
Appeal Decisions

Site visit made on 27 November 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 MARCH 2026

Appeal A Ref: APP/Y3615/W/24/3350157

Heath Drive, Send, Woking GU23 7EP

- 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 [outline] planning permission
 - The appeal is made by Denton Homes Limited against Guildford Borough Council.
 - The application Ref is 22/P/01069.
 - The development proposed is outline planning application for up to 29 residential units with all matters reserved except for access.
 - This decision supersedes that issued on 30 April 2025. That decision on the appeal was quashed by order of the High Court.
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Appeal B Ref: APP/Y3615/W/24/3350162

Heath Drive, Send, Woking GU23 7EP

- 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 outline planning permission
 - The appeal is made by Denton Homes Limited against Guildford Borough Council.
 - The application Ref is 24/P/00657.
 - The development proposed is outline planning application for up to 40 residential units with all matters reserved except for access.
 - This decision supersedes that issued on 30 April 2025. That decision on the appeal was quashed by order of the High Court.
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Decisions

1. Appeal A: The appeal is dismissed and outline planning permission is refused.
2. Appeal B: The appeal is dismissed and outline planning permission is refused.

Preliminary Matters

3. There are two appeals on the same site which differ in the number of dwellings proposed. To avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.
4. I have taken the description of development for Appeal A from the appeal form as the proposal was amended while it was being considered by the Council. Both appeals were made in outline with access to be considered at this stage. Appearance, landscape, layout and scale are therefore reserved for future consideration.
5. These appeals are being re-determined following the quashing of the previous decisions. It was accepted those decisions were founded on error as the Council could no longer demonstrate a deliverable five year supply of housing land at the

time the decisions were issued. While it was alleged the decisions were unlawful in other respects, those claims were not determined as the parties were already in agreement the decisions should be quashed.

6. I have had regard to those previous decisions, along with a prior appeal¹. Insofar as they form material considerations, I have determined the appeals afresh on their own planning merits. In doing so, I have taken into account further submissions made at the redetermination stage.
7. Amended site layout plans to each appeal² were also submitted at the redetermination stage. These omitted the woodland walk previously shown and for Appeal B, amendments to the indicative site layout. I have considered whether it would be appropriate to accept these revised plans, having regard to the guidance in the 'Procedural Guide: Planning Appeals – England', and the tests given in the Holborn Studios³ judgment. The Procedural Guide makes clear that the appeal process should not be used to evolve the scheme and that in most cases the appeal should be determined on the basis of the plans upon which the Council made its decision.
8. The appeals before me are in outline. While access has been submitted for consideration, I have assessed both appeals on the basis that the position of circulation routes within the site would be considered as part of the layout. This would include the woodland walks. The amended plans would therefore be indicative at most and so would not be treated as part of the formal proposal. There would be no prejudice from my taking them into account as indicative plans in considering the appeals.
9. Further evidence with respect to biodiversity was submitted by the main parties and also by other interested parties following consultation. I am mindful of the advice in Circular 06/2005⁴ at paragraph 99 that, with regard to species protected by law, "It is essential that the presence or otherwise, and the extent that they may be affected by the proposed development, is established before the planning permission is granted...." and the need for up-to-date evidence. I have therefore accepted the additional evidence. Additional opportunities for comment were provided to the main parties.
10. A completed planning obligation dated 5 December 2024 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted for each appeal. Each sought to address affordable housing, open space, biodiversity net gain, education, highway improvements, ecological mitigation and monitoring. I will return to these in due course.

Background and Main Issues

11. The appeals are against the non-determination of the applications. Having had regard to all submissions by the main and interested parties, the main issues in both appeals are the effect of the proposed development on:
 - biodiversity; and

¹ APP/Y3615/W/21/3269208 dismissed 3 February 2022

² Appeal A - 1005 PL Rev C; Appeal B – 1005 PL Rev J

³ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

⁴ ODPM Circular 06/2005 Biodiversity and geological conservation – statutory obligations and their impact within the planning system

- the character and appearance of the area, including the effect on the River Wey & Godalming Conservation Area.

Reasons

Biodiversity

Bats

12. The 2025 Technical Note (2025 TN) identifies only a limited number of changes from the 2024 Technical Note (2024 TN) with respect to the use of the site by roosting bats following aerial survey of the trees. It remains the case that the site is identified as being of local importance to roosting bats. Many of the trees identified as being suitable for bat roosts would be retained.
13. The 2025 TN continues to rely on the 2024 bat activity surveys which confirmed the site had moderate to high levels of activity. The majority of this activity was by soprano pipistrelle bats and likely reflects the large maternity roost at Send Lodge immediately adjacent to the site. Monitoring noted that activity levels were higher to the north-west of the site where it is proposed to retain the woodland. The 2025 TN concluded that the site was of local-district importance to bats. The Preliminary Ecological Appraisal confirmed that there would be a negative impact on bat species from the loss of suitable foraging and commuting habitat.
14. The maternity roost at Send Lodge is noted as housing over 600 bats. There is evidence before me which indicates that having feeding grounds in close proximity to maternity roosts is of particular importance given the needs of reproductive and lactating bats, as well as for juveniles. Given the scale of the maternity roost, the loss of foraging space would likely have an adverse effect on the bat population. I acknowledge the loss would represent a very small proportion of the Core Sustenance Zone, however in this case its proximity to the maternity roost means that the specific location of the foraging ground is important.
15. Furthermore, the retained woodland would inevitably experience more disturbance as it would become available for public use. There would also be the potential for increased disturbance to bats from lighting. The appeals have been accompanied by a Lighting Strategy which sets out that the proposals would result in negligible light spill to the woodland. However, its recommendations include factors which are unknown, such as providing light only where required; or which could not be reasonably controlled or enforced, such as requiring internal lights to be set back into rooms and preventing pendant lighting from being positioned in close proximity to windows. I therefore could not be certain that the proposed mitigation would be effective.
16. Consequently, the proposal would have an adverse effect on bats and would be contrary to Guildford Borough Local Plan: Development Management Policies (22 March 2023) (LPDMP) Policy P6 which seeks to protect protected species.

Badgers

17. Badgers are offered protection by virtue of their inclusion in the schedules to the Wildlife and Countryside Act 1981 and the provisions of the Protection of Badgers Act 1992. The appeals have been accompanied by relevant surveys. These are confidential and it is not unusual for this to be the case with respect to badger

surveys. However, I am satisfied these have been carried out by an appropriately qualified person.

18. The 2025 TN concurs with the 2024 TN in that it concludes that the site is of local importance for the badger population. However, it considers that the use of the site has declined since the 2024 survey and classifies both of the active setts as outlier setts. The 2025 TN confirms the proposal will destroy the existing setts, and that there is potential for the development process to result in the killing or injury to the badgers and likely disturbance of badgers occupying the setts. However, it notes that there would be long-term foraging and sett creation opportunities following construction however it does not recommend that any artificial sett provision is made.
19. Surrey Wildlife Trust (SWT) for the Council do not concur with the assessment of sett 3 as an outlier. This is based on seeming 'gaps' in the monitoring data and consider that as there is evidence of badgers together near this sett, it is of sociological importance. It is also noted that evidence of attempts to access neighbouring private land to survey is not provided, nor was there acknowledgement of evidence provided regarding the neighbouring land.
20. It is acknowledged that the camera may not have activated in time to record all movements. It is also noted that there may be other holes obscured by dense vegetation. However, the levels of activity recorded are less than those of the 2024 TN. Consequently, the evidence before me is not persuasive that there is a main sett on the site.
21. Irrespective as to the classification of the setts, the evidence before me is clear that the proposals would result in the destruction of setts used by badgers. The best practice guide from the Badgers Trust advises that no mitigation is required where the sett is not a breeding sett. However, that does not change the fact that the proposal would have an adverse effect on biodiversity.
22. The appellant sets out that the previously suggested locations for replacement setts remain valid. This is a matter which could be addressed by condition. However, even if formal paths were not provided through the woodland, activity levels by people would increase. This would likely make any mitigation less effective.
23. LPDMP Policy P6 applies to priority species of which badgers are not one. I have not been directed to any of the documents or strategies referred to by LPDMP Policy P6 b) or c) which would bring badgers into the ambit of the policy. However, I am mindful of the advice in paragraph 16 f) of the National Planning Policy Framework (the Framework) which advises that plans should avoid unnecessary duplication of policies, including policies in the Framework. I am also mindful that the Natural Environment and Rural Communities Act 2006 (NERC Act) includes a duty under s40(1) that every public body must, in exercising its functions, have regard to the purpose of conserving biodiversity.
24. Paragraph 187 f) confirms that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on biodiversity. Paragraph 193 a) confirms that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

25. Consequently, I conclude that the proposal would not conserve biodiversity with respect to badgers and would be contrary to the provisions of the Framework which seek to minimise impacts on biodiversity.
26. I therefore conclude that the proposal would have an adverse effect on biodiversity. It would therefore be contrary to LPDMP Policy P6 insofar as it relates to bats and to the provisions of the Framework which seek to minimise impacts on biodiversity insofar as it relates to bats and badgers.

Character and Appearance

27. The appeal site measures approximately 2.5ha. It is bounded by the River Wey Navigation to the north and west, residential properties on Send Road and Heath Drive to the south, and the access road and open space associated with an employment development to the east. It is privately owned with no public access and is wooded. Development along Heath Drive and Send Road in proximity to the site typically consists of relatively large properties set in generous plots.
28. Appeal A seeks outline permission for 29 dwellings on that part of the site identified for development. The indicative layout demonstrates this level of development could be comfortably accommodated within the site, typically providing larger dwellings within decent sized plots. It therefore would, insofar as can be assessed at the outline stage, readily integrate with the existing form of development.
29. Appeal B proposes 40 dwellings within the same area and so would inevitably be at a higher density than that in the surrounding area. However, the position of the site at the end of Heath Drive means that any development would only be perceived in conjunction with existing development when viewed along Heath Drive. The proposal would therefore not appear as poorly related or otherwise incongruous alongside the existing development.
30. The indicative layout demonstrates that 40 dwellings and their associated amenity and parking spaces could be accommodated within the site. This also shows that the layout could allow for some areas of landscaping and for parking to be accommodated in various positions relative to the proposed dwellings. I have no reason to think that an appropriate scheme could not be achieved.
31. Given the scale of both proposals, the proposed retention and enhancement of part of the woodland and the proximity of the site to the existing built form of Send, the proposal would have a neutral effect on the landscape character of the area.
32. The Wey and Godalming Navigations Conservation Area (CA) follows the route of the canalised waterway and extends to the navigation channel and towpath in this location. Given the site abuts the CA, it falls within the setting of the CA. The character and appearance of the CA is of an open water navigation passing through a range of urban and rural locations. Its significance is derived from its historic interest as one of the earliest waterways to be made navigable and the consequent industrial and social changes that came with changing modes of transportation. Its setting adds to the ability to appreciate the CA by allowing changing land uses and the relationship of the navigations to the surrounding land to be understood.

33. The appeal site provides a wooded frontage to the CA. It contrasts with the expansive open nature of the land on the opposite bank and provides an attractive rural frame to the CA, particularly when experienced by those using the footpath on the opposite bank. It also serves to screen the CA from the built form in Send which lies closer to the CA than that on the opposite side. However, there are clearly urbanising features visible in views along the CA such as the small wharf, public house and the bridge at Send.
34. While the proposal before me is in outline, the indicative layout does not show any development within the designated open space which includes the woodland area along the bank of the River. This could be secured by condition. However, the proposal would inevitably bring development closer to the CA than it is at present. Despite the stand off distance, the built form of any dwellings would be perceptible through the landscaping. This would urbanise the site. The resultant change would alter the setting in which the CA is experienced and would harm the way in which it is experienced.
35. Paragraph 212 of the Framework sets out that great weight should be given to the asset's conservation, irrespective of whether this would amount to substantial harm, total loss or less than substantial harm to significance. Paragraph 213 further advises that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.
36. I find that the harm to the significance of the CA would be less than substantial and at the lower end of that range. Nevertheless, this harm carries considerable importance and weight. In such circumstances, paragraph 215 of the Framework confirms that these harms should be weighed against the public benefits of the proposal.
37. Those benefits would be the delivery of both market and affordable housing. The delivery of affordable housing would be slightly above the minimum sought by policy with respect to Appeal A and so attracts additional weight. These would be benefits to which I would attach significant weight. There would be the economic benefits during both the construction and occupation stages of the development and environmental benefits from biodiversity net gain and increased public access to the open space. There would also be a heritage benefit from the seating areas which would allow the CA to be appreciated. I attach limited weight to these benefits. Consequently, I am satisfied that the public benefits of the proposal would outweigh the limited harm to the significance of the CA I have identified even giving it considerable importance and weight.
38. I therefore conclude that the proposal would have an acceptable effect on the character and appearance of the area, including the effect on the River Wey & Godalming Conservation Area. The proposals would therefore be in accordance with Guildford Borough Local Plan: Strategy and Sites 2015–2034 (adopted 25 April 2019) (LPSS) Policy D1, LPDMP Policies D4 and D8 and Send Neighbourhood Development Plan 2019-2034 (made May 2021) (SNDP) Policy 4 which taken together seek to deliver high quality design, including for residential infill development, which respects the character of the area.

Other Matters

39. LPSS Policy ID4 designates the appeal site as open space and confirms that open space will be protected from development in accordance with the Framework. This

approach is confirmed in LPSS Policy ID5. SNDP Policy Send 5 further identifies 0.8ha of the site where it runs adjacent to the River Wey as a local green space and confirms development should be managed in a manner compatible with the designation. The supporting text identifies that this approach is specifically supported by LPSS Policy ID4 and also refers to the Framework.

