



Appeal Decision

Site visit made on 7 May 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2019

Appeal Ref: APP/D3640/W/19/3221146 18 & 18a Tekels Park, Camberley GU15 2LF

- 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 Lux Homes Ltd against the decision of Surrey Heath Borough Council.
 - The application Ref 18/0616, dated 10 July 2018, was refused by notice dated 14 January 2019.
 - The development proposed is the erection of one building containing 10 apartments following the demolition of existing buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one building containing 10 apartments following the demolition of existing buildings at 18 & 18a Tekels Park, Camberley GU15 2LF in accordance with the terms of the application, Ref 18/0616, dated 10 July 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Lux Homes Ltd against Surrey Heath Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the area, the effect of the proposed parking arrangements on highway safety and the effect of the proposal on the Thames Basin Heaths Special Protection Area.

Reasons

Character and appearance

4. The development would be located within Tekels Park, a hilly, wooded area within the Wooded Hills Character Area defined in the Western Urban Area Character Supplementary Planning Document, 2012 (SPD). The area is recognised for its topography, trees and irregularly shaped plots primarily accommodating low density, detached dwellings that are set back from the road.
5. The appeal site is a large irregular plot with a wide frontage containing many trees. This accords with, and positively contributes towards, the distinctive character of Tekels Park. However, at present there is a building in a state of

- advanced disrepair which detracts from the otherwise well-maintained surroundings. The proposal would remove this building and construct a larger block containing 10 apartments.
6. Although larger, the development would in part be on the footprint of the established built form within the irregular shaped plot and therefore, would have a broadly similar position within the site. Furthermore, it would be within the confines of the outer boundaries established for three dwellings permitted under a separate consent¹. This would allow for the retention of most trees, and increased boundary planting adjacent to the road.
 7. The proposed building would use the topography of the site such that it would provide three storeys at the rear but present a two-storey elevation to the road. As a result, the overall height of the building would be broadly compatible with other detached dwellings nearby. Taking these factors together, the proposal would preserve many of the intrinsic characteristics of the Wooded Hills Character Area.
 8. The massing and form of the building is larger than most of the nearby detached dwellings. However, the building would be proportionate to, and sited within a generously sized plot with a wide frontage to the road. Furthermore, the mass of the building would be countered by the articulation of the front elevation. The effect would be enhanced by using contrasting materials with darker, muted larch panelled areas visually receding and giving an emphasis to the three principal Corten steel panelled areas. When this is combined with the woodland context, the mass and form of the building overall would not appear dominant in the street scene.
 9. I acknowledge that most dwellings in the area have a more conventional built form and utilise pitched and hipped roofs. Nevertheless, I note that the SPD records that the built form in the Wooded Hills area has architecture from modern periods described as being “generally of a bland mediocre design” and possessing “little architectural merit”. Furthermore, guiding principle WH6 of the SPD encourages opportunities to be taken that enhance the architectural quality of buildings in the area, and welcomes appropriate high quality contemporary designs. As such, the use of a flat roof of itself would be unlikely to harm the architectural character of the area, so long as it formed part of a high quality contemporary design that respected its surroundings, as in this case.
 10. The Council points out that the resulting density would be higher than the prevailing very low density residential development and specifically, to principle WH2 of the SDP that refers to net densities above 9 dwellings per hectare being out of keeping. Although density is an important component of the character of the area, it is not the only factor. In this case, the coherent nature of the plot and siting of one building within it would maintain the semi-rural spaciousness with other surrounding built form. It would therefore not result in a cramped form sub-division of the plot and minimal side gardens that principle WH2 seeks to prevent.
 11. Moreover, paragraph 127c of the National Planning Policy Framework (the Framework) states that planning decisions should ensure that developments are sympathetic to local character but should not prevent or discourage

¹ Reference SU/16/1115

appropriate innovation or change such as increased densities. In addition, more recent local guidance is set out in principle 6.4 of the Residential Design Guidance Supplementary Planning Document, 2017 (RDGSPD) which suggests that housing development should seek to achieve the highest density possible without compromising local character. To my mind the appeal proposal would accord with this guidance, and in doing so would have the additional benefit of providing much needed smaller housing units.

