



Appeal Decision

Site visit made on 15 May 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2019

Appeal Ref: APP/R3650/W/18/3216058

Green Lane Farm, Green Lane, Badshot Lea, Surrey GU9 9JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Farnham Estates against the decision of Waverley Borough Council.
- The application Ref WA/2018/1230, dated 3 July 2018, was refused by notice dated 31 October 2018.
- The application sought planning permission for the construction of 43 dwellings and associated parking, with new access from Monkton Lane without complying with conditions attached to planning permission Ref WA/2016/2456, dated 5 March 2018.
- The conditions in dispute are Nos 2, 3, 5 and 8 which state:
 - (2) The development hereby permitted shall be carried out in accordance with the following approved plans: 58806-100B Site Location Plan, 58806-101F Site Layout Plan, 102E external materials and boundary treatments, 103E surface materials plan, 104E Refuse management plan, 110E Street scenes AA & BB, 111E Street scenes CC & DD, 120A Plots 23 & 27, 124A Plots 1, 3, 38, 40, 43; 125B Plots 1, 3, 38, 40, 43; 126A plot 42, 144C plots 17, 19, 20, 24, 25, 26; 145B plots 4, 6, 18, 36; 146A plots 2, 37, 39, 41; 147B Plot 5; 149 Plot 7 and 8; 161 Plots 30/31; 162C Plot 34 & 35; 180B Plots 28, 29, 32, 33; 181B Plots 9, 11, 12, 13, 14, 15, 16; 182 Plot 21/22; 183 Plot 10; 250 Single Garage and 251A Double Garage.
 - (3) Prior to the commencement of the development the applicant shall construct the proposed vehicular site access onto Monkton Lane in accordance with drawing no. 58806-101F, and subject to the Highway Authority's technical and safety requirements.
 - (5) No dwelling shall be occupied until construction has been completed of a 3.0m wide shared pedestrian footway/cycleway along the southern boundary of the site, with associated crossing points, between Green Lane and the Monkton Lane junction with Water Lane, in accordance with drawing no. 58806-101F, and subject to the Highway Authority's technical and safety requirements.
 - (8) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 58806-101F for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- The reasons given for the conditions are:
 - (2) A condition specifying the relevant drawings provides certainty.
 - (3) The proposed access is required to be built prior to development commencing to ensure it can adequately provide for construction traffic.
 - (5) To ensure pedestrian and cycle links are provided prior to occupation of the dwellings to meet the needs of the occupiers and in order to protect highway safety.
 - (8) To ensure adequate parking and vehicle turning are provided prior to occupation of the dwellings to meet the needs of the occupiers and in order to protect highway safety.

Decision

1. The appeal is allowed and planning permission is granted for the construction of 43 dwellings and associated parking, with new access from Monkton Lane at Green Lane Farm, Green Lane, Badshot Lea, Surrey GU9 9JL in accordance with the application Ref WA/2018/1230, dated 3 July 2018, without compliance with condition numbers 2, 3, 5 and 8 previously imposed on planning permission Ref WA/2016/2456, dated 5 March 2018 and subject to the conditions set out in a schedule at the end of the decision.

Application for costs

2. An application for costs was made by Farnham Estates against Waverley Borough Council. This application is the subject of a separate Decision.

Background

3. Planning permission was granted on appeal in March 2018 for the construction of 43 dwellings and associated parking on land to the west of Green Lane with a new access from Monkton Lane¹. Work has not yet started on site to implement this permission. The current proposal is to change 5 of the units from affordable housing to market housing and to amend the layout by adding rear conservatories to Plots 1, 3, 38, 40 and 43 and by providing detached rather than semi-detached dwellings on plots 34 and 35. Planning conditions 3, 5 and 8 would need to be revised to show the updated site plan number. A deed of variation to the appeal planning obligation has been submitted during the current appeal.
4. The Council has not objected to the addition of the conservatories or to the provision of detached houses on plots 34 and 35. I have no reason to disagree having regard to the modest nature of the physical changes to the approved layout and to their limited impact on the surrounding area.

Main Issues

5. The main issues therefore are (a) the sufficiency of the proposed affordable housing provision and the legitimacy of its provision under the S.73 procedure and (b) the acceptability of the deed of variation to the planning obligation.

Reasons

Affordable housing

6. The approved scheme offered 18 affordable housing units, equating to 43% of total units proposed. The current proposal for 13 affordable housing units would equate to 30% provision. Policy AHN1 of the Waverley Borough Local Plan Part 1 (2018) (WLP) states that the Council will require a minimum provision of 30% affordable housing on all housing development sites above specified thresholds, and in all cases where on-site provision is being made that the size and tenure split of units should reflect the type of housing identified as being required in the most up-to-date evidence of housing need. The proposal would satisfy the minimum overall provision requirement and the Council's report confirms that the size and tenure split would be broadly in line with the West Surrey Strategic Housing Market Assessment (2015) (SHMA). The proposal would thereby be in accordance with the current development plan.

¹ Appeal Ref: APP/R3650/W/17/3180922 and planning application WA/2016/2456.

7. The Council and interested parties have objected to the scale of reduction in affordable housing provision. The Council refers to a need for 314 additional affordable homes per year in the SHMA and as at 1 April 2016 there were over 1,500 households registered on the Council's Housing Register, unable to access housing to meet their needs in the market. Whilst not doubting the ongoing high demand for affordable housing in Waverley, the strategy for meeting that need is reflected in the recently adopted Policy AHN1 of the WLP with which the current proposal is compliant.
8. Moreover, in allowing the appeal, the Inspector acknowledged that provision of 18 affordable dwellings on the site would exceed policy requirements but did not attach any material weight to this. Nor did he consider this excess a benefit to the scheme that would otherwise outweigh any harm, as he considered the proposal to accord with the Development Plan in all other respects. There is therefore no policy basis upon which to justify rejection of the level of affordable housing provision in the current proposal.
9. The Council's first reason for refusal of the current proposal contends that the difference to the affordable housing provision in the approved scheme would be substantial, and that the current proposal cannot be considered to be a minor material amendment in accordance with S.73 of the Town and Country Planning Act 1990. Condition 2 to the appeal permission lists the approved plan numbers and provides a mechanism to enable the variation of the planning permission utilising the S.73 procedure. There is no statutory definition of a minor material amendment but Planning Practice Guidance² states "*it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved*". Case law has established that the S.73 procedure may only be used to make amendments to an existing planning permission which do not amount to a "*fundamental alteration*" of the proposal authorised by that permission³.
10. The reduction in the number of affordable dwellings does not fundamentally alter the nature of the appeal permission. The overall number of dwellings would remain at 43, the housing mix little changed, and level of affordable housing provision would move from one policy compliant position to another. Moreover, the previous excess in provision in the appeal permission was not deemed a necessary benefit to outweigh any harm arising from that proposal. Accordingly, I do not regard the proposed reduction in affordable housing provision to be a fundamental alteration. It is not substantially different from that of the appeal permission, and the S.73 procedure is entirely appropriate in enabling the change to be made.

Planning obligation

11. The Council's second, third and fourth refusal reasons related to the absence of a completed legal agreement to update the planning obligation in place for the appeal permission. The appellant has subsequently submitted a deed of variation dated 17 May 2019 that has been signed by representatives for Waverley Borough Council and Surrey County Council. The deed of variation makes modest increases to the contributions to be paid to the County Council in relation to both primary and secondary education and substitutes a revised table to detail the reduction in affordable housing provision from 18 to 13 units.

² Paragraph: 017 Reference ID: 17a-017-20140306

³ R v Coventry CC, ex parte Arrowcroft Group plc [2001] PLCR 7 at paragraph 33.

Other undertakings specified in the principal agreement attached the appeal permission would remain unchanged.

12. I am satisfied that the deed of variation in association with the principal agreement would secure contributions towards, education, leisure, recycling containers and highway works to mitigate the proposal's effects upon infrastructure. There would not be conflict with Policies ICS1 and ST1 of the WLP or with Policies FNP30 and FNP32 of the Farnham Neighbourhood Plan (2017) (FNP) that relate to transport impacts and infrastructure contributions.
13. I am also satisfied that the deed of variation in association with the principal agreement would secure provision of appropriate on site affordable housing. The proposal would provide a sustainable, inclusive and mixed community and would be in accordance with Policy ANH1 of the WLP and with Paragraphs 62 and 64 of the National Planning Policy Framework which promote the delivery of a sufficient supply of homes including affordable housing.
14. The site lies within the zone of influence of the Thames Basin Heath Special Protection Area (TBHSPA) that is designated under the Habitats Directive. The Council has confirmed that it has undertaken an Appropriate Assessment which has been approved by Natural England. As such, the proposal would not affect the integrity of the TBHSPA subject to contributions. The principal agreement to the appeal permission confirmed that the contributions would be put toward the Council's costs in maintaining and managing areas of Suitable Accessible Natural Green Space (SANGS) pursuant to the strategy and toward Access Management and Monitoring of the TBHSPA. The deed of variation would enable application of the contributions under the principle agreement to a new planning permission. The proposal would not thereby conflict with Policy NRM6 of the South East Plan, Policies NE1 and NE3 of the WLP or with Policies FNP12 and FNP13 of the FNP which collectively seek to safeguard the integrity of the TBHSPA.
15. I consider that all the matters to be addressed by the deed of variation in association with the principle agreement would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. They would thereby be in accordance with Regulation 122 of the CIL Regulations.

Conclusion

16. I conclude that the proposal would provide sufficient affordable housing and that the change in provision would amount to a minor material amendment that can legitimately be accepted through the S.73 procedure. The deed of variation to the appeal planning obligation is also acceptable. The appeal is therefore allowed. I shall grant a new planning permission without the disputed conditions but substituting new conditions that contain the updated plan numbers (condition 2) and current site plan number (conditions 3, 5 and 8). A revised condition 1 is necessary to fix the commencement of the development to not later than 3 years from the date of the appeal permission. I have retained the non-disputed conditions from the appeal permission as these are still relevant.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of the original permission 5 March 2018.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
LGH 58806-101 Rev G Site Layout Plan,
LGH 58806-102 Rev F External Materials and Boundary Treatments,
LGH 58806-103 Rev F Surface Materials Plan,
LGH 58806-104 Rev F Refuse Management Plan,
LGH 58806-110 Rev F Street Scenes AA & BB,
LGH 58806-111 Rev E Street Scenes CC & DD,
LGH 58806-124 Rev B Plots 1, 3, 38, 40, 43,
LGH 58806-125 Rev C Plots 1, 3, 38, 40, 43,
LGH 58806-144 Rev D Plots 17, 19, 20, 21, 22, 24, 25, 26,
LGH 58806-149 Rev A Plot 7, 8, 11, 12,
LGH 58806-150 Plot 35 Handed,
LGH 58806-162 Rev A Plot 34,
LGH 58806-181 Rev C Plots 9, 13, 14, 15, 16.
- 3) Prior to the commencement of the development the applicant shall construct the proposed vehicular site access onto Monkton Lane in accordance with drawing no. 58806-101 Rev G and subject to the Highway Authority's technical and safety requirements.
- 4) No dwelling shall be occupied unless and until the proposed pedestrian links between the site and Green Lane and Monkton Lane have been constructed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.
- 5) No dwelling shall be occupied until construction has been completed of a 3.0m wide shared pedestrian footway/cycleway along the southern boundary of the site, with associated crossing points, between Green Lane and the Monkton Lane junction with Water Lane, in accordance with drawing no. 58806-101 Rev G and subject to the Highway Authority's technical and safety requirements.
- 6) No dwelling shall be occupied until construction has been completed of a shared pedestrian/cycling facility on Green Lane, between its junctions with Bagshot Lea Road and Crown Lane, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.
- 7) No dwelling shall be occupied until the existing shared pedestrian footway/cycleway on Monkton Lane has been widened to a consistent 3.0m width, between the new crossing point on Monkton Lane and the Sainsbury access roundabout junction on Water Lane, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

- 8) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 58806-101 Rev G for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 9) No dwelling shall be occupied unless and until the following facilities have been provided in accordance with a scheme to be submitted to and approved in writing by the local planning authority for:
- (a) Independently accessible secure parking of bicycles integral to each dwelling within the development site;
 - (b) One fast charge electric vehicle charging socket for every dwelling and flat, with a charge point specification of 7kw Mode 3 with Type 2 Connector and a power requirement of 230v AC 32 Amp single phase dedicated supply and;
 - (c) Travel plan welcome packs to each dwelling, including information relating to the availability of and whereabouts of local public transport, walking, cycling, car clubs, local shops, schools and community facilities.
- The approved facilities shall be thereafter retained and maintained.
- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) programme of works (including measures for traffic management);
 - v) means of construction;
 - vi) the erection and maintenance of security hoarding;
 - vii) vehicle routing;
 - viii) measures to control the emission of dust and dirt during construction;
 - ix) measures to control noise;
 - x) measures to prevent the deposit of materials on the highway;
 - xi) on site turning for construction vehicles;
 - xii) details of any floodlighting to be used;
 - xiii) no burning of any waste or other materials on the site;
 - xiv) delivery, demolition and construction working hours.
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development
- 11) Prior to the commencement of development, the following details, relating to the proposed sustainable urban drainage system (SuDs), shall be submitted to and approved in writing by the local planning authority in consultation with the Lead Local Flood Authority:
- Drainage Design - Finalised drawings for construction to include: a finalised drainage layout detailing the location of SUDs elements

(including permeable paving where feasible), pipe diameters, levels, details of how SuDS elements will be protected from root damage and long and cross sections of each SuDS element and including details of any flow restrictions.