40. The glossary to the Framework confirms that open space is all open space of public value and confirms that it can act as a visual amenity. It is not in dispute that the site is private land and at present only offers a visual amenity as public value. The planning obligation for Appeal A makes provision to secure 694.7sqm of land as formal and informal recreation open space with the obligation for Appeal B making the same provision for 911.7sq m. A condition could limit the developable area of the appeal site. As part of the land would be secured for public access in perpetuity where none exists at present, I am satisfied that the loss resulting from the proposed development would be replaced by equivalent provision in terms of quality. This would also preclude development of the land within the local green space designation and so would accord with the protections that the Framework offers to such land. While the most recent indicative plans do not include formalised footpaths through the site, this would be addressed at the reserved matters stage and through the Amenity/Natural Green Space provisions of the relevant planning obligation.
41. The proposals would deliver additional housing where a five year supply of housing land cannot be demonstrated. LPSS Policy H2 seeks at least 40% affordable housing from proposals of the scale of both appeals. Appeal B would provide 40%, while Appeal A would provide 41%, based on each scheme delivering the maximum number of dwellings for which permission is sought. This provision would be a benefit of the proposal, particularly in respect of Appeal A which would provide 0.4 of a dwelling more than the policy minimum. These are considerations which weigh in support of both appeals.
42. Appeal B would be subject to the mandatory condition for biodiversity net gain (BNG), while Appeal A would not. Notwithstanding, information has been provided to demonstrate that BNG could be delivered, and provision is made in the planning obligation to secure this for both proposals. Irrespective of whether BNG would be mandatory, it would nonetheless be a public benefit.
43. The proposals would be in a location well related to the facilities within Send, including public transport. There are no concerns with respect to noise, flood risk or drainage which could not be addressed by condition. The surrounding highway network would be capable of accommodating the increase in traffic that would be generated by each of the proposals. Off-site works would be necessary to improve pedestrian and highway safety in the area. These could be secured by condition or through the planning obligation as appropriate. However, as these are all to be expected of any well-designed development, they would be neutral in my assessment of the proposals.
44. The appeal site is within 5km of the Thames Basin Heaths Special Protection Area (SPA) which is subject to pressures from recreational disturbance and road traffic emissions. The planning obligation for each appeal makes provision for contributions in accordance with the SPA Avoidance Strategy 2017 and the SPA Tariffs Supplementary Planning Document 2024 with respect to Strategic Access Management and Monitoring. It is not entirely clear that the Suitable Alternative

Natural Green Space has been appropriately secured through the combination of the planning obligation and suggested condition for each appeal. This is a matter I would have considered further were I not minded to dismiss both appeals. Had I been minded to allow the appeals, it would have been necessary to establish whether each proposal, on its own or in combination with other projects, would likely have significant environmental effects on the integrity of the European site and if any mitigation had been appropriately secured. However, it has not been necessary for me to pursue this issue as a finding that the proposals would not have an adverse effect on the integrity of the European sites, with or without any mitigation, would be at best a neutral matter.

45. The planning obligation submitted for each appeal also make provision with respect to off-site open space and education. These contributions would be to address the demands generated by the proposed developments and so would be neutral in my assessment of the proposals.
46. Specific concerns have also been expressed with respect to the living conditions of neighbouring occupiers and housing mix. These would be addressed at the reserved matters stage and so do not form part of my consideration of these appeals.

Planning Balance

47. It is not in dispute that the Council cannot demonstrate a deliverable five year supply of housing land, with the agreed level of supply being 2.98 years. None of the policies cited in Footnote 7 of the Framework would provide a strong reason for refusing the development proposed. Consequently, paragraph 11d)ii of the Framework is engaged. This sets out that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having regard to key policies.
48. Each appeal would make a contribution towards the delivery of market and affordable housing. In the case of Appeal A, this would be slightly above the 40% affordable housing sought by development plan policy. I attach significant weight to these benefits given the scale of the proposals and the shortfall in supply. There would be economic benefits during the construction and occupation stages of the development. The provision of seating areas would allow the CA to be appreciated in a way that it cannot at present. Biodiversity net gain and public access to the woodland would be secured which would also be benefits. I attach limited weight to these considerations.
49. Against these benefits are the adverse impacts that I have identified in respect of the effects on biodiversity. I attach very substantial weight to the harm that would arise to bats given the potential effect on the foraging area supporting the adjacent maternity roost. I attach moderate weight to the loss of badger setts given that on balance, it is likely the site does not contain a main or breeding sett. I also acknowledge there would be some harm to the significance of the CA, albeit this would be a limited harm.
50. Consequently, I find that the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, even having regard to key policies in the Framework. The proposals

therefore do not benefit from the presumption in favour of sustainable development.

Conclusions

51. Appeal A: The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations, including the Framework, of sufficient weight to indicate the decision should be taken otherwise. For the reasons given, I conclude that the appeal should be dismissed and outline planning permission refused.
52. Appeal B: The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations, including the Framework, of sufficient weight to indicate the decision should be taken otherwise. For the reasons given, I conclude that the appeal should be dismissed and outline planning permission refused.

Jennifer Wallace

INSPECTOR