



Appeal Decisions

Hearing held on 19 December 2023

Site visit made on 19 December 2023

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2024

Appeal A Ref: APP/D3640/W/22/3300731

Central Garage, Bagshot Road, Chobham, Surrey GU24 8BS

- 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 East Street Homes (UK) Ltd against the decision of Surrey Heath Borough Council.
 - The application Ref 21/1141/FFU, dated 13 October 2021, was refused by notice dated 10 December 2021.
 - The development proposed is described as the "demolition of existing garage structures and change of use to Class C3 (dwellings) to provide 5no. 3-bed houses with associated parking and landscaping".
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Appeal B Ref: APP/D3640/W/22/3311833

Crown Motors, Bagshot Road, Chobham, Woking GU24 8BS

- 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 East Street Homes (UK) Ltd against the decision of Surrey Heath Borough Council.
 - The application Ref 22/0734/FFU, dated 15 July 2022, was refused by notice dated 8 November 2022
 - The development proposed is described as the "demolition of existing garage structures and change of use to Class C3 (dwellings) to provide 4 no. three bedroom houses with associated parking and landscaping".
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. An application for an award of costs was made by East Street Homes (UK) Ltd against the Environment Agency (EA). This application is the subject of a separate Decision.

Preliminary Matters

4. For ease of reference, I refer to the different cases as Appeal A and Appeal B in this decision letter as set out in the headers. I have dealt with each appeal on its own individual merits but to avoid duplication, I have considered the appeals together in this document. Although there are two appeals, I have used singular terms in places for the ease of reading.

5. The appellant provided a completed unilateral undertaking (UU) pursuant to s106 of the Town and Country Planning Act 1990, which I will comment on later in this letter.
6. Since the submission of the appellant's appeal, the National Planning Policy Framework (the Framework) was revised on the 20 December 2023. The revisions to the Framework do not directly relate to the main issues of dispute and therefore are not material in the consideration of the appeals before me.
7. The parties provided me with a copy of a statement of common ground relating to flood risk¹ at the start of the hearing, which I have had regard to.

Main Issues

8. The main issues in this appeal are:

Appeal A and Appeal B

- the effect of the development on the character and appearance of the area, including the setting of the Chobham Conservation Area²,
- the effect of the development on the living conditions of adjoining and future occupiers through overlooking and loss of privacy,
- whether the development provides adequate private outdoor amenity areas, and,
- whether the location of the development is suitable having regard to flood risk.

Reasons

Character and Appearance

9. The appeal site forms a 'T' shaped parcel of land that is currently occupied by a car sales dealership with three existing buildings utilised as a MoT and servicing workshops. The site is part of a row of dwellings and contains buildings that are set back within the site.
10. The area is generally suburban in character with the centre of Chobham, and its range of services and facilities, a short walk from the appeal site. Although not within the Chobham Conservation Area (CCA), the site lies within its setting.
11. The proposal seeks to demolish all of the buildings on the site and erect, for Appeal A, five dwellings on the site, and for Appeal B, four dwellings on the site. Private parking and garden areas will be provided within the site. For both appeals, a pair of semi-detached dwellings would be erected to the front of the site. An access would be provided to the east, allowing vehicles to enter the rear of the site where, for Appeal A, a terrace of three dwellings would be erected, and for Appeal B, a pair of semi-detached dwellings would be erected.
12. To either side of the appeal site are a range of dwellings that face onto the main road. These range in size and design with flats at St. Lawrence House, semi-detached and detached properties, as well as retail, commercial, and

¹ Statement of Common Ground Co-Joined Appeals Flood Risk Addendum 18 December 2023 (the Addendum)

² Appeal A only

educational buildings. In that context, the re-development of the site would sit within a varied townscape.

13. The Council argue that, for Appeal A, the height and window positions of the proposed pair of semi-detached dwellings would give rise to a poor relationship when seen against the neighbouring properties. Either side of the appeal site are existing semi-detached dwellings at Elm Bank and Laurel Bank. Although these properties share a common design feature through bay windows at ground floor level, they nonetheless utilise differing materials and roof types. The proposed windows on the front elevation would be positioned just below the eaves, following the form of the adjoining properties. Although the eaves and cill level would be lower, I am not persuaded that this amounts to such harm that would render the development unacceptable. Moreover, although the roof height would be marginally higher than the adjoining properties, given the setting back of the proposed dwellings from the road edge and its position between two existing dwellings, I am not persuaded that the overall height would be very conspicuous within the streetscape. Thus, the design of the semi-detached dwellings for Appeal A would be acceptable.
14. The developments would provide good levels of amenity within the site through the provision of adequate outdoor garden areas, a matter that I will return to later in this letter. There is no dispute that the dwellings meet expected space standards and that adequate parking and turning areas would be provided within the site. I am therefore satisfied that the proposed layout for Appeal A and Appeal B would not constitute overdevelopment of the site, nor result in a cramped or incongruous form of development that would harm the character and appearance of the area.
15. Thus, the development would not be in conflict with Policies DM9 and CP2 of the Surrey Heath Core Strategy and Development Management Policies Document 2012 (the Core Strategy) and paragraph 135 of the Framework which seek, amongst other things, to ensure that developments are of a high quality design and layout that respects and enhances the local environment.
16. In reaching this decision I have also had regard to the Surrey Heath Residential Design Guide Supplementary Planning Document September 2017 (RDG).