12. The appeal proposal makes provision for 12 parking spaces in four groups of 3 to the north east of the building. This broadly accords with the guidance in the RDGSPD which suggests that parking layouts should have no more than 3 spaces grouped together without intervening space for landscaping. Although the parking would partially be located forward of the building, it would be to the side rather than in front of the principal elevation. The existing trees and additional planting shown adjacent to the road would prevent parked cars from dominating the street scene. I return to the matter of overspill parking below in terms of highway safety, but in respect of local character and appearance, were this to occur adjacent to the appeal site as a result of the development, given its relatively modest scale and that such an occurrence would not be unusual on a residential road, I find no harm in this respect.
13. Therefore, the appeal proposal would introduce a high quality contemporary designed building, at a height that is in keeping with the surroundings, set within a verdant and spacious plot that would respect the important characteristics that comprise the Wooded Hills Character Area. Accordingly, I do not find there would be a conflict with policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2011-2018, February 2012 (CS) which sets out the general design principles that new development is expected to meet, including that it should respect and enhance the local character of the environment.

Parking

14. The proposal provides one parking space per apartment which accords with the levels suggested within the Surrey County Council Vehicular and Cycle Parking Guidance, January 2018 (the Guidance). In addition, two visitor spaces would be provided, which the Guidance encourages but states are not always necessary. Notwithstanding that Tekels Park is a private road, the Highway Authority have not raised a concern in relation to this level of parking, which carries moderate weight.
15. The Council highlight the lack of a pavement and the topography of the area which they consider would dissuade visitors from walking to the development. Nevertheless, there is little specific evidence to substantiate the concern that significant over-spill parking would arise as a result such that the general levels of parking set out in the Guidance would be inadequate. Even if there were some on-street parking, the evidence provided does not show that this would cause harm to the surrounding road network or an unacceptable impact on highway safety.
16. Accordingly, in line with the Guidance, the proposal makes adequate provision for off-road parking and therefore I do not find the proposal would conflict with policy DM9 of the CS, which sets out general design principles including that new development should provide a high quality design layout.

Thames Basin Heaths Special Protection Area

17. The appeal site is located within 5km of the Thames Basin Heaths Special Protection Area (SPA), a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for rare and vulnerable species of birds. In this case, the Woodlark, Dartford Warbler and Nightjar. Recent caselaw² requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage.
18. In the absence of mitigation measures and using a precautionary approach, given the proximity to the SPA it is reasonable to suppose that future residents of the development would potentially visit the Site for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. Notwithstanding that the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the SPA.
19. The Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document (2019) (SPD) sets out the Council's approach to mitigating the adverse effects of new housing development through two main avoidance measures. This includes the provision of Suitable Alternative Natural Greenspace (SANG), which is funded through the Council's adopted Community Infrastructure Levy and Strategic Access Management and Monitoring (SAMM).
20. The Council have confirmed that there is currently sufficient SANG available. Moreover, the Infrastructure Delivery Supplementary Planning Document 2014 confirms that such CIL contributions have the greatest priority in the infrastructure hierarchy.
21. The SAMM project coordinates visitor management across the publicly accessible parts of the SPA and provides for wardens. SAMM is funded by contributions from new development within the identified area of harm secured by a legal agreement, with the proportionate rates set out in the SPD. The appellant has submitted a signed Unilateral Undertaking (UU) that would provide a financial contribution (£4,866) towards the costs of providing SAMM as required by the SPD and policy CP14B of the CS. I am satisfied that the obligation meets the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
22. Furthermore, in response to consultation under Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017, Natural England have confirmed that the mitigation measures proposed in this case would be sufficient to avoid an adverse impact to the integrity of the SPA and would be appropriately secured, which given their specialist knowledge, attracts considerable weight.

