



Appeal Decision

Site visit made on 18 December 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/G5180/W/24/3344198

51 & 53 The Grove, Biggin Hill, Westerham TN16 3TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Quantum Land & Planning Ltd against the Council of the London Borough of Bromley.
 - The application Ref is 23/03103/FULL1.
 - The development proposed is revised application for demolition of existing dwellings & outbuildings and erection of 8 x three storey, 4-bedroom family homes with associated landscaping, amenity areas, car parking and refuse storage facilities.
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Decision

1. The appeal is dismissed and planning permission for revised application for demolition of existing dwellings & outbuildings and erection of 8 x three storey, 4-bedroom family homes with associated landscaping, amenity areas, car parking and refuse storage facilities is refused.

Preliminary Matters

2. The Government has published its Housing Delivery Test (HDT) results alongside the publication of a revised National Planning Policy Framework (The Framework) in December 2024. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments made in reaching my decision.
3. It was requested that I view the appeal site from 55 The Grove, and I was able to do so at my visit.

Background and Main Issue

4. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed period. In its Statement of Case, the Council has resolved to contest the appeal on the ground that insufficient information has been submitted to demonstrate that the proposals would not have a harmful impact on biodiversity including protected species.
5. The appellant and the Council were given the opportunity to comment further on the submitted evidence, and many of the issues have been addressed or could be addressed by planning conditions. However, concerns remain about the presence of slow worms on the site and the steps to be taken for their protection.
6. On that basis, the main issue is the effect of the proposal on the protected species of slow worms.

Reasons

7. The appellant has submitted a Unilateral Undertaking (UU) and a Licence for the translocation of reptiles (slow worms) to a site at Fort Horsted in Kent. The Council's consultant ecologist accepts that the suggested translocation site does sound suitable.
8. However, the Council has raised concerns about the wording of the UU, and in particular that it does not bind the third-party translocation site at Fort Horsted and therefore does not provide a mechanism to ensure the protection of slow worms.
9. In response, the appellant sets out that the purpose of the UU was not to provide a legally binding mechanism, rather it was to demonstrate that they had identified the translocation site and that the Licence was in place for the translocation to be undertaken. They consider that this demonstrates that a suitable site has been identified, can be secured, and will be secured.
10. However, the suitability of Fort Horsted as a translocation site remains in question. The Council's ecologist states that a reptile survey of the proposed translocation area would ordinarily be expected prior to determination. The appellant confirms that an alternative site would be sought if the site does not have sufficient carrying capacity, and that the appellant needs more certainty before committing to the time and effort in undertaking these surveys. The evidence also suggests that a management plan for Fort Horsted as a whole has not been prepared, or at least has not been seen by the Council's and the appellant's ecologists. When read as a whole, the evidence does not give sufficient certainty that Fort Horsted would be a suitable site, and the apparent difficulty of identifying suitable translocation sites leads to significant uncertainty about whether an alternative site can be secured.
11. The appellant has proposed that a negatively worded 'Grampian' condition could be used to ensure that a scheme for an off-site receptor area will be secured through a legal agreement. They consider that this mechanism provides full protection to the Council, as it will have to approve any scheme that is proposed to deliver the translocation.
12. However, the Planning Practice Guidance specifies that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Such a condition should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). Although the delivery of the proposal may be at risk, the development is not particularly complex and exceptional circumstances for the proposal have not been established even allowing for the Council's very poor housing land supply. The appeal proposal does not provide the exceptional circumstances required to justify the imposition of a Grampian condition.
13. Policy 72 of the Local Plan 2019 specifically states that planning permission will not be granted for development which will have an adverse effect on protected species, unless mitigating measures can be secured to provide alternative habitats. Based on the evidence before me, it has not been demonstrated that the proposal would secure an alternative habitat for slow worms. The proposal would therefore conflict with this development plan policy. Even given the willingness of the appellants and Fort Horsted to agree to the translocation of slow worms, a

scheme has not been secured that can demonstrably provide alternative habitats through translocation.

14. The appellant has referred to other appeal decisions which demonstrate the use of Grampian conditions, and in particular *The Captains Club Hotel* decision¹. However, in that decision the Inspector concluded that sufficient capacity would be able to provide the proposed development with the necessary credits. This does not reflect the circumstances in the appeal before me, where there remains a significant degree of uncertainty about the ability of Fort Horsted to support translocated animals. It has also not been demonstrated that other appeals referred to are a direct parallel to the circumstances of the appeal before me, including whether the identified mitigation was confirmed to be suitable.
15. Drawing the above together, it has not been demonstrated that the proposal would not have a harmful impact on a protected species, namely slow worms. For the reasons stated previously, this matter should not be addressed by a Grampian condition. Due to the potential harm to this protected species, the proposal would be contrary to Policies 70 and 72 of the Local Plan with regards to mitigation measures for wildlife features and securing mitigation measures for protected species. The proposal would also be contrary to the Framework with regards to conserving and enhancing the natural environment.

Planning Balance and Conclusion

16. It is common ground that the Council does not have a 5 year supply of deliverable housing sites, and the appellant refers to a supply of only 2.4 years. The consequence of the HDT is also 'presumption'. The tilted balance of paragraph 11(d)(ii) of the Framework is therefore engaged. This sets out that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies.
17. In respect of the key policies referred to in paragraph 11(d)(ii) of the Framework, although the site is located within an established residential area it has poor access to services and facilities by sustainable methods of transport and is therefore not in a particularly sustainable location. Although it would make effective use of land this does not override the need to address protected species. The scheme is of a pleasant design that complements the area, but the key policies also refer to providing affordable homes and the proposal would make no provision for this.
18. With regards to benefits, the proposal would add to the supply and mix of housing in the area. But even allowing for the Council's very poor housing land supply position, the benefits arising from a development of this scale would be no more than moderate. That is the case even given the cumulative contribution that small sites can give to the delivery of housing as well as the Government's aim of significantly boosting the supply of homes as set out in the Framework and the Written Ministerial Statement 'Building the homes we need'. Considered cumulatively and individually, including with regard to key policies of the Framework, the benefits of the proposal carry no more than moderate weight.

¹ Appeal Ref: APP/V1260/W/23/3327258

19. I have concluded that it has not been demonstrated that the proposal would not have a harmful impact on a protected species, and this carries significant weight against the appeal. This adverse impact would significantly and demonstrably outweigh the moderate benefits of the proposal when assessed against the policies of the Framework taken as a whole.
20. The proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above the appeal should be dismissed.

David Cross

INSPECTOR