



Appeal Decision

Site visit made on 16 August 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/L3625/W/24/3337752

32-40 Buckles Way, Banstead, SM7 1HD

- 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 Duxhurst Developments against the decision Reigate and Banstead Borough Council.
 - The application Ref is 23/01157/F.
 - The development proposed is Demolition of 40 Buckles Way and erection of 5 detached dwellings on land to the rear of 32-40 Buckles Way.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework published in December 2023, and any reference to paragraph numbers are to this version.
4. The appeal submission includes a revised drawing¹ which shows the access road into the site straightened, rather than weaving. The Council indicate that the Highways Authority has not been consulted on the revised drawing. I have considered whether it would be appropriate to accept the drawing, having regard to the guidance in the 'Procedural Guide: Planning Appeals – England (2024)', and the tests given in the 'Holborn Studios' judgement². The drawing would involve the introduction of an amended vehicular access onto Buckles Way, and the straightened access road would result in a slight change to the layout of the development. This would be a fundamental change to the application that results in a different scheme than the one which was before the Council. As such, it would not be appropriate for the drawing to be accepted, as it could unacceptably prejudice those who should have been consulted, in particular the Highways Authority. For this reason, I have

¹ Appendix 13 of appellant's Statement of Case

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

determined the appeal using the original drawings that were considered by the Council and upon which the views of interested parties have been sought.

5. As part of their final comments, the appellant also sought to submit an Ecological Response Statement and, subsequently, an Interim Preliminary Ecological Appraisal (IPEA) and Preliminary Roost Assessment (PRA) as additional late evidence. The undertaking of a Preliminary Roost Assessment survey had been recommended in a Preliminary Ecological Assessment that had been issued to the appellant in May 2023. It is unclear why the surveys were not undertaken before a planning application was submitted. The subsequent appeal was therefore submitted without this crucial evidence.
6. As the appellant's Ecological Response Statement had been submitted at the final comments stage and the IPEA and PRA subsequent to the final comments, interested parties have not had an opportunity to provide additional representations related to this issue. I have therefore not accepted the documents as it would be procedurally unfair to do so.
7. One of the Council's reasons for refusal related to the provision of insufficient on-site car parking. The Council has confirmed the number of car parking spaces provided on site would be policy compliant. They therefore advise that they no longer wish to defend the reason for refusal in respect of car parking, and I do not address this matter in the reasoning below.

Main Issues

8. The main issues are:

- the effect of the proposal on protected species, with particular regard to bats and reptiles;
- the effect of the proposal on the character and appearance of the area, including the landscape amenity of the area;
- the effect of the proposal on the living conditions of occupiers of neighbouring properties, with particular regard to outlook, light and privacy for the occupiers of 30 and 42 Buckles Way and 8 and 9 Larchwood Close;
- whether the proposal would provide an appropriate mix of housing, having regard to the development plan; and
- whether the proposal would result in the harm to or loss of remains of archaeological significance.

Reasons

Protected species

9. 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.
10. The appellant's Preliminary Ecological Assessment (PEA) identifies 40 Buckles Way as having high suitability for roosting bats during the active season and

low suitability during the hibernation season. As a consequence, the PEA recommends undertaking further bat emergence surveys. Bat emergence surveys are not included within the submitted evidence. In the absence of such assessments it is not possible to confidently ascertain that there are no bats roosting within the site.

