

# Appeal Decision

Site visit made on 24 June 2014

**by Phil Grainger BA(Hons) MRTPI**

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

**Decision date: 9 July 2014**

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**Appeal Ref: APP/D3640/A/13/2208883**

**Pembroke House, 148 Frimley Road, Camberley, Surrey GU15 2QN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Thames Valley Housing Association and Tesco Stores Ltd against the decision of Surrey Heath Borough Council.
  - The application ref: 13/0336, dated 13 May 2013, was refused by notice dated 19 August 2013.
  - The development proposed was described as 'erection of a three storey building to comprise retail use (class A1) on ground floor with 14 x 2 bed flats above, access from Frimley Road'.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. These are:
  - the effect on local employment opportunities;
  - the effect on the vitality and viability of the adjoining neighbourhood shopping centre;
  - the effect on the character and appearance of the area;
  - the adequacy of the living conditions that would be provided for occupants of the proposed flats; and
  - the effect on the safety and convenience of highway users.

## Inspector's Reasoning

Employment matters

3. The appeal site lies within, but on the edge of, a designated Core Employment Area (CEA). Policy CP8 of the Council's Core Strategy and Development Management Policies Document (the CS) indicates that such areas will be retained for employment use and that new development in them should not result in an overall loss of industrial floorspace. It also advises that proposals for alternative uses will only be permitted where these support the integrity of CEAs and their employment function.
4. The text to the policy indicates that such alternative uses could include crèches and coffee houses that support the needs of the CEA. Shops are not mentioned and whilst those proposed might well be used by people working in the CEA they are intended to serve the locality generally. Moreover, whilst the shops would provide jobs, that would be true whether they were located in a CEA or not and it is not their prime function. These matters would not in themselves justify a development of the type proposed within a CEA.

5. That said, although the CS is a relatively recent document this policy is not fully in accordance with the more recent national guidance set out in the National Planning Policy Framework (the NPPF). Paragraph 22 of the NPPF cautions that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Where that is the case applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses.
6. In this case, I am told that the building on the site has remained vacant for about 10 years despite extensive marketing. The Council, who I understand own the site, have not sought to dispute this. Moreover, there is no dispute that the affordable housing element of the appeal scheme is badly needed.
7. I have also taken into account that the site is on the edge of the CEA in a position where it relates to the retail and other development along Frimley Road as well as the CEA behind it. Moreover, the CEA generally appears to be reasonably thriving. In these circumstances I conclude that allowing the appeal site to be developed for non-employment uses need not seriously harm the function of the CEA or set a harmful precedent for other uses in it. Nor would it have a serious and harmful effect on local employment opportunities.
8. I conclude that whilst the appeal proposal is contrary to Policy CP8, there are site specific considerations that, taken together with the NPPF, are sufficient to indicate that this would not necessarily be an overriding objection to a scheme that was otherwise acceptable and would help to support a sustainable local community. I have gone on to consider the proposal on that basis.

#### Shopping matters

9. The ground floor of the appeal development would include two retail units, one of 376 m<sup>2</sup> (which would be occupied by Tesco); the other of 196 m<sup>2</sup>. Given the modest size of the proposed Tesco store and the existence of much larger supermarkets in the surrounding area, I am satisfied that its catchment would be local. Accordingly the only centre where the possibility of an effect needs to be considered is the adjoining parade and other shops on Frimley Road<sup>1</sup>.
10. I have taken into account that the proposal appears to pass the sequential test (if this needs to be applied) and that it falls below the threshold at which the need for a retail impact assessment is automatically triggered. However, that does not mean that any effect on the centre, which is a matter of great concern to local residents and traders, is incapable of being a material planning consideration. Moreover, retail assessments have in fact been submitted by the appellants.
11. I have had regard to those assessments, but found that they do not accord fully with what I saw during my visit. Amongst other things I note that the original assessment based on a survey carried out in April 2013 identified only two vacant units within the parade and one more in the wider area – ie 3 in total. Having discussed the circumstances of these vacancies, the assessment concluded that they were transient.
12. However, during my visit, over a year later, I also found that 3 units were vacant. In addition when the Council surveyed the parade in July 2012 they found 2 units vacant in that smaller area. A consistent pattern of vacancies

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<sup>1</sup> The designated parade is limited to part of one side of Frimley Road. However, there are other retail or quasi-retail units, including what appears to be the main existing convenience store, beyond or on the other side.

over a period of almost two years thus emerges, albeit only about 10% of the total. Moreover, whilst they may not always have been the same units, the former Threshers store at least seems to have remained vacant for over a year. Accordingly I do not fully share the appellants' confidence that the current vacancies will be short lived, especially if the vacant units face competition for occupiers from a new unit in the appeal scheme.

