



Appeal Decision

Inquiry held on 10 May 2016

Site visit made on 10 May 2016

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 14 June 2016

Appeal Ref: APP/Y3615/W/15/3132753

109 South Lane, Ash, Aldershot, GU12 6NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Anthony Webber (Cove Construction Ltd) against Guildford Borough Council.
 - The application Ref: 14/P/01637 is dated 29 August 2014.
 - The development proposed is a residential development comprising 21 dwellings with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development comprising 21 dwellings with associated access, parking and landscaping at 109 South Lane, Ash, Aldershot, GU12 6NL in accordance with the terms of the application, Ref: 14/P/01637 dated 29 August 2014, subject to the conditions set out in the attached Schedule.

Applications for Costs

2. At the Inquiry an application for costs was made by Mr Anthony Webber (Cove Construction Ltd) against Guildford District Council, and a counter-application for costs by Guildford District Council against Mr Anthony Webber (Cove Construction Ltd). These applications are the subject of separate decisions.

Reasons

3. The appeal site extends to about one hectare and comprises the existing dwelling at No 109 South Lane, a hard surfaced area and buildings used for the appellant's timber business, stables, and a large paddock where horses are grazed. South Lane is mainly residential in character comprising a mix of detached and semi-detached dwellings. However, the appeal site is defined as being in the countryside beyond the Green Belt and within the buffer zone of the Thames Basin Heaths Special Protection Area (TBHSPA).

Common Ground and Housing Supply

4. A Statement of Common Ground (SoCG) was submitted in which the following matters were agreed by between the parties as not being in dispute.

- The site lies in a sustainable location, and in accordance with the *National Planning Policy Framework* (the Framework), the proposed development would provide social, economic and environmental benefits.
 - There would be no adverse impact on the character of the area including the health of trees around the site perimeter.
 - The proposed development would deliver an acceptable housing mix.
 - Subject to appropriate conditions and licenses, there would be no adverse impact on the ecology of the site and area.
 - There would be no adverse impact on highway safety.
5. It is also common ground between the parties that the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites (as required by paragraph 47 of the Framework). Paragraph 49 makes it clear that where there is such a shortfall, relevant policies for the supply of housing should not be considered up-to-date, and that due weight should be given to the relevant policies according to their degree of consistency with the Framework's policies. The shortfall is very significant, and this is not disputed. Saved Policy RE4 of the *Guildford Local Plan 2003* (LP) seeks to restrict development in the countryside outside the Green Belt, except in a limited range of circumstances, and as such may be considered a policy relevant to the supply of housing. Accordingly, I attach very limited weight to this policy. In such situations it is likely that further development will be needed in such areas in order to meet the current housing needs of the Borough.
6. However, this does not mean that permission should automatically be granted, and paragraph 49 of the Framework says that in situations where development plan policies have failed to deliver a sufficient supply of deliverable housing sites, housing applications should be considered in the context of the presumption of sustainable development. The mechanism for applying that presumption is set out in paragraph 14 of the Framework, and it says that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole.
7. I note that a new local plan is currently being prepared. However, as it is at a relatively early stage in its progress towards formal adoption, I afford its emerging policies carry little weight at this time

Main Issues

8. The application was discussed at the Council's Planning Committee on 25 November 2015 where it was resolved that, had the Council been in a position to determine the application, it would have been refused for a number of putative reasons. Based on these reasons I consider the main issues in this case are:
- *The effect of the proposal on the health and well being of a local resident;*
 - *Whether the proposed development would increase the risk of flooding on the site and elsewhere; and*
 - *The effect of the proposed development on the TBHSPA, with particular regard to the availability of a suitable SANG.*

Issue 1: The effect of the proposal on the health and well being of a local resident

9. The Council's 1st putative reason for refusal states: *'It has not been demonstrated that the proposed development, in particular the construction noise and related disturbance, would not seriously adversely impact on the health and well being of a local resident "Miss A", who suffers from a complex condition of Autism with associated Post Traumatic Stress Disorder and Chronic Fatigue Syndrome. It has not been possible to mitigate this impact, and therefore the proposal conflicts with saved LP Policy G1 (3).'*
10. However, prior to the Inquiry the Council withdrew this reason for refusal because it was satisfied that a suitably worded 'Grampian' type pre-condition would address its concerns.
11. I understand that the relocation of "Miss A" and her family has been agreed with the developer of the nearby site at Ash Lodge Drive; the mechanism for achieving this being through a Unilateral Undertaking which will come into effect on commencement of that development. Therefore, in effect, this condition would prevent any development on the appeal site until such time as the family of "Miss A" has been relocated. I have considered the advice on conditions in the Government's Planning Practice Guidance (PPG), and whilst this form of condition is unusual, the agent acting on behalf of "Miss A" and her family has stated that it would address his client's concerns, and I accept that it represents a pragmatic way forward.
12. On this basis I am satisfied that the proposed development would not result in additional harm being caused to the health and well-being of this local resident and her family. As such, I find no conflict with saved LP Policy G1 (3).

Issue 2: Whether the proposed development would increase the risk of flooding on the site or elsewhere

13. The submitted Flood Risk Assessment (FRA), together with information provided by the Environment Agency indicates that the site is susceptible to surface water flooding, despite being situated within Flood Zone 1 (low risk). The Council's 2nd putative reason for refusal states that *'without sufficient and compelling evidence it is not satisfied that the proposed development would not increase the risk of flooding on site and elsewhere'*. However, in March 2105 the appellant submitted additional drainage strategy details (Enzygo), and based on a review of these details the Council withdrew this reason for refusal.
14. However, Surrey County Council, as Lead Local Flood Authority, reviewed these additional details and advised that they could not recommend that planning permission be granted because the proposed surface water drainage strategy did not comply with the requirements set out under the technical standards. In particular, the response said proper regard had not been given to the Sustainable Urban Drainage System (SuDS) hierarchy, and that infiltration as a drainage option has been disregarded based the results of a desk top study.
15. This matter was discussed at the Inquiry and an adjournment was held to enable a dialogue to be held with the County Council to discuss the areas of concern. It was clarified that the proposed system would provide flood water storage up to 225 cubic metres of flood water storage on site, which exceeds the requirement for the site to accommodate 197 cubic metres to cater for a 1

in 100 year plus climate change event. It was also confirmed that controlled discharge would take place to the piped ordinary watercourse (and not the main combined sewer). The County Council has since confirmed that it is satisfied with these drainage strategy details, and raises no objections to the proposal subject to appropriately worded conditions.

16. I find no reason to disagree with that professional assessment, and conclude that the proposal would not result in an increased risk of flooding on the site or elsewhere. As such, there would be no conflict with saved LP Policy G1 (7).

Issue 3: The effect of the proposed development on the TBHSPA, with particular regard to the availability of a suitable SANG

17. The appeal site lies within the 400m buffer zone of the Thames Basin Heaths Special Protection Area (TBHSPA), and the net increase in the number of dwellings on the site would be likely to have a significant impact on the integrity of the TBHSPA. The Council's 3rd putative reason for refusal states that it cannot be satisfied that this proposal, either alone or in combination with other development, would not have an adverse effect on the integrity of the TBHSPA. The 4th reason relates to the absence of a planning obligation to secure financial contributions to mitigate harm caused to TBHSPA.
18. However, although only submitted in draft prior to the Inquiry, the appellant has subsequently provided a signed and dated agreement under Section 106 of the *Town and Country Planning Act 1990*. This makes such provision in the form of a contribution of £102,570.23 for avoidance works towards the cost of upgrading an existing suitable alternative natural green space (SANG), and an access and monitoring contribution of £20,185.63. These levels of contribution are in line with the Council's *TBHSPA Interim Avoidance Strategy* which has been adopted by the Council and may be afforded full weight.
19. Paragraph 204 of the Framework says planning obligations must be necessary to make the development acceptable in planning terms, and be fairly and reasonably related to it in scale and kind. As the development is also chargeable development, the Section 106 Agreement needs to satisfy the corresponding tests in Regulation 122 of the *Community Infrastructure Regulations 2012* (CIL). Having regard to the representations made, I consider the relevant policy and CIL legal tests have been met and a contribution is justified. I am satisfied that the provisions of Regulation 123 concerning the pooling of planning contributions does not apply, as the contribution is required to improve a SANG to ensure it has suitable capacity to mitigate the impact.
20. Planning permission has been granted to a privately delivered SANG at Ash Lodge Drive (Ref: 12/P/01973) as part of a residential development for up to 400 dwellings, and this SANG falls within the catchment of the appeal site. The SANG is 24ha in extent, of which only 8ha would be taken up by the Ash Lodge Drive development. Therefore, although the SANG has yet to be implemented, it has considerable spare capacity and would be capable of mitigating the impact of the appeal proposal should it be delivered. This is not disputed by the parties.
21. The SoCG suggests that a 'Grampian' type pre-condition would prevent development proceeding on the appeal site unless and until the Ash Lodge Drive SANG is provided. Conditions of this type have been imposed elsewhere by the Council in similar situations. Nonetheless, I accept that there is no

certainty that the Ash Lodge Drive SANG site will become available during the lifetime of the planning permission if the appeal were to succeed. However, it would be wrong of me to refuse to impose such a condition solely because there is no guarantee that the action in question will be carried out within the time limit of the permission. Rather, so long as the condition would prevent any development taking place until it was satisfied, refusal should only follow where there would be no adverse planning implications arising from granting a planning permission which was not subsequently implemented.