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

23. On this basis, I find that the mitigation measures identified are sufficient to avoid the likely impact of the increased residential development proposed on the SPA, and they can be appropriately secured. As a consequence, I am satisfied that the proposal would not result in a significant effect to the SPA. I therefore find no conflict with policies CP12 and CP14B of the CS, and saved policy NRM6 of the South East Plan which seek to protect against such harm.

Other Matters

24. The UU would provide a financial contribution (£26,960) towards the provision of Affordable Housing in line with policy CP5 of the CS that seeks 20% on site provision for sites of 5-9 units (net). In this case an independent viability exercise has resulted in the parties agreeing that a financial contribution towards off-site provision is the most appropriate mechanism of securing the provision of affordable housing commensurate with the scale of the development.
25. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, that this is directly related to the development and that the amount, having been independently tested, is fairly and reasonably related in scale and kind to the development. Therefore, on the evidence before me, the Affordable Housing obligation satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
26. Subject to some of the conditions discussed below, the topography and intervening distances achieved by the proposal would not result in significant harm to the living conditions for the occupants of nearby houses. Nor does the evidence suggest that the proposal would have an adverse effect on the bio-diversity at the site. Although some residents have expressed a preference for houses over apartments, given that I have not found the proposal to result in harm to the character and appearance of the area, this is not a reason to dismiss the appeal. Furthermore, the existence of a separate permission for housing at the site would not provide justification to prevent suitable alternative proposals.

Planning balance

27. There is no dispute between the parties that the Council is currently unable to demonstrate a five year supply of deliverable housing land. Paragraph 11c of the Framework indicates that for decision-taking the presumption in favour of sustainable development means approving development proposals that accord with an up-to-date development plan without delay. In this case, the most relevant policies of the CS broadly align with the advice in the Framework for achieving well-designed places, and so are up to date. As will be seen from my reasoning above, I have found no conflict with the development plan, and as such the appeal proposal should be approved. In these circumstances, there is no need to consider the balancing exercise set out in paragraph 11d of the Framework.

Conditions

28. The three year period in which the planning permission may be implemented is a statutory requirement but I also consider that it is necessary to specify the plans that are approved and that the development shall be undertaken in accordance with these as this provides certainty.

29. A condition requiring the agreement of the finish of the external materials to be used is reasonable given their impact on the overall quality of the design. However, there is no need to require the details to be agreed prior to the commencement of any development, and I have adjusted the wording to reflect this. Similarly, as the additional planting indicated contributes to the overall appearance of the development it is reasonable to agree a detailed landscaping scheme. However, I have adapted the suggested wording to include a timetable for implementation rather than requiring all landscaping to be carried out prior to first occupation, as this would be dependent upon the season.
30. Furthermore, considering the importance of the verdant character of the site, and the number of protected trees, the development should proceed in accordance with the tree protection plan and methodology submitted. I have, however, amalgamated several of the conditions suggested by the Council in this respect to avoid duplication. Planning Practice Guidance advises that pre-commencement conditions should only be used where the requirements of the condition are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. In light of the submitted comprehensive manual for managing trees on development sites, it is not necessary to require the developer to submit and agree photographs with the Council prior to the commencement of development.
31. Given the proximity of the development to the M3 motorway, appropriate noise mitigation is required prior to the occupation of the development. I have however adjusted the wording of parts of the condition as there is no requirement to have matters agreed prior to the commencement of any development. Furthermore, I accept that the measures shown to prevent unreasonable overlooking to 16a Tekels Park should be implemented. In addition to the suggested wording I have referred to the provision of the privacy screens to the relevant balcony areas.
32. The submitted ecological information included a mitigation and enhancement plan in order to adequately protect the bio-diversity at the site. Accordingly, the scheme should proceed in accordance with the recommendations based on this evidence. I have however removed the more advisory wording suggested by the Council as this would not meet the 6 tests necessary for conditions as set out in paragraph 55 of the Framework.
33. Finally, the transportation evidence does not suggest that a transport construction management plan to be agreed prior to the commencement of development would be warranted for a development of this scale. However, of the details to be agreed, I accept that it would be reasonable to secure the hours of construction in order to safeguard the living conditions of nearby residents and have amended the condition accordingly. As this relates to the period of construction it follows that it will need to be agreed prior to the commencement of development.

Conclusion

34. For the reasons given above I conclude that the appeal should be allowed.

Helen O'Connor

Inspector

Schedule of conditions (9 conditions)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan 17-J2192-LP01; Existing site plan 17-J2192-LP02A; Proposed site plan 17-J2192-100A; Proposed floor plans, lower and upper ground 17-J2192 101B; Proposed floor plans, first and roof level 17-J2192 102B; Proposed elevations, north and street scene 17-J2192 103B; Proposed elevations, south, east and west 17-J2192 104A; Existing floor plans and elevations 17-J2192 105; Existing site sections and elevations 17-J2192 106A and Proposed long and cross site sections 17-J2192 107.
- 3) Prior to the relevant part of the development taking place details and samples of the external materials to be used shall be submitted to and approved in writing by the local planning authority. Once approved, the development shall be carried out using only the agreed materials.
- 4) The development shall not be occupied until full details of both hard and soft landscaping works, including a time-table for implementation, have been submitted to and approved in writing by the local planning authority. Thereafter the development shall proceed in accordance with the approved details and time-table.
- 5) The development hereby permitted shall be carried out wholly in accordance with the submitted Arboricultural Report prepared by Arboricultural assessment & method statement by Barrell Tree Consultancy dated 12th July 2018 reference 17317-AA-AS. As such no demolition, site clearance or building operations shall commence until tree and ground protection has been installed in accordance with British Standard 5837: 2012 "Trees in Relation to Design, Demolition and Construction" and as detailed within the submitted Arboricultural Report. No trenches, pipe runs for services and drains shall be sited within the Root Protection Area as defined in British Standard 5837: 2012 "Trees in Relation to Design, Demolition and Construction" of any retained tree unless otherwise agreed in writing by the local planning authority. The tree protection measures shall be retained until completion of all works hereby permitted.
- 6) Prior to the first occupation of any part of the development the following will be implemented:
 - 1) Window and door openings in elevations detailed within Table 6 of the submitted Paragon acoustic report (reference 20180709-4198) shall be fitted with acoustic glazing that achieves a minimum dB Rw + Ctr sound reduction stated therein.
 - 2) Measures in accordance with details that have previously been submitted to and approved in writing by the local planning authority to achieve a level of no more than 55dBleq on balconies and on other private amenity areas within the development.
 - 3) Self-generated noise from the mechanical ventilation system must meet the guidance given at paragraph 4.36 of Building Regulations Approved Document F (2010) - Means of ventilation. Attenuators should be incorporated to reduce external noise sources to appropriate internal

levels. The ventilation system to be designed so that its overall noise level contribution in any living room is no more than 25 dB(A), and in any bedroom no more than 20 dB(A). This includes the combined, total noise levels due to self-generated noise from powered elements, aerodynamic noise, external noise ingress via the system itself and breakout noise levels.

4) The mechanical ventilation plant in accordance with details that have previously been submitted to and approved in writing by the local planning authority showing that noise breakout from its operation does not cause nuisance to neighbours. (Note; submission of a BS4142:14 assessment may be required.)

Thereafter the glazing and ventilation details referred to above shall be retained.

- 7) Before first occupation of the development hereby approved the privacy screens to the side of the first and second floor balconies in the west elevation facing 16a Tekels Park shall be installed and thereafter retained. Before first occupation of the development the first and second floor side windows in the west elevation facing 16a Tekels Park shall be completed in obscure glazing and any opening shall be at high level only (greater than 1.7m above finished floor level) and retained as such at all times.
- 8) The development hereby approved shall be undertaken in accordance with the recommendations as outlined in the submitted 'Biodiversity Appraisal', author Andrew McCarthy Ecology, dated November 2016 and 'Ecological Mitigation and Enhancement Plan', author AA Environmental Ltd, dated July 2018.
- 9) No development shall commence until the hours of construction have been submitted to and approved in writing by the local planning authority. Thereafter the development shall proceed in accordance with the agreed details.