



Appeal Decision

Site visit made on 16 September 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/C3620/W/24/3339161

67 Links Road, Ashted, Surrey KT21 2HL

- 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 John Smith against the decision of Mole Valley District Council.
 - The application Ref is MO/2023/0801/PLA.
 - The development proposed is erection of 3 No. detached houses following demolition of the existing house.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal the Council adopted the Mole Valley Local Plan, October 2024 (LP). The Council provided copies of LP policies that supersede the equivalent previous local plan and core strategy policies cited in the reasons for refusal in its decision notice. The Council considers that these LP policies do not change the essence of its decision. I have also taken account of the appellant's comments in response and determined the appeal against the LP and the Ashted Neighbourhood Plan, December 2016 (ANP).

Main Issues

3. The main issues are:
 - the impact of the proposal on a European Protected Species, namely roosting bats;
 - its effect on the character and appearance of the area, including the site;
 - the effect of the access road and Plot 2 dwelling on the living conditions of the occupants of No.65 Links Road, having regard to external amenity space and outlook; and
 - whether the Plot 2 dwelling would provide satisfactory living conditions for occupants, having regard to outlook, external amenity space and (also for occupants of the Plot 3 dwelling) bin storage and collection.

Reasons

European Protected Species - roosting bats

4. The house on the appeal site would be demolished. Inspection of it in 2021 found some degraded structure or fabric with areas of notable damage¹. These features gave potential ingress to internal voids or cavities and moderate potential for roosting bats. Bat surveys in 2021 did not discover roosting bats or any bats associated with these parts of the house. Limitations of those surveys included possible implications of delay (with the development) and the need for an accurate baseline given that bats are mobile animals and can move roost sites, so potentially after the 2021 surveys.
5. At an inspection in 2023 these parts of the house had become open and more exposed to the elements². It is not clear to me why this has reduced bat roosting potential nor, on the face of it, why further deterioration in the structure or fabric of the house has not increased potential ingress by roosting bats. In any event, use of the house as a bat roost was not screened out in 2023 – it simply changed from moderate to low potential. As such, there remained a reasonable likelihood of bats being present and being affected by demolition of the house. Indeed, the appellant agrees it is necessary to repeat some of the original 2021 bat surveys to establish up-to-date presence or absence of roosting bats and inform details of any required mitigation measures. The appellant considers a further emergence bat survey and such details can be secured by a condition prior to works commencing on the site.
6. However, there has been a notable change to the condition of the house and to bat potential since the original bat surveys. They are also already more than 3 years old. If planning permission was granted, commencement of development (including demolition of the house) could be up to 3 years hence. Notwithstanding that the site was inspected again prior to the Council's determination of the application, these surveys are therefore nonetheless out of date and can no longer be relied on in determining this appeal³. Another bat survey could not be conditioned because it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making my decision⁴. This includes the suitability and details of any necessary mitigation measures which must be informed by appropriate survey.
7. I cannot, therefore, be certain that there would be no harm to roosting bats and exceptional circumstances for post-decision survey work before the commencement of development are not evident in this case⁵. In final advice to the Council, Surry Wildlife Trust (SWT) maintained concerns about the age of the 2021 bat surveys and noted the absence of a further bat survey prior to determination of the appeal application⁶. SWT also assumed that the appellant's suggested condition for a post-decision bat survey could be applied, though it deferred to the Council about the suitability of doing so. This position

¹ Preliminary Ecological Appraisal and Bat Survey Report – November 2021

² Site Visit Update – April 2023

³ Advice note on the Lifespan of Ecological Reports and Surveys - April 2019, Chartered Institute of Ecology and Environmental Management

⁴ Circular 06/2005 Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system; British Standard for Biodiversity: Code of Practice for Planning and Development BS 42020

⁵ BS 42020

⁶ Letter - 11 October 2023

is not, therefore, the same as that SWT 'had no objections to the information submitted or a condition', as the appellant suggests. The Council, as the local planning authority, came to its own judgement on the SWT advice and rejected the appellant's suggestion of a condition for essentially the same reasons as I do.

