



Appeal Decisions

Site visit made on 1 May 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2024

Appeal A Ref: APP/D3640/W/23/3327946

Lake House, 10C Butler Road, Bagshot, Surrey GU19 5QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr R T and Mr J R Grocock against the decision of Surrey Heath Borough Council.
 - The application Ref is 22/0262/FFU.
 - The development proposed is to demolish existing garages and erect pair of semi detached houses with parking, landscaping etc.
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Appeal B Ref: APP/D3640/W/23/3327947

Lake House, 10C Butler Road, Bagshot, Surrey, GU19 5QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr R T and Mr J R Grocock against the decision of Surrey Heath Borough Council.
 - The application Ref is 23/0428/FFU.
 - The development proposed is to demolish existing garages and erect pair of semi detached houses with parking, landscaping etc.
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Decision

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

Preliminary Matter

2. As set out above there are two appeals on this site. The schemes have the same description of development but differ, principally in the external appearance and siting of the proposed dwellings. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

3. The main issues in these cases are the effect of the proposed development on a) the character and appearance of the area; b) the living conditions of existing neighbours and future occupiers of the proposed development; and c) the Thames Basin Heaths Special Protection Area.

Reasons

Character and Appearance

4. The appeal sites comprise an existing garage block and grassed area of land to the rear of Lake House, a large period property which has been converted into flats. There is suburban housing to the north, north-west and north-east of the

site. To the southwest of the site is an area of open grassland and trees, with the M3 motorway immediately to the south of the site.

5. Both schemes would necessitate the removal of the existing garage block and have the new houses positioned immediately to the south west of Lake House. The existing access would be utilised with parking for existing residents and future occupiers in a similar position to where it is currently located. Appeal scheme A proposed flat roofed dwellings, described as being contemporary. The scheme for Appeal B incorporated a hipped roof and an external appearance and materials intended to better reflect the architecture and appearance of Lake House.
6. Lake House appears to be part of a larger complex of buildings within separate ownerships and collectively differs from the surrounding housing developments, which contain newer and smaller properties. Access is gained from a driveway off Butler Road and because this complex of buildings is set slightly apart from the surrounding suburban housing, it is seen and experienced largely within its own more open and spacious context.
7. In both cases, the presence and close proximity of the proposed semi-detached dwellings to the existing building would create an awkward juxtaposition of built forms. The resulting developments would each appear at odds with the prevailing open and spacious context. Whilst the more traditional approach of the building design in Appeal B might be less visually jarring than the flat roof, contemporary design of Appeal A, this does not overcome the unsympathetic relationship that would arise from the presence of semi-detached houses in this position.
8. I note that the schemes are said to be hidden from wider public views, be of a modest scale, provide an active frontage and have no impact upon the wider street scene. I have also been directed to other nearby developments which have a more contemporary approach. However, none of these factors overcome or provide mitigation for the harm I have identified.
9. Whilst variety and difference does not necessarily lead to harm, in this particular instance both schemes would harm the character and appearance of the area. The proposals would therefore be contrary to Policy DM9 of the Core Strategy and Development Management Policies DPD 2012 (CSDMP) which, amongst other things, requires developments to respect local character.
10. The proposals would also be inconsistent with Principle 6.6 of the Residential Design Guide Supplementary Planning Document 2017 (SPD) which require schemes to respond to the size, shape or rhythm of surrounding plot layouts. There would also be conflict with Principle 7.8 which requires buildings to positively contribute to the character and quality of an area.

Living Conditions

11. Both schemes are said by the Council to cause harmful, mutual overlooking. In particular, the existing communal space serving Lake House would be overlooked from the new houses and the rear gardens of the new houses would be overlooked from Lake House. In addition, Appeal B is said to cause harm to occupants of Lake House through being overbearing, particularly from the ground floor windows and patio areas of Lake House.

12. From the evidence before me and my own observations of the site, it seems that there would inevitably be mutual overlooking of the respective outside amenity spaces. Notwithstanding the proposed fencing, the proximity and positioning of the new houses in both schemes, would inevitably result in the communal space serving Lake House being directly overlooked from the rear windows of the new houses.
13. I note that the communal space is already subject to some overlooking but this is mainly restricted to Lake House occupants. I also acknowledge that the new garden areas would provide some separation between the new house windows and the communal space. Nevertheless, the extent of overlooking in each scheme would undoubtedly reduce the privacy and quality of the communal area. That some occupants of Lake House have their own patio areas does not diminish the harm that would arise.
14. Lake House would be at ninety degrees and in close proximity to the new gardens for the new houses. It is also set at a higher ground level than the new gardens. Windows on the rear elevation of Lake House would have extensive views into these proposed garden areas. Whilst the proposed fencing may assist in reducing the extent of the overlooking, it would not reduce the overlooking (real or perceived) to a level that might be considered usual or acceptable for a location such as this one. The two schemes have slightly different layouts relative to Lake House but this does not alter my findings.
15. I note that the proposed houses are said to have gardens of an acceptable size and shape. However, these are not determining factors, rather the key issue is the quality of the space and the overall living conditions that would be provided for future occupants.
16. The dwellings in Appeal B would have a greater scale and bulk due to their hipped roof design. As a result of this, together with their siting, they would have an overbearing presence when viewed from the ground floor of Lake House. This would negatively impact upon the living conditions of those occupants of Lake House nearest to the houses.
17. Overall, I find the proposals would be harmful to the living conditions of both the existing neighbours as well as future occupiers of the proposed development. The developments would therefore be contrary to Policy DM9 of the CSDMP which, insofar as this main issue is concerned, requires the amenities of occupiers of neighbouring properties to be respected.
18. For similar reasons both schemes would be contrary to Principle 8.1 of the SPD and Appeal B would additionally run counter to Principle 8.2, which seeks to avoid developments being overbearing or visually intrusive.

Thames Basin Heath SPA

19. The appeal site lies within 400m of the Colony Bog & Bagshot Heath Site of Special Scientific Interest, which forms part of the Thames Basin Heaths SPA. It provides habitats for three rare bird species: Dartford Warbler, Nightjar and Woodlark. Accordingly, the area is protected and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017.
20. Any housing within 400m of the SPA would normally be resisted. This is generally because within that proximity, risk factors such as the predation by domestic cats or contamination from litter cannot be mitigated. Beyond 400m

and within 5km of a protected site, impacts arising from new housing development can more readily be mitigated.

21. I have some sympathy with the appellant's position that in both cases, due to the M3 motorway, access to the SPA would in reality entail using one of two routes, both of which are approximately 900m in length. I also note that in this instance Natural England, subject to the imposition of appropriate mitigation measures, does not object in principle to either scheme.
22. However, even if I were to conclude that the circumstances meant the schemes could be supported in principle, they would both be within 5km of the SPA and likely significant effects upon the protected areas would arise, either alone or in combination with other plans or projects. In acknowledgement of this, the appellant has provided unilateral undertakings that seek to provide the mitigation necessary to avoid the schemes affecting the integrity of the SPA. I return to this matter below.

Other Matters

23. The developments are said to be highly energy and water efficient. However, no details are provided, and it is not clear that the dwellings would be anything other than in accordance with the current Building Regulations. It is also suggested that a biodiversity net gain will be achieved although few details are provided, with the matter seemingly left to be addressed through a condition. Any positive weight I could attribute to these matters would therefore be limited.
24. The schemes would accord with the Nationally Described Space Standards; do not raise any objections from the Highway Authority; raise no issues of harm from flooding/drainage; or would cause harm to the nearby protected trees. However, these factors would represent a lack of harm and so would accordingly be neutral in my decision.

Planning Balance

25. It was suggested that the Council had consistently failed to deliver a 5-year land supply and was currently unable to demonstrate the necessary provision. The Council rejected this contention and indicated that it was in the process of producing an updated position statement.
26. I subsequently sought an update on the position statement and was provided with a copy of the Council's document 'Five-Year Housing Land Supply 2023 – 2028' (March 2024). It has a base date of April 2023. This confirms that the Housing Delivery Test results published in December 2023 showed the Surrey Heath measurement to be 129%. As a result, it is said that the Council can demonstrate a 7.24 year supply of housing land.
27. The appellant has had an opportunity to comment upon this position statement and has raised a number of queries on the Council's approach and conclusions. Furthermore, the historical undersupply was reiterated, and appeal decisions re-referenced which indicate a recent supply of 4.8 years. The appellant also considered that there should be a buffer of 20% for these appeals. Therefore, the appellant maintains that there is an undersupply of deliverable housing land, although its exact scale was unclear.

28. In tandem with this, the appellant also notes the age of the CSDMP and that it was adopted before the first iteration of the Framework and should be considered out of date. However, Paragraph 225 of the Framework is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with this Framework.
29. The need to protect an area's character and the living conditions of existing and future residents, as set out in Policy DM9 of the CSDMP, are perennial and in direct compliance with Framework Paragraph 135. I therefore do not consider the objectives of Policy DM9 to be inconsistent with, or have necessarily been superseded by, the Framework. Accordingly, the policy should be afforded due weight.
30. However, even if I were to accept the appellant's propositions regarding an absence of a 5-year supply of deliverable housing land and that the Local Plan should be deemed out of date, this does not automatically mean that the appeals should be allowed. The schemes would clearly accord with the Government's objective outlined within the Framework to boost the supply of homes from a variety of sites. Therefore, whilst the provision of new dwellings attracts positive weight, the extent of the benefit would be modest given the scale of the development.
31. I acknowledge that the houses would be in a location with reasonable access to facilities and services and would be a type of dwelling to which there is said to be demand. There would be direct and indirect social and economic benefits of the development, both short-term during construction and longer-term upon occupation. When taken overall, I consider the benefits of two additional dwellings to attract moderate weight.
32. Conversely, the support in the Framework for new housing is not at the expense of development being appropriately located so that harm does not arise to the character of an area or the living conditions of existing or future residents. The harms I have identified in these respects would be clear and long lasting for both schemes. The need to avoid such adverse effects is constant and in direct compliance with the Framework. As such, they are worthy of significant weight.
33. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the new dwellings would significantly and demonstrably outweigh the benefits. The schemes would not therefore benefit from the presumption in favour of sustainable development. The material considerations in these cases would not therefore indicate that the proposals should be determined other than in accordance with the development plan.
34. Had I been minded to grant planning permission and had I concluded that the location of the houses relative to the SPA were acceptable in principle, it would have been necessary for me to undertake an Appropriate Assessment for each proposal. This would have been essential in order for me to be able to conclude that the integrity of the SPA was protected from adverse effects. However, as I am dismissing the appeals for other reasons there is no need for me to undertake the Appropriate Assessments or consider this matter further.

Conclusion

35. Whilst there would be some beneficial aspects arising from the schemes, considered overall the developments would cause harms which would conflict with the development plan when taken as a whole. There are no other material considerations, including the Framework, which lead me to determine these appeals other than in accordance with the development plan. Therefore, I conclude that neither appeal should succeed.

Stewart Glassar

INSPECTOR