



Appeal Decision

Site visit made on 4 February 2025

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 18th February 2025

Appeal Ref: APP/A3655/W/24/3350364

The Beeches, Wych Hill Lane, Woking GU22 0AH

- 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 B Johnson against the decision of Woking Borough Council.
 - The application Ref is PLAN/2024/0414.
 - The development proposed is a two storey rear infill extension and part first floor rear extension to provide 1 No. additional two storey, three bedroom flat, as well as alterations to the roof and the addition of rooflights; all together with all other minor internal alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (Framework) was revised in December 2024. I do not consider that there are any material changes in the Framework, pertinent to this appeal proposal. It is not therefore necessary to seek the views of the Appellant or the Council on the revised Framework.
3. The application forms indicate that the proposal seeks permission for extensions to the property to provide 1 additional 2 storey, 3 bedroom flat. However, the plans indicate that the new unit would provide 2 bedrooms at first floor with living/kitchen accommodation at ground floor, together with a change to the adjoining flat from 2 to 3 bedrooms. The Appellant has also confirmed that the proposal would be the erection of a 1 new 2 bedroom unit and the conversion and alteration of an existing flat from 2 bedrooms to 3 bedrooms. I have assessed the proposal on this basis and as shown on the submitted plans.
4. The application plans were revised during the course of the application and my decision is based on the plans as determined by the Council.

Main Issues

5. The main issues in this appeal are:
 - The effect of the proposal on the living conditions of neighbours, with particular regard to overlooking and loss of privacy,
 - Whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to the provision of amenity space,

- The effect of the proposal on flood risk, and
- The effect of the proposal on the integrity of the Thames Basin Heaths Special Protection Area.

Reasons

Living conditions

6. The appeal property is a large detached Edwardian property which has been converted and extended to provide 5 residential units and is situated within a predominantly residential area. The property is on the north side of Wych Hill Lane (A247). It is also Locally Listed as a Building of Townscape Merit. There is a gravelled area to the front for parking and turning as well as a covered bin and cycle store.
7. The proposal seeks to introduce one additional residential unit at the rear of the building which would infill within an area indicated as communal open space on the existing plans. There would be changes to the adjoining residential unit, to introduce a further bedroom at the rear, which would include the insertion of a new rear facing window at first floor, together with other internal and external alterations.
8. There is a detached residential dwelling, known as Sparrows, to the immediate east of the appeal property which has a boundary line which extends at an angle to the rear of the appeal site. From the information before me, including photographs, as well as my site visit, this land adjoining and to the immediate rear of the appeal site is used as part of the private amenity area for these neighbours, including both patio and grassed areas.
9. There would be new rear facing windows to serve bedrooms at first floor level as part of the new unit in the appeal building as well as the introduction of a new rear facing window at first floor level to serve a bedroom in the existing unit to be amended. Given the distance between these windows, and particularly the two easternmost rear facing windows, and the rear garden to Sparrows, as well as the angled shape of the boundary between the appeal property and the neighbouring property, I consider that there would be direct overlooking of the rear amenity space of the neighbours at Sparrows. This would result in an unacceptable loss of privacy and harm to the living conditions of the neighbours at Sparrows.
10. I have taken into account the existing planting towards the rear of the appeal site, but there would be no certainty that such planting would remain at the site in perpetuity. Even if retained, it would not prevent overlooking at all times of the year.
11. I therefore conclude that the proposal would unacceptably harm the living conditions of the neighbours at Sparrows, with particular regard to overlooking and loss of privacy. This harm would conflict with Policy CS21 of the Woking Core Strategy (2012) (Core Strategy), the Council's Supplementary Planning Documents: Outlook Amenity Privacy and Daylight (2022) (SPD) and Design (2015) (Design SPD) and the Framework and in particular paragraph 135 f), all of which amongst other matters seek a high quality of design which protects the amenities of existing and future occupiers.
12. The Council has only raised a concern on the effect on the living conditions of the neighbours at Sparrows and given the siting of the proposed development in

relation to the other surrounding properties, I do not consider that the development would have any material impact on the living conditions of neighbours to these other properties. However, the absence of harm to the living conditions of residents of these other dwellings does not override the harm I have concluded to the residents of Sparrows.

Amenity Space

13. All the units within the building, including the new proposal, have 2 or more bedrooms and are therefore regarded by the Council as family accommodation under the Council's SPD.
14. The existing area of communal amenity space at the rear of the building would be significantly reduced with the proposed building of the new unit, and the provision of its own private amenity space. It would leave a modest area at the northern end of the site. Access to this space would necessitate walking around the western boundary of the site to the communal space and the more convoluted access together with its much reduced size, some of which would be further reduced by existing planting would erode the attractiveness of the open space for use as communal open space for all the flat users. Given its limited size and attractiveness for use, the communal area of open space would not therefore reduce or replace the need for suitable private amenity space.
15. The proposals also seek to alter the private amenity space for a number of the existing flats within the building. The proposed new unit would have its own private amenity space, and there would be no change to the amenity space serving the unit to the east of the new unit (Unit 4). The unit to the west of the proposed unit (Unit 2) would have its private amenity space reduced to enable the provision of the proposed communal space, but it would still in my view provide sufficient space to serve the unit.
16. However, the flats facing primarily towards the front of the building would either have a small balcony only or a small balcony and amenity space at the front of the building. The Appellant has suggested that these garden spaces at the front of the building could be delineated through the use of small picket fences with taller screening plants behind. The area in front of the property is, as existing, of generous proportions but is largely used for access, parking and turning as well as cycle and bin storage. Given the access, parking and turning activities at the front of the site which would not be altered, I am not persuaded on the very limited information before me that the proposed areas of open space, even with appropriate fencing and planting would offer acceptable and usable private amenity space to serve the residents of these flats, which are family sized flats. The advice in the SPD at 3.9 also states that private amenity space should enjoy a high degree of privacy from the public street and from other public places and for that reason front gardens are not normally considered to contribute towards the provision of on site amenity space. Whilst the site is protected from the public street by a mature hedge, I have found that there would be a conflict between the provision of the proposed garden spaces at the front of the building and the shared uses in that area.
17. I therefore conclude that the proposal would not provide suitable living conditions for future residents, with particular regard to the provision of amenity space, in terms of both private and communal amenity space. This would conflict with Policy

CS21 of the Core Strategy and the SPD as well as the Framework and in particular paragraph 135 f), all of which amongst other matters seek a high quality of design which protects the amenities of existing and future occupiers.

Flood Risk

18. The application was supported by a Flood Risk Assessment (FRA) which concludes that the site would be at a low risk of flooding from all sources but taking a precautionary approach has made several mitigation recommendations. However, the Council states that its Strategic Flood Risk Assessment (November 2015) (SFRA) identifies part of the application site to be at a medium and high risk of surface water flooding. The FRA also include information which shows that in an exceedance event, more of the site is at a higher risk of flooding, including part of the proposed additional unit.
19. It is not entirely clear to me, on the basis of the information before me, the extent of the higher risks of surface water flooding across the site. The Council has referred to this being within the area of the access/ egress to the site, whereas the FRA has referred to areas within the site. It is therefore difficult to reconcile the limited information before me. I note that there has been development permitted at the site for additional residential development since the SFRA was prepared, but I do not know whether flood risks were raised in connection with those proposals or sequential tests undertaken.
20. No sequential test has been submitted with this proposal. Paragraph 170 of the Framework is clear that development should be directed away from areas at highest risk of flooding (whether existing or future). Paragraph 173 states that a sequential test should be taken for any applications known to at risk now or in the future from any form of flooding and that the objective is to steer new development to areas with the lowest risk of flooding from any source. It specifically states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
21. Although its comments are advisory only because of the scale of the development, Surrey County Council as the Lead Local Flood Authority (LLFA) noted that the application had not considered the surface water flood risk to and from the site and has not suggested appropriate mitigation measures to inform the proposal. However, it is not clear to me whether the LLFA had before it the FRA as this document is not included in the list of documents referenced by the LLFA.
22. Taking all these factors together and on the basis of the information before me, I cannot be satisfied that the proposed development would be acceptable in terms of flood risk. This would conflict with Policy CS9 of the Core Strategy as well as the Framework, and in particular Section 14 on Planning and Flood Risk and the associated sections of the Planning Practice Guidance.
23. The Council has referred to a number of appeal decisions where flood risk was considered and the Appellant has referred to another permission in the vicinity where flood risk was not raised as an issue although in the view of the Appellant the flood risks at that site are higher than at the appeal site. However, my decision is necessarily based on the proposal before me and the evidence available to me in

respect of this specific proposal. These other permissions and appeals do not therefore persuade me to a different view.

Thames Basin Heaths Special Protection Area

24. The Thames Basin Heaths Special Protection Area (TBH SPA) has been identified as an internationally important site of nature conservation and has been given the highest degree of protection. The proposed development would be located between 400m and 5km from the TBH SPA. The Council has undertaken an Appropriate Assessment and concluded that there would be no adverse effect on the SPA through recreational disturbance and urbanisation providing the scheme makes an appropriate financial contribution via the Community Infrastructure Levy as well as paying a tariff for Strategic Access Management and Monitoring to implement an identified programme of works to mitigate the impacts of the proposed development. I take the same view.
25. The Appellant is not disputing that the proposal, as it includes the provision of one additional residential unit, requires to provide a financial contribution towards mitigation measures in order to offset any adverse effect on the integrity of the TBH SPA. The Appellant and the Council have both referred to the submission of a draft legal agreement at the application stage, but the Council has raised a number of issues with the legal agreement as submitted.
26. There is no completed agreement before me as part of the appeal submission. I have no reason to doubt that the Appellant would be prepared to enter such an agreement and to pay the required mitigation. However, it is not open to me to impose a condition to require such an agreement; the financial contribution required needs to be delivered through a legal agreement. For a legal agreement to be taken into account at the appeal stage, it would have needed to have been submitted in accordance with the procedural guidance for appeals.
27. Without a satisfactory and completed legal agreement before me to secure appropriate contributions towards mitigation measures, I am unable to conclude that the proposal would not have an adverse effect on the integrity of the TBH SPA, either alone or in combination with other plans and projects in relation to urbanisation and recreational pressure effects. This would be in conflict with the Conservation of Habitats and Species Regulations 2010 (SI No.490), Saved Policy NRM6 of the South East Plan 2009, Policies CS8 and CS17 of the Core Strategy and the updated Thames Basin Heath Avoidance Strategy all of which seek to protect the SPA.

Conclusion

28. The proposal would create one additional residential unit which is to be supported. However, this benefit does not outweigh the harm I have concluded under each of my main issues.

29. The proposal would not accord with the development plan and there are no other material considerations to override this finding. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that this appeal should be dismissed.

L J Evans

INSPECTOR