11. The appellant has indicated that a pre-commencement condition could be imposed requiring submission of a bat roosting suitability survey and bat survey. Although the Circular states that surveys should only be required where there is a reasonable likelihood of a species being present, it advises that surveys should be carried out before planning permission is granted. The required survey cannot lawfully be secured by condition and this information is required prior to making a decision, in order that I can be satisfied that the development would not have a harmful effect on protected species.
12. The PEA identifies the brash piles within the appeal site as having suitability for foraging and sheltering reptiles, and the site has a low potential for reptiles. Consequently, the PEA recommends the implementation of impact avoidance measures, which would include utilising a precautionary approach to dismantle the brash piles on-site.
13. However, limited further detail is provided. For instance, it is unclear where reptiles can go, in the event that they are found during construction. Without information about the population size and diversity survey date, it is unclear what mitigation would be required. Therefore, the limited mitigation details within the PEA are not evidence based and cannot be demonstrated to be effective or appropriate.
14. 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.
15. In conclusion, in the absence of sufficient evidence to the contrary, the proposal would potentially cause unacceptable harm to protected species. Therefore, the proposal would conflict with policy NHE2 of the Reigate and Banstead Development Management Plan (2019) (DMP) which requires that development protects and enhances biodiversity. The proposal would also not accord with paragraphs 180 and 186 of the Framework, which require that planning decisions contribute to and enhance the natural and local environment.

Character and appearance

16. The appeal site comprises the whole of the grounds of 40 Buckles Way (No 40), a two storey detached house, and areas to the rear of gardens of 38, 36, 34 and 32 Buckles Way. The rear gardens to these properties are very generous in length, positively contributing to the spacious and verdant character of the area. The garden boundaries are lined with fences, hedges, shrubs and trees, and mature vegetation is present throughout the gardens, which slope gently down to the rear of the plots.
17. Three previous applications for residential development on parts of the appeal site have been refused and dismissed at appeal. The most recent of these to the proposal before me was for 5 dwellings (APP/L3625/W/14/3000049). I note

that the previous appeal proposals did not cover the exact same areas as the current appeal site and differed in terms of layout to the current proposal.

18. The appellant's Arboricultural Method Statement identifies 23 that the majority of trees and hedgerows are recommended for removal or pruning. The access road into the site would be lined by four on-street car parking spaces. The proximity of the proposed car parking lining the site access road to the boundary of the appeal site limits the potential for landscaping along the site's boundary. The lack of planting in this area would emphasise the additional parking as an uncharacteristic feature which would contribute to a sense of overdevelopment of this part of the site. In this regard the proposal would not comply with case study 3 of the Local Character and Distinctiveness Design Guide Supplementary Planning Document (2021) which states that infill schemes should retain space between existing buildings and new access roads to maintain the street scene and provide space for new landscaping.
19. The rear of the site is marked by mature trees which would be removed. The spread of development would limit the space for meaningful replacement tree planting. As a result, the proposal would result in a significant reduction in canopy cover and would fail to assimilate with the verdant character of its surroundings.
20. I am not persuaded that the proposed planting, and additional planting which could be secured by planning condition, given the spread and layout of development and length of time the planting would take to become established, would provide adequate mitigation against the harm that I have identified.
21. The proposed buildings would be located to the rear of existing dwellings and set well back from the road frontage. Whilst visible from neighbouring properties, given the change in site levels and the significant set back from the public highway, the proposal would not be prominent in views from Buckles Way.
22. The width of the proposals' plots would be similar to those fronting Buckles Way. Detached dwellings are part of the character of Buckles Way and therefore the proposal would be acceptable in this regard. The traditional design approach would be in character with other dwellings on Buckles Way. Whilst the dwellings would have deep footprints, the houses on Buckles Way vary quite considerably in terms of external appearance, and I find that the height and scale of the dwellings would be commensurate with neighbouring dwellings some of which are particularly large. I also noted crown roofs at a number of properties on Buckles Way, and therefore the dwellings' proposed roof forms would not appear at odds to the character of the area.
23. The plot sizes for the proposed dwellings would be smaller than those prevailing in the immediate area. However, they would be proportionate to the size of the dwellings and so the relationship between the dwellings and their plots would be satisfactory. Consequently, the development would broadly reflect the pattern of development in the area and would not result in an unacceptable increase in density.
24. My attention has been drawn to eleven different backland developments within the Borough. These types of development are fact sensitive and site specific, turning on the individual circumstances of each case. In this instance, whilst I found the principle, and design of the dwellings acceptable, the limited scope

for landscaping as a result of the site layout would cause harm to the character of the area. Therefore, these other schemes have not eased my concern that harm would arise in this case.