- Source Protection Zones - confirmation from the Environment Agency that the level of surface water treatment provided prior to infiltration is adequate.
 - Infiltration Tests - In accordance with Section 3.2 of the Foul & Surface Water Drainage Strategy prepared by Turner Jomas & Associates, infiltration tests at the final location of the proposed infiltration tests to confirm infiltration rates. The final size of the soakaways shall be in accordance with their respective infiltration rates.
 - Exceedance Flow Routes - Details of how the SuDs will cater for system failure or exceedance events, both on and offsite. Proposed ground levels of the site shall be provided as evidence of the exceedance flow routes.
 - Construction Management and Maintenance - details of how the SuDs will be protected and maintained during the construction of the development.
 - Lifetime Management and Maintenance plan - details of maintenance regimes and responsibilities of the drainage and SuDS elements during the operation and lifetime of the systems shall be submitted. The development shall be undertaken in complete accordance with the approved details prior to the first occupation of the development.
- 12) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer shall be submitted to and approved in writing by the local planning authority to demonstrate that the Sustainable Urban Drainage System has been constructed as per the agreed scheme.
- 13) Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 14) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling shall be undertaken in accordance with the terms of the approved piling method statement
- 15) Prior to commencement of development, other than that required to be carried out as part of an approved scheme of remediation, the following shall be submitted to and approved in writing by the local planning authority:

(a) An investigation and risk assessment, in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment shall be undertaken by a competent person as defined in Annex 2: Glossary of the National Planning Policy Framework.

(b) If identified to be required, a detailed remediation scheme shall be prepared to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property. The scheme shall include

- (i) All works to be undertaken
- (ii) Proposed remediation objectives and remediation criteria
- (iii) Timetable of works
- (iv) Site management procedures

The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The remediation works shall be carried out in strict accordance with the approved scheme. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.

(c) Upon completion of the approved remediation works, a verification report demonstrating the effectiveness of the approved remediation works carried out.

- 16) Following commencement of the development hereby approved, if unexpected contamination is found on site at any time, other than that identified in accordance with Condition 15, the local planning authority shall be immediately notified in writing and all works shall be halted on the site. The following shall be submitted and approved in writing by the local planning authority prior to the recommencement of works:
- a) An investigation and risk assessment, undertaken in the manner set out in Condition 15 (a) of this permission.
 - b) Where required, a remediation scheme in accordance with the requirements as set out in Condition 15 (b).
 - c) Following completion of approved remediation works, a verification report, in accordance with the requirements as set out in Condition 15 (c)
- 17) The development shall be undertaken in complete accordance with the impact avoidance, mitigation and enhancement measures detailed within the Ecological Mitigation and Enhancement Plan and the Reptile Survey Report.
- 18) Prior to the commencement of development, a revised bat mitigation strategy to include compensation for a loss of foraging and commuting opportunities shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in complete accordance with the approved strategy.
- 19) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a Written Scheme of Investigation which has been submitted to and

- approved in writing by the local planning authority. No development shall take place other than in accordance with the Written Scheme of Investigation.
- 20) No development shall take place until samples of all external facing materials, including that to be used on boundary walls, buildings and hard surfacing, have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.
- 21) No development shall take place until cross sections/details indicating the proposed finished floor levels of the buildings hereby permitted and finished ground levels surrounding the buildings have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 22) No development shall take place until details of earthworks have been submitted to and approved in writing by the local planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.
- 23) No development shall take place until a protective fence consisting of chestnut paling (1.2m height) fastened to a post and rail fence, shall be erected to a minimum of 8m from the centre of the nearest protected tree, so as to exclude storage of materials, level increases, excavation or other building activities likely to be harmful to roots. Such fencing shall remain in place throughout the duration of the construction works. The local planning authority's Tree Officer shall be informed of the proposed date of commencement, at least one working week in advance, to allow inspection of protection measures.
- 24) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 25) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings 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.