8. Given all of the above, I am not satisfied the appellant has demonstrated that there would be no unacceptable adverse impact on a European Protected Species, namely roosting bats. In these circumstances the proposal does not comply with LP Policy EN9. It includes that development likely to affect a protected species should include an assessment of its impact in line with BS42020 and demonstrate measures to conserve and enhance as an integral part of the development.

Character and appearance of the area, including the site

9. The existing house and wide, deep L-shaped landscaped garden plot is part of a long straight row of dwellings of varied design, type and spacing fronting the south side of Links Road, in a residential area of Ashtead. Most land behind these dwellings, up to a railway line, has been developed with infill housing accessed by cul-de-sacs in-between the Links Road dwellings. Some of this housing faces the railway line, set back from it, and some has back gardens that end next to the railway line. This parallel line of dwellings in a backland position is a locally distinctive feature in Links Road⁷. Although the scope for significant further backland development on the south side of Links Road is limited, the appeal site is one such remaining opportunity. It would be redeveloped with three new dwellings with common design features and external materials, including as is evident in some nearby dwellings.
10. Plot 1 would essentially be a two-storey house. Although closer to the bungalow at No.69 on one side it would not reduce this gap excessively. It would also be narrower than the existing house to give room for an access road between it and the bungalow on the other side at No.65 Links Road, so be further away from that dwelling. This would maintain the existing arrangement of a house next to both bungalows and the building line of detached dwellings with intervening gaps, some forming access roads along the south side of Links Road. In public views this part of the proposal would be in-keeping with the Links Road streetscene.
11. The layout of the Plot 2 dwelling (chalet bungalow) and Plot 3 dwelling (one and a half storey house) would result in, respectively, a back garden ending next to the railway line and a dwelling facing the railway line. This would be compatible with a similar layout at the backland dwellings to the southwest and northeast of the site. Those dwellings are mainly two-storey houses, so the comparatively modest scale and form of the Plot 2 and Plot 3 dwellings would have a more recessive presence.
12. All three proposed back gardens would be significantly shorter than the back garden on the site. However, each would be broadly comparable or compatible with the size and length of opposing or intervening back gardens at most of the dwellings on the south side of Links Road, including (albeit different proportions to the existing back garden) an L-shape at Plot 2.

⁷ Built Up Areas Character Appraisal – Ashtead supplementary planning document, February 2010

13. While the Plot 2 dwelling in particular would be close to some site boundaries, this is not unusual in the backland housing in this part of Links Road. In layout and form the dwellings would not overdevelop each plot, nor dominate the site or nearby dwellings. This would reflect the prevailing arrangement of regular plot sizes and clear linear layout of adjoining and consecutive dwellings. The proposal would therefore be assimilated into its surrounding context and maintain important features of residential development in Links Road.
14. Consequently, I find that the proposal would not adversely affect the character or appearance of the area, including the site. It therefore complies with LP Policy EN4 and ANP Policies AS-En3 and AS-H5. These include that development should complement the character of the area, respond to the prevailing pattern of development, including gardens, and make a positive visual contribution to local distinctiveness and the streetscene in scale, spacing, building line and materials.

Living conditions – occupants of No.65 Links Road

15. In layout and proximity, the initial part of the access road would be near the front and narrow side gardens of No.65. But this would be in much the same way as an intervening driveway between two dwellings. Domestic use and activity in these gardens of No.65 is innately more open to public scrutiny and subject to passing vehicle noise or other disturbance. The longer portion of access road behind would, though, run parallel with all of one side of the back garden of No.65.
16. However, all domestic use and activity in this wide back garden would not have to be next to the access road and it borders another back garden along the other side. A condition could ensure a suitable fence or wall was provided on the site, along the access road and this common boundary, including next to the side garden of No.65 with appropriate landscaping. Allied to low speed and volume of traffic from two dwellings using this part of the access road, and three dwellings overall in the front part, these measures would ensure noise and visual intrusion or other disturbance experienced in the gardens of No.65 from passing vehicles (or people) would not be excessive.
17. The wide rear elevation of the Plot 2 dwelling would stretch across most, but not all, of the end of the long back garden of No.65. Although in direct line of sight from rear facing windows of No.65 there would as a result be a significant separation distance between these two dwellings. While incorporating a taller gable part, the low eaves level and mainly receding sloped hipped roof of this chalet bungalow would not be unduly prominent or conspicuous in these views, including partially obscured by intervening boundary fence and hedgerow, trees or shrubs, including at the end of the back garden of No.65. Consequently, although near this common boundary the Plot 2 dwelling would not be unduly dominant or overbearing in relation to domestic activity in this end of, or elsewhere in, the large back garden of No.65.
18. The juxtaposition between access road, dwellings and gardens would be analogous to most of the residential development on the same site side of Links Road. This includes dwellings in a similar backland position to those fronting Links Road with access roads between or next to gardens and some serving significantly more dwellings with many more vehicle movements.

19. Considering the above, I find that the access road and Plot 2 dwelling would not adversely affect the living conditions of the occupants of No.65 Links Road, having regard to external amenity space and outlook. Consequently, the proposal complies with LP Policy EN4. It includes that development should not significantly affect the amenity of residents occupying properties in the surrounding area, taking into account suitability, compatibility and mitigation.

Living conditions – occupants of Plot 2 and Plot 3 dwellings

20. Other than upwards towards the sky, the siting of the Plot 2 dwelling would prevent distant views from ground floor north facing lounge and kitchen windows. However, the existing boundary hedgerow on the site (which could be retained by a condition) would not be unduly stark or overwhelming to look at, as might be a wall or fence in such proximity. The lounge window would also allow a more oblique view from this main habitable room and not be the only window in it or the only family living space. The kitchen window would mainly be used standing in front of a sink and while a side (east) facing kitchen window would be much closer to a boundary hedgerow, a kitchen is not a main habitable room and usually transient in use. It would not anyway be the only window in the kitchen, which is part of a main open plan living space, including a dining area and a family area. The more extensive main aspect from this room would be south towards the back garden, through large bi-fold glazed doors across nearly all one end of this room.
21. A significant part of the back garden of the Plot 2 dwelling would be long but narrow and at right angles to it – on one side, next to a boundary hedgerow with trees near the railway line and on the other side, in part, next to a turning area and car parking for the Plot 3 dwelling. Because this part is more distant it would likely conveniently be used for a range of ancillary domestic use and activity, such as a vegetable garden, to site a shed or dry clothes. The main useable part of the back garden would not be substantially smaller in area and be a practical, convenient rectangular shape for primary outdoor domestic use and activity, such as relaxation or children's play. This most private part of the back garden would also be well-related to and easily accessed from the main open plan living space in this dwelling.
22. There is no objective evidence of unacceptable levels of existing noise or other disturbance from vehicles or trains in the bottom end of the site. The proximity of back garden space to parking areas or the railway line for the Plot 2 dwelling would be typical of other dwellings in some of the backland residential development next to it in Links Road. There is no suggestion that intensity of noise or disturbance would be greater than elsewhere in Links Road and the Council's Environmental Health officer did not object for either reason.
23. It is not clear to me why bins could not be provided within the plots of each of the proposed dwellings. The flat access road would not be so long as to be unduly inconvenient to move bins at the Plot 2 and 3 dwellings for collection from the southern side of Links Road. There is no evidence that the Council (or its contractor, if not one in the same) does not permit the pavement to be used for this purpose. Even if separate collections for refuse and recycling, this would be a transient, temporary use so not result in bins permanently stored on the pavement. Alternatively, a condition could require details to be approved by the Council for a bin collection point in a dedicated strip of land

near the start of the access road, next to Links Road, including a small adjustment to the front garden boundary of the Plot 1 dwelling.

24. Taking account of all the above, I find that the design, siting and layout of the Plot 2 dwelling would provide satisfactory living conditions for occupants, having regard to outlook, external amenity space and (also for occupants of the Plot 3 dwelling) bin storage and collection. As such the proposal complies with LP Policy EN4. It includes that development should not significantly affect the amenity of future occupants taking into account outlook or sense of enclosure and refuse storage location.

Other Matters

25. The LP District housing requirement (or 'target' as the Council also puts it) is not the full extent of identified local housing need⁸ and, annualised, it is higher than average annual housing completions in recent years⁹. But neither consideration means the Council cannot demonstrate a five year housing land supply (HLS), as the appellant alludes to. Furthermore, an appeal decision from September 2024 pre-dates adoption of the LP, so the HLS position then was considered against the previous local plan and core strategy¹⁰. In any event, the Inspector found the Council could demonstrate the requisite 4 year HLS.
26. LP Policy H1 sets out that the Council considers it can deliver a 5 year HLS against the LP housing requirement 'for much of the plan period and certainly up until the time of the first review'. Under LP Policy S1(2) this review is to be completed before the third anniversary of its adoption. The LP was recently examined by an Inspector and found to be sound on this basis. The LP requirement for the Ashted Neighbourhood Area is 652 net new dwellings in the plan period 2020-2039.
27. The Council failed the 2022 Housing Delivery Test because, at 58%, the delivery of housing was below 75% of the housing requirement over the previous three years. This is an important consideration in determining the appeal.
28. Earlier this year the Government issued a written ministerial statement¹¹. Amongst other things it sets out measures to seek to deliver the housing an area (and the country) needs to address an acute housing shortage, including through the plan making process and in development management decisions. This expression of Government policy is also an important material consideration.

Planning Balance and Conclusion

29. Given the housing delivery position, National Planning Policy Framework (NPPF) paragraph 11(d) is engaged in this appeal. The starting point is that planning permission should be granted.
30. The LP and the ANP support new housing on unidentified small sites, such as in this case, including residential redevelopment and infilling. The proposed dwellings would be acceptable in size (number of bedrooms), mix, layout, design and form, use high quality materials and meet water efficiency

⁸ Because of constraints, such as Green Belt, National Landscape and Area of Great Landscape Value

⁹ LP graph – page 18

¹⁰ APP/C3620/W/24/3338736

¹¹ Building the homes we need – Ministry of Housing, Communities and Local Government, 30 July 2024

standards. There would also be satisfactory living conditions for future occupants and existing residents. These outcomes would be aligned with objectives of the NPPF to significantly boost the supply of homes to meet peoples living needs, make effective and efficient use of small, under-utilised urban sites with an appropriate density of development, a high standard of amenity and help to address climate change. Three dwellings overall, and a net gain of two dwellings, would make a modest contribution in these regards so I consider these considerations have moderate weight in support of the appeal.

31. On the other hand, the LP seeks to minimise impacts on protected species to preserve and enhance biodiversity. These outcomes have not been achieved in this appeal and there is no apparent reason why not. The LP is recently adopted and consistent in this respect with equivalent aims of the NPPF. Even if an adverse impact on roosting bats was small in extent, the absence of suitably informed and adequate mitigation or compensation would cause harm to this European Protected Species. In my view, housing development should not be at the expense of adequate regard to a protected species, so this consideration has substantial weight against the appeal.
32. With regard to NPPF paragraph 11(d)(ii), the adverse impacts of granting planning permission would, therefore, significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. As a result, the presumption in favour of sustainable development – the so called ‘tilted balance’ – does not apply in this case.
33. The proposal conflicts with the development plan. Other material considerations, including relevant provisions of the NPPF, do not indicate that the appeal should be decided other than in accordance with the development plan. Consequently, for the reasons given above the appeal does not succeed.

Robin Buchanan

INSPECTOR