25. It has been put to me that the appeal proposals would also make an efficient use of the site. However, the development plan is explicit that backland development will only be permitted if it responds positively to the landscape character of the area. I have found that this would not be the case.
26. For the above reasons, I conclude that the proposed development would harm the character and appearance of the area with particular regard to the landscape amenity of the area. I therefore find that it would conflict with Policies DES1 and DES2 of the DMP, Policy CS4 of the Reigate and Banstead Core Strategy (2014) and the Local Character and Distinctiveness Design Guide Supplementary Planning Document (2021). Amongst other aspects, these policies seek to secure development of a high standard of design which positively contributes to the existing character by incorporating appropriate landscaping to mitigate the impact, and complement the design, of new development.
27. Equally, the proposal would not comply with paragraph 135 of the National Planning Policy Framework (2023) which requires that development is visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Neighbouring occupiers

28. During my site visit I viewed the proposal from 30 Buckles Way's (No 30) rear garden, which is generous in length. An outbuilding and terrace area which is used for activities including homeworking is located to the rear of the garden, and there is a swimming pool and terrace area within the mid-point of the garden. Given their distance from neighbouring houses, these areas of the garden provide high levels of privacy to the neighbouring occupiers.
29. Plot 5 would adjoin No 30's side boundary adjacent to its outbuilding. At two storeys high, the house would extend significantly above the existing high garden boundary. As the rear of the house would be positioned close to the shared boundary with No. 30, its width and height have the potential to impact the outlook for neighbouring occupiers from the garden.
30. Views from the rear of the garden and outbuilding would look directly to the side elevation of Plot 5 with minimal separation distance. Plot 5's side elevation would be particularly deep due to its projecting front gable element. Overall, the combined depth, height and proximity of the house to the neighbouring garden means that the proposed development would be a dominant and oppressive feature for the neighbouring occupiers of No 30.
31. Due to its position, height and proximity to the west, the presence of plot 5's built form would overshadow No 30's garden during the late afternoon and evening. Overall, in the absence of substantive evidence to demonstrate otherwise, I find that Plot 5, due to its height and proximity, would reduce the amount of daylight and sunlight reaching the rear of No 30's garden and its outbuilding.
32. The first floor window on Plot 5's side elevation facing No. 30 would be obscure glazed which would prevent overlooking towards No 30. At first floor level Plot

5's front and rear windows would provide angled, but direct views into the rear of No 30's garden. Plot 1 would have a very similar relationship with 42 Buckles Way, whose rear garden I noted was also well used by the neighbouring occupiers. The upper floor front and rear windows of Plot 1 would have unrestricted views into the garden of 42 Buckles Way. Given the proximity and orientation of Plot 1 and Plot 5's windows, which would look directly into the gardens of neighbouring properties, this would result in a harmful loss of privacy for the occupiers of both neighbouring properties.

33. The land to the rear of the site drops sharply and 8 and 9 Larchwood Close (Nos 8 and 9), to the rear of the appeal site, are located at a significantly lower level. Plots 2-5 would adjoin the rear boundaries of these neighbouring properties. However, the building line of new houses would be positioned away from the shared boundary with the intervening space forming rear gardens which would be free from built form.
34. The separation distance combined within the spacing between and around the proposed detached houses would reduce the impact of the proposal. Whilst it would have a greater visual impact, when viewed from rear windows and gardens on Larchwood Close, than the existing situation, the appeal buildings would not be overly oppressive to the extent that they would significantly harm the level of outlook for occupiers of surrounding properties. In coming to this view, I have taken into account the proposed heights of the houses and the levels differences between the appeal site and Larchwood Close properties.
35. However, as the rear gardens would not be especially deep, the first floor rear windows within Plot 2-5 would allow views into the gardens of Nos 8 and 9 from a relatively close position. Both gardens are currently secluded and offer high levels of privacy. The levels difference would exacerbate the impact of the overlooking. Given the proximity and orientation of these windows, which would look directly into the gardens of Nos 8 and 9 this would result in a harmful loss of privacy for the occupiers of both neighbouring properties.
36. The proposal would have a harmful effect on the living conditions of the occupiers of 30 and 42 Buckles Way and 8 and 9 Larchwood Close, with particular reference to outlook, overlooking and light. I therefore find that it would conflict with Policies DES1 and DES2 of the DMP. Amongst other aspects, the policies seek to protect the living conditions of occupiers of neighbouring properties.