Chobham Conservation Area – Appeal A Only

17. Appeal A also refers to the effect of the development on the setting of the CCA as a result of the design of the semi-detached dwellings. The nearest part of the CCA to the appeal site is diagonally across the road and contains the car park to the Co-operative shop, and then area and buildings to the east. The Council has not expanded on the significance of the CCA, other than the design of the proposed roof would be harmful to its setting through its bulky, dominant, and disproportionate roof design and is wider and deeper than the existing built context.
18. I find the significance of the CCA to derive from its traditional semi-rural character as an attractive village with interesting groupings of buildings set along the High Street and wider area. The properties either side are indeed shallower and narrower than the proposed dwellings and also lie outside of the CCA. However, the existing development either side of the appeal site cannot be used as a metric for all new development as a consistent design that

dominates the area is not readily identifiable, which itself contains a wide range of designs, layouts, materials, and size of property.

19. Whilst the development itself would be wider and deeper than Elm Bank and Laurel Bank, the overall design and choice of materials is pleasing with an attempt to create a strong relationship between the street and buildings that frame the site. Furthermore, the depth of the building would not be readily visible from public viewpoints and the increase in width is not so great that it would be noticeable to those passing the site. I am therefore satisfied that the overall design of the proposed dwellings, including the windows and roof, and the massing of the building would sit comfortably between the existing development. Moreover, the setting back of the development from the road would enable the proposed dwellings to set against the backdrop of the adjoining properties and would have a neutral effect upon, and thus, does not harm the setting of the CCA.
20. Consequently, in considering whether to grant planning permission for development which affects the setting of designated heritage assets, I am required to have special regard to the desirability of preserving that setting³. I have also given great weight to the conservation of the setting of designated heritage assets as I am required to do at paragraph 205 of the Framework. I have set out above what I consider to be the important elements of the setting of the assets in relation to the appeal proposal and have found, for the reasons given above, that the appeal proposal would have a neutral effect and thus, does not harm the setting of the designated heritage asset.
21. Thus, the development for Appeal A would not conflict with Policy DM17 of the Core Strategy and paragraph 205 of the Framework which seek, amongst other things, to ensure that developments within the setting of a designated heritage asset is acceptable.

The Effect of the Development on Adjoining and Future Occupiers

22. The RDG recognises at paragraph 8.4 that in more compact contexts, such as infill plots and in the centre of villages, it may not be appropriate to provide the conventional separation distances normally required. The Council has identified instances where the RDG separation distance has not been adhered to within the site, which is argued results in overlooking and loss of privacy. Taking these in turn, the Council argue that plots 3 and 4 would overlook the private amenity space of 2 Elm Bank. Whilst I recognise that the first 3m that is closest to the rear elevation of a dwelling are particularly sensitive, the area closest to 2 Elm Bank is part of a canopy over an external terrace and is the area that would be most sensitive. I do not agree that the area beyond the canopy, as suggested by the Council, would be the first 3m that requires special protection. Consequently, I am not persuaded that harm by overlooking would occur to an unacceptable degree to the occupiers of 2 Elm Bank.
23. Moreover, the proposal also provides a 10m distance between the rear elevation of plots 3 and 4 and the boundary to 2 Elm Bank. In such a tight knit context I am not persuaded that 15m as suggested by the Council should be the norm. With this in mind, given the separation distance from plot 4 of Appeal A and plot 3 of Appeal B to the amenity area of Laurel Bank, I am also satisfied that overlooking to this area will not occur to an unacceptable degree.

³ Planning (Listed Building and Conservation Areas) Act 1990, s66(1)

24. Additionally, given the distance when looking towards plot 3 from the first floor window of plot 1 and 1 Elm Drive, any overlooking would be minimal and acceptable given the village centre location of the site. Consequently, the suggested amendment to plots 1 & 2 as suggested by the appellant are not considered necessary⁴.
25. Thus, the development would not result in a harmful effect on the living conditions of adjoining and future occupiers and would not be in conflict with Policy DM9 of the Core Strategy and paragraph 135 of the Framework which seek, amongst other things, to ensure that developments respect the amenities of occupiers of neighbouring property and uses. In reaching this decision I have also had regard to the RDG.

Outdoor Amenity Space

26. The RDG sets out the minimum outdoor amenity space that is required for new developments. In this instance, the requirement for each unit would be a minimum of 55 sq. m. The drawing provided by the appellant at Appendix B to Appeal A, demonstrates that plots 2 and 5 would fail to provide 55 sq. m outdoor amenity space, each by some 3 sq. m. However, the RDG states at paragraph 8.19 that the Council may accept lower standards where this is robustly justified. In this instance, one has to consider the spatial constraints of the site whilst maximising the development potential of land that is previously developed and within a highly sustainable location. These are matters that I would give great weight and would far outweigh the very minor conflict with the RDG in relation to outdoor amenity space.
27. The Council's decision notice for Appeal B also refers to the garden sizes for plots 2, 4 and 5 falling below the minimum recommended space standards as set out within the RDG. However, the development for Appeal B only proposes four dwellings so plot 5 does not exist. Moreover, the garden areas for plots 2 and 4 are recorded as being over the 55 sq. m recommended by the RDG.
28. Thus, given the village location of the site, the development would not result in substandard garden areas for the proposed occupiers. It would not be in conflict with Policy DM9 of the Core Strategy which seeks, amongst other things, to ensure that sufficient private and public space is provided. In reaching this decision I have also had regard to the RDG.

Appeal A and Appeal B ~ Flood Risk

29. From the evidence that has been provided, the northern part of the site, and partly where the semi-detached dwellings for Appeal A and Appeal B would be sited, lies within Flood Zone 3b. Part of the remainder of the site lies within Flood Zone 2, with the majority of the southern element of the site within Flood Zone 1. The proposal seeks the erection of dwellings which Annex 3: Flood risk vulnerability classification of the Framework classifies as more vulnerable development.
30. The Surrey Heath Strategic Flood Risk Assessment defines Flood Zone 3b as having a high probability of flooding. The Framework states at paragraph 165 that inappropriate development within areas at risk of flooding should be avoided by directing development away from areas at highest risk.

⁴ Appendix E to appellant's statement of case. Drawing 2965.1-A-3000-PL Rev C

31. Table 1 of the National Planning Practice Guidance (PPG) also defines flood zone 3b as the functional floodplain and Table 2 of the PPG states that more vulnerable development should not be permitted within Zone 3b. It is therefore clear that as a matter of principle the development is inappropriate in Flood Zone 3b.
32. Flooding matters at the site have been the subject of extensive correspondence and negotiations between the appellant and the EA. Whilst I have a great deal of sympathy with the appellant over the length of time it has taken to negotiate with the EA, and the apparent 'moving of the goal posts' when additional information was provided, the fact remains that it is the EA's position that part of the site lies within Flood Zone 3b. Moreover, notwithstanding the debate that took place during the hearing, the EA stated that, taking into account all of the information that has been provided to date, part of the site still remains within Flood Zone 3b.
33. Moreover, the EA's final communication regarding flooding at the site was received on 15th December 2023 and commented that the hydraulic modelling review submitted by the appellant still showed a high degree of uncertainty for higher order events. The EA confirm that it is not in a position to agree that the site is outside the functional floodplain and its objection stands. This also remained a matter of dispute within the Addendum which stated that no agreement had been reached on the site being outside of Flood Zone 3b.
34. Therefore, whilst I acknowledge that the proposed development may provide certain sustainability benefits and would contribute to the provision of housing, these matters would provide only limited benefits when weighed against the fundamental matter of its siting. The proposed development would be unacceptable because it seeks to provide a new, more vulnerable use within Flood Zone 3b. Thus, it would be in conflict with Policy DM10 of the Core Strategy and paragraph 165 of the Framework which seek, amongst other things, to reduce the risk of flooding on property and people.

Other Matters

35. The site lies within a 5km buffer zone of the Thames Basin Heaths Special Protection Area (SPA). In such circumstances, the Council requires the collection of payments from relevant developments towards the mitigation measures set out in the Strategic Access Management and Monitoring (SAMM) of the SPA.
36. As the appeal is being dismissed on other substantive issues, it is not necessary to look at this matter in detail. Moreover, had I been minded to allow the appeal, I would have explored the necessity for undertaking an Appropriate Assessment and whether the payment provided through the UU towards SAMM would off-set the impact of the development on the site identified above.

Conclusion

37. I have found that for both Appeal A and Appeal B, the proposed developments would not have an unacceptable impact on the character and appearance of the area, the living conditions of adjoining occupiers or the living conditions of future occupiers. I have also found that the proposals would provide adequate private outdoor amenity space and, for Appeal A, would have a neutral effect on the setting of the CCA.

38. However, as the development would result in a more vulnerable use within Flood Zone 3b, it would be in conflict with the local plan and Framework. Consequently, for this reason alone, Appeal A and Appeal B is dismissed.

39. Therefore, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the development plan. Therefore, the appeals are dismissed.

Graham Wyatt

INSPECTOR

APPEARANCES

For the Appellant

Chris Frost
Steve Jones
Tom James
Steve Lecocq
Andrew Fryer
Chris Cameron-Hann

For the Council

Ian Williams
Melissa Turney
Neil Landricombe

Documents

Statement of Common Ground Co-Joined Appeals Flood Risk Addendum 18
December 2023

End.