13. Nor do I share the view that the variety of uses and the vacancy rate indicate a vibrant and healthy centre. As well as the consistent vacancies that I have noted, I found the number of genuine retail units to be relatively modest with a high proportion of cafes, restaurants and takeaways at least some of which are likely to generate little trade for much of the day. Indeed, the appellants' own assessment notes that A1 uses form less than half the total (though concluding, rather surprisingly, that this constitutes a good variety).
14. Turning to footfall, which the Council consider would be adversely affected if the Tesco store opened, I found very little evidence of pedestrian activity. During the considerable time I spent in the area I saw few people walking along Frimley Road. Most of those arriving by car seemed, not unnaturally, to park as close to their destination as they could and to go directly to it.
15. I would expect the Tesco store with its own off-street parking spaces to operate in much the same way. The type and apparent quality of many of the existing retail and other units would, in my view, offer little to encourage those shopping in the Tesco store to visit them. Indeed, rather than selling goods or providing services that might be regarded as complementary to Tesco, and thus potentially benefitting from spin-off trade, many of the small number of retail units, especially, would appear to be in competition.
16. I am not surprised that such traders fear for their livelihoods. However, the planning system does not exist to protect existing businesses from competition from others. Rather it is any effect on the centre as a whole and the implications of this for the well-being and sustainability of the local community that are important.
17. In assessing these matters I have had regard to the quite exceptional level of opposition that the proposal has generated. Many local residents feel that there is no need for another store and are concerned that the proposal would lead to the loss of existing shops which are seen to have an important community role over and above their retail function. The numbers of those who are opposed to the proposal far exceed its few supporters, who consider there is a need for improved local shopping facilities.
18. That said, determining appeals involves more than counting numbers and, for the reasons I have set out above, the centre does not give the impression that it is vibrant and of high quality. A scheme that attracted more shoppers without resulting in an unacceptable level of vacancies could therefore be consistent with the aim of Policy DM12 to support and enhance its viability, vitality and retail function. It could also improve sustainability by reducing trips to more distant supermarkets. Moreover, the policy does not rule out adjustments to the boundaries of parades.
19. Nevertheless, on the information that I have and for the reasons already set out, I am far less confident than the appellants that the effect on vacancies would be benign and that the appeal scheme would not lead to a diversion and concentration of trade in a way that would be harmful to the attractiveness and functioning of the centre as a whole. Had this been my only concern, then

despite the late stage it may be that a hearing would have been appropriate to explore these matters. However, for the reasons set out below, that is not the case, and in these circumstances my uncertainties regarding retail effects add to my concerns about the proposal.

Effect on character and appearance

20. Frimley Road and the areas immediately adjoining it are defined in the Council's Western Urban Area Character Supplementary Planning Document (the SPD) as falling within the Historic Routes character area. For much of its length the development along Frimley Road is characterised by traditional two storey housing. However, the appeal site is within one of the commercial nodes sub areas which the SPD describes as including a mix of retail and other uses. Older buildings tend to be traditional and two storeys high whilst those from the 1960s and 1970s are often flat roofed and two or three storeys.
21. This general description fits the appeal site and its environs well. The building on it is two storeys high and flat roofed. It is of no special merit and is currently boarded up, although the effect on the streetscene is mitigated to a degree by 4 trees on the frontage. Trees appear to be relatively uncommon within commercial nodes but occur frequently along other parts of Frimley Road. Those on the appeal site appear to be in reasonable condition.
22. The proposed building would have a flat roof and is three storeys high with the walls carried up above roof level to form a parapet to facilitate safe access to the roof and screening of roof plant. Such a building would not reflect the predominantly two storey buildings of traditional form that predominate along Frimley Road. I have taken into account that the commercial node sub-area within which the site lies includes a number of flat roofed buildings, some of which are three storeys high. However, although these form part of the character of the area they are not the dominant feature. Moreover, they are generally somewhat undistinguished structures that detract from rather than enhancing the streetscene. They include the existing building on the site though in my view it is not the most harmful.
23. In contrast several of the larger and more recent developments have genuine pitched roofs or roofs that simulate a pitch even if they are flat in part. These buildings sit far more comfortably in their surroundings than the flat roofed ones. In this context the appeal building would represent a backward step. It would be flat roofed and relatively bulky with a rather 'boxy' appearance that the balconies and limited articulation fail to overcome satisfactorily. It would stand out as a poor form of design that was ill-suited to its location.
24. This would be emphasised by its height. Although the appellants argue that this ties in with the ridge height of the buildings to the north, that is in my view an inappropriate comparison. There is a great deal of difference between the impact of a vertical brick wall and a receding roof and I consider that it would be more appropriate to compare the relative heights of the front walls. The wall of the appeal building far exceeds that of the existing buildings in the main parade to the north. Indeed it exceeds their ridge line, if only modestly.
25. Moreover, the building immediately north of the site is noticeably lower than the main parade. It is this building that provides the immediate context of the site, and this is especially noticeable in views along Murrells Lane where the main parade is partly screened. Despite the greater set back of the appeal building I consider that in such views it would appear to rise above its neighbour in a most unsympathetic manner.

26. In addition, the pattern of window openings in the proposed building appears somewhat incoherent with some windows positioned in a way that results in no rhythm or logic apparent to the external observer. Moreover, with the loss of the existing trees and their replacement by nothing more substantial than a low hedge, all this would be readily apparent to the public view.
27. I have noted that the SPD does not rule out three storey buildings and supports the replacement of poor quality flat roofed structures with high quality ones. However, for the reasons I have set out I do not consider that the appeal building represents high quality design. Intrinsically, it is ordinary at best and it would be seriously out of keeping in this particular location. Nor is the condition and appearance of the existing building on the site sufficient in itself to justify permitting such a structure which would continue to stand out as unattractive and out of keeping long after memory of the existing one had faded.
28. I conclude that the proposed structure does not represent good design and would cause serious harm to the character and appearance of the area contrary to the aims set out in CS Policy DM9, especially (ii), as well as the design guidance in the NPPF and the SPD. This in itself is a compelling reason why the proposal should not be allowed to go ahead, at least in its present form.

#### Quality of the residential environment and other housing matters

29. Other parts of Policy DM9 and the NPPF seek to ensure that the environment provided for occupiers of new residential developments is of a good standard, with Policy DM9 referring specifically to the provision of sufficient private and public amenity space. A perceived lack of adequate amenity space forms the basis of the Council's second reason for refusal.
30. In considering this matter I have noted that the Council have adopted no specific and detailed guidance on external amenity space. I have also taken into account that although the only provision proposed is a balcony for each of the flats these balconies would be sufficient to satisfy the London Design Guide. However, it is not clear to me how appropriate that Guide is for development in Camberley although I have noted that the Housing Association involved are satisfied that the scheme would meet their requirements.
31. Be that as it may, each of the flats has two bedrooms and it seems reasonable to expect that at least some of them would be occupied by families with young children. There are various parks and recreation grounds relatively close to the site, and I would expect these to be used by older children. However, the routes to them are not always safe or traffic free. Many parents are likely to be reluctant to allow younger children, especially, to go there unaccompanied and such children would have nowhere to play outside on the site except in the car park (with its own obvious dangers) or on the balconies.
32. Moreover, the balconies on the front in particular would be exposed to traffic noise from Frimley Road, which is such that the appellants' acoustic advisors have recommended that all bedroom windows should be non-opening. In addition, the balconies on the rear would overlook the employment area and, at a slightly greater distance, a recycling centre, with the potential for noise, disturbance and smells. The balconies are therefore unlikely to provide attractive environments for play or relaxation.
33. Furthermore, in my experience many people find it unsatisfactory for bedroom windows to be non-opening. Taking all these matters into account I have concerns about the quality of the residential environment being provided. This

would not necessarily have been decisive in itself and I do not consider that it need rule out any form of residential development on the site. However, it adds to my concerns that the particular scheme before me does not represent high quality design.

34. I have taken into account that there is a considerable shortfall of affordable housing that the appeal scheme would help to address and that there seems to be a particular need for smaller units. However, that is insufficient to justify a scheme of poor overall quality. Furthermore, the appeal scheme does not provide for a mix of dwelling sizes as CS Policy CP6 normally envisages. I appreciate that this does not form part of the reasons for refusal. That said, a scheme that included some one bedroom units, not just two bedroom ones, might reduce the need for external open space and make an acceptable design easier to achieve. It would of course be for the Council to determine whether such a scheme, if it were to come forward, was acceptable.

#### Safety and convenience of highway users

35. Although not part of the reasons for refusal this is a major concern of many local residents. I have taken this into account and during my visit took care to observe traffic conditions in the build up to the evening peak. I have also had regard to the Transport Statement produced by the appellants, the findings of which have not been disputed by the Highway Authority. Despite this there are some matters that I do not find wholly convincing and my reservations were increased by some of my own observations.
36. Firstly, the Statement appears to make no meaningful assessment of existing traffic conditions. Without such information the possibility exists that the situation is at or approaching a level at which even small changes in flows could have a significant effect. Moreover, I saw that there are times, even in mid-afternoon, when there is queuing on all approaches to the roundabout near the site, which would be used by vehicles leaving the development. As the evening peak approached there were occasions when the tailback of cars northbound on Frimley Road and exiting Park Road disappeared out of sight (at least 20 and 15 vehicles respectively).
37. I have no idea how representative these observations, made on a single day and when England were playing a televised world cup football match, were. However, they are broadly consistent with the thrust of the comments made by many local people. They suggest that there are times when traffic is far from free flowing and suggest that a more considered analysis of the existing situation could have been helpful.
38. I also have some reservations about the proportion of trips to the proposed retail units that are assumed to be 'linked' or 'pass by' and thus discounted. The Transport Statement indicates that the proportion of such trips can be up to 90% but this depends on a number of factors and there is no analysis of how these apply to the circumstances of the appeal scheme. It is also not always clear whether references to pass by trips are intended to include linked trips as well. Moreover, whilst a pass by trip should not, by definition, affect the volume of traffic in the area, that may not be the case with linked trips.
39. In addition the analysis of changes in traffic generation has not been made against the existing situation but against that which would occur if the lawful use of the site for employment purposes were to resume. Although this is likely to underestimate the change that local residents will actually perceive, it is a perfectly normal procedure. However, in this case it sits a little oddly against

the appellants' assertion elsewhere that there is no reasonable prospect of employment use resuming.

40. There is one further complication in that from my visit it is clear that whilst the building on the appeal site may be unused that is far from the case in respect of the parking areas around it. In fact I counted between 25 and 30 vehicles parked on the site. I have found no mention of this in the various documents that have been submitted.
41. Why these vehicles are parked on the site and how long they remain there is accordingly not known to me, but they must generate some vehicle movements and thus reduce the increase in traffic flows to which the appeal proposal would otherwise give rise. That said, no consideration seems to have been given to the effects that the displacement of this parking might have. (For the avoidance of doubt I am not suggesting that the appeal could or should be dismissed so that vehicles can continue to be parked on the site, simply that the effects that displacing this parking might have ought to be taken into account in assessing future highway conditions).
42. There are therefore several points that I feel could usefully have been explored more thoroughly in the Transport Statement. It may be that they can all be addressed satisfactorily but on the information presently available and given the traffic conditions that I observed I consider that it would be unwise to take that for granted. Again these are matters that could have been addressed at a hearing but given my conclusions on other matters that would not have been an appropriate course of action. The potential for highway conditions to be adversely affected, contrary to the aims of CS Policy DM11, thus adds to my concerns without being necessary for my conclusions.

#### Other matters and overall conclusions

43. I have had regard to all other matters raised and am well aware of the considerable local opposition to the appeal scheme. However, my decision has been made, as it must be, on the planning merits of the proposal taking into account relevant development plan policy and national advice.
44. On those merits, I conclude that, whilst the conflict with CS Policy CP8 is not in this case an overriding objection, the proposal represents poor design that is contrary to local policy and national advice. This in itself is sufficient to indicate that it does not constitute sustainable development and is a compelling reason why it should not be allowed to go ahead, at least in its present form.
45. That conclusion is reinforced by my concerns about the quality of the residential environment being provided, especially given that the proposed dwellings are capable of accommodating small families. Uncertainties regarding the retail and traffic effects add further to my concerns but are not essential to my conclusions.
46. For the reasons set out above and having taken all other material considerations raised into account I conclude that the appeal should not succeed.

**P Grainger**

INSPECTOR