22. It is also possible that there may be other future schemes ready to lay claim to the ability of the Ash Lodge Drive SANG to compensate for any harm to the TBHSPA. However, the Council monitors applications and SANGs and consequently would be in a position to resist other schemes in the event that the Ash Lodge Drive SANG was fully taken up. In summary, I am satisfied that a pre-condition preventing development on the appeal site until the Ash Lodge Drive SANG comes forward (or another suitable alternative SANG) would overcome the Council's objections. As such, I find no conflict with saved LP Policies NE1 and NE4 and saved Policy NRM6 of the *South East Plan 2009*. For the same reasons the proposal would satisfy the requirements of Regulation 61 of the *Conservation of Habitats and Species Regulations 2010*.

Other Matters – Affordable Housing

23. The Agreement includes for the provision of 35% of the dwellings (7) to be affordable housing units as defined in the Framework's Glossary and in accordance with the requirements of the Council's Planning Contributions SPD and saved LP Policy H12. I consider this is clearly necessary to make the proposal acceptable in planning terms, and satisfies all the statutory tests in Regulation 122.

Overall Planning Balance

24. It is now necessary to determine whether the proposal is sustainable in the context of the Framework's policies taken as a whole. Paragraph 7 identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. The delivery of 21 dwellings would have a significant impact on the considerable under-supply of housing in the Borough, and this is a very important material consideration in favour of the proposal. There would also be limited economic benefits arising from the construction and subsequent occupation of the dwellings, additional support for local employment and services, and the provision of family housing and the delivery of affordable dwellings to meet an identified local need would represent an important social benefit.
25. I consider there would be no significant environmental harm, no harm to the ecology of the site and surroundings, and no material harm to highway safety. I have concluded that the proposal would not add to the risk of flooding, and subject to an appropriate condition, would not harm the health and well-being of a local resident. I have also concluded that the effect of the proposal on the TBHSPA would be satisfactorily mitigated.
26. Consequently, when viewed in the round, I find that the proposal would represent a sustainable form of development. Furthermore, no adverse impacts have been identified that would significantly and demonstrably outweigh the benefits of the proposal.

Conditions

27. I have considered the conditions put forward by the Council in the light of the advice in the PPG and Framework. A condition is needed to secure compliance with the submitted (revised) plans, for the avoidance of doubt and in the interests of proper planning.
28. To ensure that sufficient mitigation for the effects on the SPA has been secured, the pre-condition discussed above relating to the Ash Lodge Drive development is necessary. To ensure that the proposed development would not result in additional harm being caused to the health and well-being of "Miss A" and her family, the pre-condition discussed above is also necessary.
29. A number of conditions are needed to ensure that the site is adequately drained, and to prevent the risk of flooding. The condition requiring a site investigation to check for the possible presence of ground contamination and implementation of any subsequent mitigation measures is justified, although I favour a modified wording. As there is no evidence of a likelihood of archaeological remains, a condition requiring a written scheme of investigation is unnecessary in my view.
30. In the interests of the living conditions of nearby residents, a Construction Transport Management Plan should be followed. However, due to the proximity of existing housing, I intend to impose an additional condition controlling the hours of construction working. In the interests of sustainability, details of how energy efficiency in the development will be achieved are necessary.
31. The condition to ensure the protection of retained trees is needed in the interests of the appearance of the area, as are those requiring details of the landscaping of the site and the prior approval of materials. The condition requiring floor and site levels is necessary as these details are not shown.
32. In the interests of highway safety I consider the conditions requiring the construction of the access, visibility splays, and on-site parking are necessary. However, the condition requiring that garages be expressly retained for the parking of vehicles is unnecessarily prescriptive in my view, and difficult to enforce. Therefore I shall not impose it.
33. To avoid unnecessary harm to bats and the ecological interest of the site the development shall be carried out in accordance with the submitted mitigation and enhancement actions. I agree that a condition removing normal permitted development rights for the enlargement, improvement or other alterations to the dwellings at plots 5-18 is justified given their proximity to retained trees in order to safeguard the character and appearance of area.

Conclusion

34. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Nigel Harrison

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three 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	131128/LP1
Proposed Site Layout	131128/SL Rev K
Site Survey	763SL01
Street Scenes Sheet 1	131128/SS1 Rev E
Street Scenes Sheet 2	131128/SS2 Rev E
Double Garage (1)	131128/DG1/EP Rev B
Double Garage (2)	131128/DG2/EP Rev B
Single Garage	131128/SG1/EP Rev B
House Type A: Elevations/Plans	131128/HT/A Rev G
House Type B: Elevations/Plans	131128/HT/B Rev G
House Type C: Elevations/Plans	131128/HT/C Rev G
House Type D: Elevations/Plans	131128/HT/D Rev G
House Type D2: Elevations/Plans	131128/HT/D2 Rev A
House Type E: Elevations/Plans	131128/HT/E Rev G
House Type F: Elevations/Plans	131128/HT/F Rev F
House Type G: Elevations/Plans	131128/HT/G Rev F
Tree Constraints Plan	CCL 09138/TCP Rev 1
Tree Impact Assessment Plan	CCL 09138/IAP Rev 1
Tree Protection Plan	CCL 09138/TPP Rev 1
Visibility Splay	14038-TK01

- 3) No development shall take place until written confirmation has been obtained from the Local Planning Authority that the Council has secured mitigation for the development hereby approved through contributions towards the maintenance and improvement of the Ash Lodge Drive Suitable Alternative Green Space (SANG), or other suitable SANG as may be identified by the Council in consultation with English Nature. No dwelling shall be occupied before written confirmation has been obtained from the Local Planning Authority that any upgrading works required to bring the land up to an acceptable SANG standard have been completed.

- 4) No development shall take place until:
 - a) The relocation of "Miss A" and her family as set out in the Unilateral Undertaking in relation to planning permission Ref: 12/P/01973 (Ash Lodge Drive) dated 20 March 2014 has taken place; or
 - b) Before the family of "Miss A" notifies the developer of the scheme approved in planning permission Ref: 12/P/01973 (Ash Lodge Drive) dated 20 March 2014, that they do not wish to be relocated, whichever is the earlier.
- 5) No dwelling hereby permitted shall be occupied until a full scheme for the provision of a Sustainable Urban Drainage System (SuDS) for the site has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the SuDS has been constructed in accordance with the approved scheme. The details required shall include:
 - a) Full details of the proposed system including pipe positions, dimensions and levels, manhole levels and details of flow control devices;
 - b) Calculations demonstrating a reduction in surface water run-off rates and volumes up to the 1 in 100 plus climate change storm events;
 - c) Demonstration that there will be no on-site flooding up to the 1 in 30 storm event and any on-site flooding between the 1 in 30 and 1 in 100 storm events will be safely contained on the site with mitigation of the residual risk/overland flows; and
 - d) A detailed maintenance schedule for the SuDS drainage system including ownership responsibilities demonstrating that the future maintenance of the SuDS has been secured.
- 6) No foul or surface water from the site shall be discharged into the public system until the drainage works referred to in the strategy have been completed and the development shall be implemented in accordance with the approved details.
- 7) No development shall take place until details of how the SuDS will cater for system failure or exceedance events, both on-site and off-site, keeping access and egress to the site clear, must be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) No development shall take place until:
 - a) A detailed Phase One Survey, including historic investigation and detail on ground conditions to ascertain whether the site supports and soil or water contamination.
 - b) If the Local Planning Authority considers that further investigation of the site is necessary, a detailed site investigation must be carried out by a qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. The investigation shall include relevant sub-surface, soil, gas and ground water sampling together with the results of analysis and a risk assessment of the impact to receptors.

- c) Any remediation required shall be fully detailed to restore the site to a standard suitable for use, including works to address any suspected contamination.
- 9) Any remediation scheme carried out in accordance with Condition 8 above shall be carried out in accordance with the approved measures before any dwelling is occupied. Documentary proof shall be provided to the Local planning Authority including:
 - a) A quality assurance certificate to show that the works have been carried out in full accordance with the approved remediation strategy;
 - b) Details of any post remediation sampling and analysis to show that the site has reached the required clean-up criteria shall be included in the closure report;
 - c) The necessary documentation detailing what waste material has been removed from the site;
- 10) No development shall take place until details of existing and proposed site levels, finished floor and ridge levels of the dwellings to be erected, and finished external surface levels have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details.
- 11) No construction work including the receipt of deliveries associated with the development shall take place outside the hours of 0730 to 1800 Mondays to Fridays, 0800 to 1300 on Saturdays, or any time on Sundays, Bank or Public Holidays
- 12) No development shall take place, including any ground clearance and de-contamination, until a Construction Transport Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - a) The parking of vehicles of site operatives and visitors;
 - b) The loading and unloading of plant and materials;
 - c) Provision of boundary hoarding behind any visibility splays;
 - d) Wheel washing and dust screens to keep the public highway clean and prevent the creation of a dangerous surface on the public highway;
 - e) HGV delivery hours; and
 - f) Onsite turning for construction vehicles.
- 13) No development shall take place until an energy statement has been submitted to and approved in writing by the Local Planning Authority. This shall include details of how energy efficiency is being addressed, including benchmark data and identifying the Target Carbon Emissions rate (TER) for the site or the development as per Building Regulations requirements (for types of development where there is no TER in the Building Regulations, predicted energy usage for that type of development should be used) and how a minimum of 10% reduction in carbon emissions against the TER or predicted energy usage through the use of on-site low and zero carbon energy shall be achieved. The

- approved details shall be implemented prior to the first occupation of the development and retained as operational thereafter.
- 14) No development shall take place until a Construction Method Statement based on the measures indicated in the *Arborological Report prepared by Crown Consultants* dated 23 July 2014 has been submitted to and approved in writing by the local planning authority. This shall detail the measures to be taken to protect the health of existing trees, shrubs and hedgerows during construction works, including the positions of the proposed service runs. The approved Statement shall be adhered to throughout the construction period.
 - 15) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 16) No development shall take place until full details of hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority, and shall include:
 - a) A schedule of landscape maintenance for a minimum period of 10 years for the site boundaries and 5 years for all other areas, with long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas;
 - b) An implementation plan for planting;
 - c) All boundary treatments and means of enclosures including full design details; and
 - d) Details of bin stores
 - 17) All planting, seeding and turfing comprised in the approved landscaping details shall be carried out in the first planting and seeding season following the occupation of the development or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
 - 18) The development shall not be occupied until the proposed vehicular access to South Lane has been constructed, and provided with visibility splays, in accordance with the approved plans (Drawing No 140138-TK01). Thereafter the visibility splays shall be kept clear of any obstruction above 1.05m in height.
 - 19) The development shall not be occupied until dropped kerbs and tactile paving have been constructed at the proposed vehicular access in order for pedestrians to access the site, and on the western side of South lane, in accordance with a scheme to be submitted to and approved by the Local Planning Authority, and in accordance with the requirements of the County Highway Authority.
 - 20) The development hereby approved shall not be occupied until space has been laid out within the site for vehicles to turn so they may enter and leave the site in forward gear. No dwelling shall be occupied until the

parking spaces allocated to it have been laid out in accordance with the approved plans. The parking/turning areas shall thereafter be retained for that purpose.

- 21) The development hereby approved shall be carried out in accordance with the mitigation and enhancement actions as detailed in Section 5 of the Ecological Appraisal and Section 4 of the Bat Presence/ Likely Absence Survey prepared by the Ecology Consultancy, and the recommendations of those reports shall be implemented concurrently with the development.
- 22) Notwithstanding the provisions of Schedule 2, Part 1 Class A of the *Town and Country Planning (General Permitted Development) Order 1995* (or any Order revoking, re-enacting or modifying that Order), no enlargement, alteration or other improvements shall be carried out on the dwellings at plots 5-18 (as shown on Drawing No 131128/SL Rev K).
- 23) (End of conditions)

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

George MacKenzie	of Counsel
Colin Kiely	Kiely Planning
Tony Webber	Cove Construction

FOR THE LOCAL PLANNING AUTHORITY:

David Lintott	Of Counsel
Kelly Jethwa	Guildford Borough Council

INTERESTED PERSONS:

Areena David	Guildford Borough Council
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DOCUMENTS

- 1 Council's letter dated 11 April 2016 notifying interested persons of the date and venue for the Inquiry
- 2 Revised suggested conditions
- 3 Letter dated 3 December 2015 Keily Planning to M Harding
- 4 1st email dated 10 May 2016 Scott Dawson (Enzygo) to Tony Webber re: flood risk/drainage
- 5 2nd email dated 10 May 2016 Scott Dawson (Enzygo) to Tony Webber re: flood risk/drainage
- 6 Costs application on behalf of the appellant
- 7 Costs application on behalf of the Council
- 8 Planning applications which contribute to the proposed SANG at Ash Lodge Drive
- 9 Letter dated 5 May 2016 from Scott Dawson (Enzygo) to Helen Parkin (Surrey CC) re: flood risk/drainage
- 10 Letter dated 7 April 2016 from Helen Parkin (Surrey CC) to Guildford BC re: flood risk/drainage