



Appeal Decision

Site visits made on the 16 and 25 October 2017

by **David Murray BA (Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3rd November 2017

Appeal Ref: APP/D3640/W/17/3177807

Land rear of The Parade, Frimley, Camberley, GU16 7HY.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Laimond Property Investment Co. against the decision of Surrey Heath Borough Council.
 - The application Ref. 16/0631, dated 23 June 2016, was refused by notice dated 19 December 2016.
 - The development proposed is the erection of 7 residential dwellings (indicative layout) with vehicular access, car parking private open space and alteration/reductions to the existing public car park/service area.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. I have used the Council's description of the proposal rather than the one set out in the application forms as the proposal includes changes to the existing car park to provide access to the site. Nevertheless, the application is in outline format with all detailed matters reserved for subsequent consideration and the layout of the development shown on plan 15-P1105-001 is submitted for indicative purpose only.

Main Issues

3. The main issues are:
 - The effect on the character and appearance of the area;
 - Whether the development would result in the harmful loss of ecological diversity in the area;
 - Whether it is demonstrated that the provision of affordable housing as part of the development would render the scheme not to be financially viable.

Reasons

Background

4. The appeal site is located generally to the rear of commercial units with residential units above which front Frimley centre. Part of the site forms part of a private car park which is available for public use and this leads to a larger part of the site which is triangular in shape. This lies to the rear of two storey houses fronting both Burleigh Road and Leonard Close/Sheridan Road. This area of the site is heavily

wooded with mature, mainly oak, trees and extensive ground cover with brambles. To the north of the site lies an electricity sub-station.

5. The proposal in outline is to consider the principle of the development of the site with 7 residential units and the indicative layout shows that the car park would be reconfigured to provide a separate 'dog-leg' access leading to the main part of the site where the semi-detached and detached houses are shown grouped off a turning head.
6. I have taken account of the planning history of the site where it appears that planning permission was granted in May 2015 for the development of the main part of the site as an extension to the car park. The layout plan approved indicates that the 54 spaces and manoeuvring space shown would result in the majority of the existing mature trees on the site being felled other than a group in the southern corner where the triangular shape narrows.

Policy context

7. The development plan for the area includes the Surrey Heath Core Strategy and Development Management Policies 2012 (referred to as the CSDMP). I have also had regard to the Western Urban Area Character Supplementary Planning Document 2012 (SPD) as a material consideration. Within this document the site forms part of a "Commercial Nodes" character area.

Character and appearance

8. The Council says that the site lies at the transition between the commercial area and the adjacent residential one and I concur. The Council considers that the proposal would not integrate well with the surroundings of the site, with the access through the car park, and would not integrate with the post war frontage development adjacent to it. Dealing first with the access being formed to the side of the car park in a district centre location, I see no reason why residential development should not be accessed in this manner as the change to the appearance of the area would be minimal and the access driveway would not be the actual residential environment. The two elements would have a different character but the environs of the access need not appear incongruous as the Council alleges. Further, regarding highway aspects, there is no technical evidence before me that the separate route proposed would not provide a safe access arrangement or that the reconfiguration of the car park would have a material effect on the number of spaces available and an impact on the economic benefit to the commercial centre of Frimley.
9. The Council describes the character of the 'Post War Council Estate' on Burleigh Road and Leonard Close/Sheridan Road where the large rectangular plot size and regular pattern of properties are distinctive. However, it appears to me that the main element of the appeal site is in a backland setting which is visually distinct from the post war plots on either side. In practice development on the appeal site would rarely be seen in the context of the adjacent existing houses. From my observations at the site visit, I am satisfied that from the public realm of Burleigh Road and Leonard Close/Sheridan Road there would only be the odd glimpse of two storey houses on the appeal site as seen in the gaps between the existing properties. Further, at my site visit I concluded that there were no other views where the development of the appeal site would appear incongruous or out of place. I am therefore satisfied that in principle the development would not have a

- harmful effect on the character and appearance of the wider area including the recognised 'Post-War Council Estate'.
10. Turning now to the site itself, although it is much overgrown at present, the mature trees growing there make a significant positive contribution to the character and appearance of the area and are worthy of retention in the context of CSDMP Policy DM9(iv). In considering the effect of the development in the outline application the layout plan is only illustrative and not definitive. If the principle of development is acceptable on this site, I need to be satisfied that the land is capable of accommodating the 7 residential units proposed in an acceptable manner. From my observation on site and as far as I was able to see given the extent of brambles, the development of 7 new properties together with access and parking would be likely to result in the direct loss of most of the trees on site. Even where ones sited close to the boundaries are shown to be retained there is likely to be little and inadequate usable garden space outside of the spread of the trees. This would be likely to result in pressure from subsequent occupiers to fell them. This tree loss would have a significant harmful effect on the appearance of the area. Further, given the tapering nature of the site, and the likely close proximity of new dwellings to the boundaries of the land, I am not satisfied that 7 two storey properties can be accommodated on site without causing overlooking of neighbouring existing properties and which would be likely to result in harm to the living conditions of the occupiers.
 11. I have taken into account that there is a planning permission for the development of the appeal site as a car park but it is not clear to me whether any of the mature trees will be retained in the approved parking layout. Further, I am not aware of whether there was an over-riding need for the additional parking spaces in terms of the wider public benefit of ensuring the vitality of the local commercial centre, or that there is a clear likelihood that the permission will be implemented. I am therefore not able to place much weight on this alternative development and its effect on the site.
 12. Overall on this issue, I conclude that it has not been demonstrated at this outline stage that 7 units can reasonably be accommodated on the appeal site without causing significant harm to, and will not respect or enhance, the character and appearance of the area, particularly regarding the impact on existing mature trees. I also have a concern about the relationship of 7 units with neighbouring properties. On this basis the proposal does not accord with the provisions of Policy CP2 (iv) and Policy DM9(ii) and (iv) of the CSDMP.

Ecological diversity

13. Under this issue the Council refers to the representations of the Surrey Wildlife Trust at application stage suggesting that the proposal did not provide sufficient evidence to consider whether there would be a net loss of a biodiversity resource. Nevertheless, the previous permission for a car park on the appeal site, and the effect on ecological diversity is recognised by the Council.
14. The appellant refers to an Ecology Report undertaken in 2016 which notes that the site is not covered by any wildlife site designation and concludes that the main impact of the development is likely to be to the presence of a small number of garden and woodland nesting birds within the scrub and woodland habitat areas. Further a single tree with a crack in the trunk could support individual tree roosting bats but the Report says that there was no evidence to suggest it did support a bat roost. Overall, the Report makes recommendations about restricting the period in

which construction work may be carried out so as not to affect nesting birds, and on the provision of bats/bird boxes. However, the effects of increased recreational pressure arising from additional population is recognised as a potential impact on the Thames Basin Heaths Special Protection Area (SPA) that needs to be mitigated by a contribution towards the provision of Suitable Alternative Natural Greenspace (SANG).

15. The evidence put forward by the appellant's ecological consultants is not disputed by the Council. On the basis of the detailed evidence it is clear that the site is not important as a natural habitat for species. Nevertheless, the Report recognises the presence of broad leaved semi-natural woodland which I consider to be worthy of retention because of its amenity value.
16. Overall on this issue, I conclude that the development proposed would not result in the loss of an area recognised to be of importance for ecological diversity and as such there is no conflict with Policy CP14A of the CSDMP of the relevant provisions in paragraph 109 of the Framework. I also understand from the officer report at application stage that the appellant has paid the contribution necessary to secure mitigation of the effects of the development on the SPA and meet the requirements of Policy 14B so I do not need to consider this aspect further.

Affordable housing

17. Under this issue the Council refers to Policy CP5 of the CSDMP (adopted in 2012) which indicates, amongst other provisions, that new development schemes of between 5-9 units should make provision on site for 20% of the development to be affordable housing. The proposal does not offer to make such provision and the appellant submits a Financial Viability Assessment which concludes that the development cannot viably deliver affordable housing on site or make a financial contribution in lieu of this.
18. Before considering this question of viability, the general issue reflects the present tension between the development plan and the material consideration of the more recent Written Ministerial Statement (WMS) issued by the Minister for Communities and Local Government on the 28 November 2014. The WMS indicates, in summary, that in order to free-up the planning system and reduce disproportionate burdens on small-scale developers, affordable housing contributions should not be sought from developments of 10 housing units or less (subject to other specific factors that do not apply here). Although successfully challenged in the High Court in July 2015, the Court of Appeal subsequently upheld the government's challenge to that legal decision in May 2016. Further, paragraph 31 of the national Planning Practice Guidance (PPG) was amended in November 2016 to reflect the WMS. Therefore the WMS and the current guidance in the PPG are material considerations in the appeal and to which I attach significant weight. The critical issue is whether the more recent WMS and formal national guidance outweigh the conflict of the proposal with the provisions of the development plan.
19. In its statement the Council indicates that it has not had sufficient time to obtain specialist advice on the financial viability statement submitted with the appeal, but notwithstanding this element, there is no specific evidence put forward to demonstrate that the operation of Policy CP5 has not had a material effect on the delivery of housing or that the contribution sought has helped to increase the overall delivery of affordable housing and would continue to do so.

20. On the balance of evidence available, it appears to me that the weight to be given to the more recent Ministerial Statement, that contributions towards affordable housing should not be sought from small developments of less than 10 residential units, outweighs the general requirements of Policy CP5 in this case. I therefore do not need to consider the issue of viability.

Planning balance

21. Bringing together my conclusions on the main issues, I have found that while the principle of development on the appeal site is acceptable, as it would not conflict with or harm the general character of the area including the Post-War Council Plots, it has not been demonstrated that 7 residential units could reasonably be accommodated on the appeal site. Such a scale of development is likely to result in the loss of mature trees which contribute to the character of the area and the awkward shape of the site restricts the positioning of dwellings to avoid overlooking and causing a loss of privacy for the occupiers of adjacent housing. This harm means that the proposal conflicts with the parts of the development plan that I have identified.
22. In terms of affordable housing, the weight to be attached to the more recent national policy and guidance on affordable housing outweighs the policy requirements of the development plan in this case so that such provision is not needed as part of the proposed development scheme. I have also found that the evidence available does not indicate that the site is of importance for nature conservation.
23. The adverse impact identified above has to be balanced with the benefits of development. I recognise that the proposal would contribute to the supply of housing which the Framework seeks to significantly boost. Further the site lies in a sustainable location close to a settlement centre with a range of transport modes. The creation of the new housing and the people that would live there and use local businesses and services would also be a local economic benefit. These aspects would contribute to the social and economic roles of sustainable development.
24. Nevertheless, I find that the adverse environmental impact that I have concluded would arise means that the proposal as it stands does not meet the environmental role of protecting and enhancing the natural and built environment as set out in paragraph 7 of the Framework concerning the environmental role and I conclude that the proposal does not constitute 'sustainable development' when the Framework is read as a whole.
25. I conclude that the benefits do not amount to considerations which clearly outweigh the conflict with the development plan and the adverse impacts that would be caused and on this basis outline planning permission should not be granted.

Conclusion

26. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

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