Guide (2021). Collectively, these identify urban design principles and principles for residential infill developments, including the need to respond to the surrounding context and enhance the character and appearance of the local area.

Effingham CA and NDHA

27. The majority of the site is adjacent to Effingham CA, however the appellant indicates that a small area of the site access is within the CA boundary. Consequently, I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
28. The CA encompasses the original historic core of the village, including the historic medieval manor houses, the 12th century church (St Lawrence), as well as open land, such as the King George V playing fields. Its special character and significance is derived from its historic and architectural interest, including its legible medieval origins and plan form, and its traditional and vernacular architectural form.
29. In addition, the ENP describes the 'Wall, Beech Avenue' as a length of very old boundary walling from the time this site was the orchard/kitchen garden, originally part of the estate of the manor house Effingham House. It is described as a tall red brick wall constructed in a garden wall bond with a solid course coping. The wall runs along the southern and northern boundaries of the site, with the northern part of the wall also forming the boundary of the CA.
30. Whilst the wall is not statutorily listed, paragraph 209 of the Framework states that the effect of an application on the significance of a non-designated heritage asset (NDHA) should be taken into account in determining the application. In weighing applications that directly or indirectly affect NDHAs, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
31. The majority of the site is located outside the CA, and the part of the site within the CA consists of a small access road adjoining a utilitarian garage block. However, as described above, the wall on the site's northern boundary is a NDHA, and consequently, the appeal site makes a positive contribution to the setting of the CA.
32. The proposed dwelling takes design cues from the neighbouring existing houses and those under construction within the Orchard Walls development, including the use of brick as the main building material. A car port is proposed adjacent to the east of the house. This is to be of a traditional style, constructed from timber and with a hipped roof to mirror the main dwelling.
33. The introduction of three new trees at the site entrance, within the CA, will have a positive visual effect on the setting of the CA. Due to its single storey design and location beyond the tall boundary wall, the proposal would not be prominent in views from the CA. Where its roof is visible in views from within the CA it would blend in with the roofs of existing dwellings located immediately to the rear on Beech Close. Given the significant size of the CA the development of a single dwelling along its boundary will not alter its general character.
34. The heritage value of the locally listed brick wall is primarily derived from its association with Effingham House as a surviving element of the wider Estate. The dwelling would be constructed adjacent to the northern section of the locally listed wall, with a generous set back away from the southern section of

the wall. The construction of modern housing between the parts of the wall on the site's boundary and Effingham House, which is located a significant distance away, has already severed the visual link between the two.

35. The proposal ensures the full retention of the wall. As a result of the set back from the wall the proposal would have no physical impact on the NDHA. Whilst the proposal would result in additional built form, due to its limited size and height the heritage value of the wall, which is principally derived from its association with Effingham Hall, would not be harmed.
36. For the above collective reasons, I find that the proposal would preserve the character and the appearance of the CA, and the significance of the CA would not be adversely affected. Nor would the proposal result in harm to the heritage value of the locally listed brick wall. The proposal would comply with Policies D18 and D20 of the DMP and Policy D3 of the GLPSS which collectively prioritise the conservation of heritage assets, including NDHAs when considering the overall impact of development proposals upon their significance and importance.

Living conditions

37. The dwelling under construction at Plot 8 is a chalet bungalow which would have rear ground floor windows and rear dormer windows facing towards the appeal site. During my site visit I was able to view the proposals from Plot 8.
38. The proposed dwelling's rear elevation would be constructed adjoining the boundary with Plot 8, and the submitted drawings indicate that there would be an 11.5 metre separation distance between the rear elevations of the properties. The building would be single storey with relatively low eaves and a hipped roof form which would pitch away from the shared boundary and reduce the roof's massing. Furthermore, Plot 8's rear garden slopes gently downwards so that the appeal site is at a lower level.
39. Although the proposal would create additional built form which would be clearly visible from Plot 8's rear windows and within its garden, the low height, hipped roof form and the lower site level of the appeal site reduce the impact of the proposal. Overall, I consider that these factors, combined with the 11.5 metre separation distance would ensure that the proposal would not be overly oppressive to the extent that it would cause unacceptable harm to the level of outlook for occupiers of Plot 8.
40. Accordingly, the proposal would comply with Policy D5 of the DMP which, amongst other aspects, seeks to protect the living conditions of occupiers of neighbouring adjoining properties from unreasonable visual intrusion.

Other Matters

41. The Framework seeks to significantly boost housing supply and indicates the value of using suitable land within settlements for homes. It also encourages the optimal use of underutilised land. The proposal would contribute to local housing supply, through the provision of an additional dwelling and would represent a more efficient use of the appeal site.
42. I acknowledge that residential development in this general location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan, for instance in respect of the standard of

accommodation or living conditions of future occupiers. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.

43. As mentioned above, the application site overlaps with a planning permission for the demolition of the existing property and erection of 8 dwellings with a new access provided onto Beech Close (Ref:P/21/P/02246). The appeal proposal would reduce the garden areas related to Plot 8. However, the various aspects of it are readily severable and there is no automatic requirement to complete a development. Consequently, I consider both schemes could be implemented. In reaching this conclusion, I have had regard to the Council's arguments that the proposal would result in a breach of the conditions and legal agreement for permission P/21/P/02246 which rely on the development being built out as approved.
44. The concerns expressed by the Council regarding a potential breach of planning control are outside the remit of this appeal.

Planning Balance and Conclusion

45. The proposal would be located where it would be accessible to local services, facilities and public transport. An additional residential unit would make a small but important contribution towards local housing supply. When this is considered with the other benefits, they attract weight in my decision.
46. There would be some economic benefits from the occupiers of the residential units supporting local facilities and services in the area and there would be some benefits from construction employment, but these would be short term. I attribute moderate weight to these benefits.
47. Weighed against the above is the harm which would be caused through the failure to demonstrate that the proposal would make appropriate provision of measures to address climate change, sustainable design, construction and energy use and adequate provision through a financial contribution in lieu of on-site provision of affordable housing. I find this harm, when taken together, to be significant.
48. The harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTR