

5 April 2017

**Planning Applications Committee  
Update**

Item No.	App no. and site address	Report Recommendation
4 Page 13	16/0652 24 and Greenways 26 London Road, Bagshot	GRANT subject to conditions

**UPDATE**

The Council's Viability Officer has confirmed a requirement for £226,000 towards affordable housing provision in lieu of on-site provision.

The Council's Arboricultural Officer has raised no objections to the proposal.

Natural England has raised an objection to the proposal on the following basis:

*"The application is not currently able to contribute towards an identified SANG and has not proposed an acceptable individual bespoke SANG to provide the avoidance and mitigation measures required. An identified SANG is required to enable certainty that there will not be a significant impact upon the SPA from development. SAMM contributions must also be secured. Natural England therefore objects to the proposed development and recommends that the application be refused planning permission."*

A legal agreement is advanced for the provision of the affordable housing contribution and a SAMM contribution of £8,889.40 but has not been finalised.

Officers have carefully considered the objection from Natural England and, notwithstanding the Ash and Tongham decisions indicated in Paragraph 7.6.4, are concerned that there does not appear to be a SANG solution for this proposal.

In addition, the national Planning Practice Guidance at Paragraph: 007 Reference ID: 21a-007-20140306, issued in March 2014, indicates:

*"Care should be taken when considering using conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...'*

*Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. A condition precedent that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a condition precedent would be unlawful and may be the subject of enforcement action."*

One of the tests for imposing planning conditions is that they are "reasonable in all other respects". It is a concern that the imposition of Condition 3, which would prevent the commencement of the development until the SANG solution is provided would be unreasonable when there is significant uncertainty that this could be complied with during the lifetime of the permission.

As such, given the materiality of the Natural England objection and the Government guidance; and along with the precautionary approach which needs to be taken in relation to development which could have an adverse effect on the SPA, the recommendation is amended to recommend refusal on SPA grounds (both SANG and SAMM provision).

The lack of a mechanism to secure a contribution towards affordable housing provision elsewhere in the Borough is also added as a reason for refusal give that a legal agreement has not been secured.

The applicant has been informed about this proposed change to the recommendation. The applicant has responded strongly criticising the proposed late change in recommendation without the ability to respond. The applicant is of the opinion that Natural England has not added anything substantively more than its original advice (received 9 August 2016) and that the inspector's decisions remain material considerations. In the circumstances the applicant has requested three alternative options to refusal:

- Defer the application from determination at this Committee meeting;
- Expand the required Section 106 legal agreement to include the required SANG mitigation and delay determining the application until completed; or
- Revert back to the original recommendation.

However, it is considered that there has been a change in advice by Natural England with the latest advice received on the 22 March 2017 (after the report was finalised). There is no certainty that deferral of the application would resolve this matter in a timely manner and a S106 would still need details of an acceptable SANG site. The officer's recommendation to refuse therefore remains.

#### **CHANGE IN RECOMMENDATION:**

#### **REFUSE, for the following reasons:**

1. The Planning Authority is unable to satisfy itself that the proposal (in combination with other projects) would not have an adverse effect on the integrity of the Thames Basin Heaths Special Protection Area (SPA) and the relevant Site of Specific Scientific Interest (SSW). In this respect, significant concerns remain with regard to the adverse effect on the integrity of the Special Protection Area in that there is likely to be an increase in dog walking, general recreational use and damage to the habitat and the protected species within the protected areas. Accordingly, since the planning authority is not satisfied that Regulation 62 of the Conservation of Habitats and Species Regulation 2010 (The Habitats Regulation) applies in this case, it must refuse permission in accordance with Regulation 61 (5) of the Habitats Regulations and Article 6 (3) of Directive 92/43/EE. For the same reasons the proposal conflicts with guidance contained in the National Planning Policy Framework and Policy CP14 of the Surrey Heath Core Strategy and Development Management Policies 2012 and Policy NRM6 of the South East Plan 2009 and Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document (Adopted January 2012).
2. In the absence of a completed legal agreement under Section 106 of the Town and Country Planning Act 1990, to secure a contribution towards affordable housing provision elsewhere in the Borough, the applicant has failed to comply with Policy CP5 of the Surrey Heath Core Strategy and Development Management Policies Document 2012 and the National Planning Policy Framework.

5 Page 33	16/0840 Erlwood Manor, London Road, Windlesham	GRANT subject to conditions
--------------	---	-----------------------------

**UPDATE**

Comments have been received from the Arboricultural Officer. No objection is raised subject to condition (this will take the form of condition 11 as drafted in the committee report being amended (amendment underlined)), and an informative being added.

**Amended condition 11**

No development shall take place until full details of soft landscaping works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved, and implemented prior to first occupation.

The submitted details shall include details of new planting to be carried out and shall make provision for the planting of 5 new trees within the property boundaries of a minimum "heavy standard" size [12 - 14cm girth and a nominal diameter of 4.1cm].

All hard and soft landscaping works shall be carried out in accordance with the approved details. All plant material shall conform to BS3936:1992 Parts 1 – 5: Specification for Nursery Stock. Handling, planting and establishment of trees shall be in accordance with BS 8545:2014 Trees: from nursery to independence in the landscape.

Any trees or planting that, within a period of 5 years from the date of planting, dies, becomes damaged, diseased or is removed shall be replaced in kind.

Reason: To preserve and enhance the visual amenities of the locality in accordance with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012.

Suggested informative

In relation to condition 11, the 5 trees to be planted as mitigation for the loss of the Oak and the Beech removed to facilitate the development should comprise a mix of any of the following: Quercus palustris "Green Pillar" / Quercus robur "Regal Prince", Quercus robur fastigiata "Koster" or Fagus sylvatica "Dawyck" [green cultivar not purple or gold variants].

6 Page 55	16/0961 325 Guildford Road, Bisley	GRANT subject to conditions
--------------	---------------------------------------	-----------------------------

**UPDATE**

**CORRECTION**

Paragraph 2.2 – The sentence should read:

*"The application site includes an access direct from Guildford Road and no access is proposed through the adjoining Foxleigh Grange development."*

Three representations in support have been received (none making any specific comments). The LLFA had requested that further drainage details were provided which the applicant has more recently provided. On the basis that the LLFA will need a minimum 21 day period, an extension of time to determine the application is proposed.

**CHANGE TO RECOMMENDATION:**

**To extend the time period to determine the application to allow full consideration of the further drainage details to 27 April 2017, and any required drainage conditions added following the receipt of further LLFA comments, with any required time period**

**extensions to be agreed by the Head of Regulatory.**

7

Page 73

17/0081

Shatin, Westwood Road, Windlesham

GRANT subject to conditions

**UPDATE**

For clarity, the recommendation is as follows:

**GRANT subject to conditions**

This was omitted in error from the heading of the report.