Mix of housing

37. Policy DES4 of the DMP requires all new residential developments to provide homes of an appropriate type, size and tenure to meet the needs of the local community. The policy specifies that at least 20% of market housing should be smaller one or two bed homes on sites outside of town and local centres, such as the appeal site.
38. Whilst I accept that the character of the area is generally defined by large, detached dwellings, the Council indicate that smaller homes could be accommodated without adverse impact on the character of the area. For instance, through the provision of smaller homes designed to look like a larger detached house. I have no substantive evidence before me to demonstrate that there could not be a suitable design solution to enable the provision of a small number of smaller homes within the proposal.

39. Furthermore, the supporting text to Policy DES4 identifies that the size requirements set out in the policy will help to meet the need for smaller family housing, including as part of infill and residential garden developments where larger housing normally prevails.
40. For the reasons given above, the proposal would fail to provide a choice of housing to reflect the local market housing needs. It would therefore fail to provide an appropriate mix of housing, contrary to Policy DES4 of the DMP, as set out above, as well as paragraph 60 of the Framework, which requires an appropriate mix of housing types for the local community.

Archaeology

41. The site is not close to a County Site of Archaeological Importance, Area of High Archaeological Potential, Scheduled Monument, Registered Park and Garden, or Listed Building. Notwithstanding these matters, the planning application form confirms that the site is 0.4 hectares, and Policy NHE9 is clear that an archaeological assessment is required to inform the determination of planning applications in such instances.
42. Surrey County Council's archaeological advice indicates that a desk based archaeological assessment should be submitted prior to the determination of the planning application. Policy NHE 9 states that development will be required to protect, preserve, and wherever possible enhance, the Borough's heritage assets and historic environment. However, in the absence of substantive evidence to demonstrate otherwise, it seems to me, that a pre-commencement condition requiring the submission of desk-based or on-site investigations, would achieve the same aims as Policy NHE9.
43. Subject to the imposition of a pre-commencement condition, the appeal scheme would comply with Policy NHE9 of the DMP, the aims of which are outlined above.

Other Matters

44. The appellant has identified development plan policies and Framework paragraphs relating to matters including making the best use of land, which it is contended that the proposed development would accord with.
45. The proposal would provide high quality family sized homes which meet internal and external space standards. However, the absence of harm or development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.
46. A number of concerns from third parties have been raised in relation to the development. These include its effect on highway safety, crime, lack of affordable housing and conflicts with covenants. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.
47. The provision of four (net) family sized houses would assist in boosting the supply of homes as supported in paragraph 60 of the Framework, albeit the lack of smaller units tempers the weight afforded to this. As a small site, it could be developed quickly and support for such sites, particularly windfall sites within existing settlements, is provided by paragraph 70. The fact that the site is within an urban area with accessible shops, services and public transport

facilities is also a benefit supported by paragraph 110. The Framework also encourages the optimal use of underutilised land. Combined, I give these factors significant weight.

48. However, the Framework sets out, in paragraph 131, that the creation of high quality and beautiful places is fundamental to what the planning process should achieve. The failure of the proposals to represent a high quality form of development carries substantial negative weight. In addition, paragraph 135 identifies that development should provide a high standard of amenity for existing users. This weighs heavily against the proposals. Furthermore, in view of my conclusions on the effect on a protected species, the appeal proposal conflicts with both the Framework and the development plan. Having regard to the statutory provisions protecting these species, I attach considerable weight to that potential for harm.

Planning Balance and Conclusion

49. The delivery of housing and the economic, social and environmental benefits are all afforded weight, but this is not of sufficient magnitude to outweigh my overall conclusion on the main issues.
50. The proposal would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations which indicate that the decision should be determined other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR