



Appeal Decision

Site visit made on 22 April 2021

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/Y3615/W/20/3258735

Oldlands, Burnt Common Lane, Ripley GU23 6HD

- 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 Langham Homes against the decision of Guildford Borough Council.
 - The application Ref 19/P/02191, dated 24 January 2020, was refused by notice dated 27 April 2020.
 - The development proposed is the erection of 30no. residential dwellings with the associated vehicular and pedestrian access via Burnt Common Lane, car parking, secure cycle storage and landscaping on land off Burnt Common Lane, Ripley.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 30no. residential dwellings with the associated vehicular and pedestrian access via Burnt Common Lane, car parking, secure cycle storage and landscaping, at Oldlands, Burnt Common Lane, Ripley GU23 6HD, in accordance with the details in application Ref: 19/P/02191, and subject to the conditions in the attached schedule.

Procedural Matters and Main Issues

2. In allowing the appeal, I have removed reference to the appeal site from the description of development, and I am satisfied that making this change has not compromised the interests of the main parties.
3. The planning application was originally refused due to the absence of a completed legal agreement to secure the necessary infrastructure to mitigate the impact of the proposed development. Specifically, this related to contributions towards the Thames Basin Heaths Special Protection Area, as well as highway improvements, education, and off-site open space for children's play space and formal playing fields. In addition, the provision of 40% affordable housing was required.
4. Following the submission of the appeal, the parties have provided a completed and signed legal agreement under Section 106 of The Planning Act 1990 and this agreement provides all of the mitigation required by the Council. Based on the evidence before me, I am satisfied that the infrastructure requirements are necessary to mitigate the effect of the proposed development. Accordingly, they would meet the requirements of Paragraph 56 of the National Planning Policy Framework (the Framework) as well as Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations).

5. Although usually expected, the mortgagee is not party to the agreement. The evidence confirms that this is their usual position and that it is a long-standing position of the company not to enter into such agreements. This is a shortcoming of the agreement and brings with it an element of risk should the site have to be repossessed. However, I note that the parties are content to proceed on this basis and I have no reason to disagree. Consequently, I am satisfied that the limited risk of repossession should not stand in the way of the development coming forward.
6. As identified above, the obligations are CIL compliant, and therefore, I give the legal agreement full weight in my assessment of the appeal. On this basis, the completed agreement addresses refusal reason 2. Accordingly, the main issues are the effect of the proposal on:
 - i) the character and appearance of the surrounding area; and
 - ii) the Thames Basin Heaths Special Protection Area.

Reasons

Character and appearance

7. The appeal site forms part of a housing allocation which has recently been removed from the Green Belt. It is a strip of primarily undeveloped land with a wide frontage on to Burnt Common Lane, which runs adjacent to the site from north to south. To the southern end of the site, and well set back from the main highway is Oldlands, a detached dwelling, and opposite the full extent of the site, there is an established residential environment that fronts Burnt Common Lane.
8. The existing built up frontage exhibits inherent variety. Houses are not set on a consistent building line, and architecturally, they differ. Some properties are set back from the road, some are closer, and some are angled towards it. In addition, there is a variety of detached and semi-detached houses, and gaps between buildings are not consistent. The spaces between buildings generally offer opportunities for well-maintained landscaping and mature trees and there is also a varied roofscape with pitched and hipped roofs widely apparent. Burnt Common Close offers a more consistent layout with semi-detached houses set around a central parking and turning area in a modest cul-de-sac, but generally the immediately adjacent environment lacks specific uniformity or rhythm within the street scape.
9. The western boundary of the appeal site is generally formed by mature hedgerow and large trees, beyond which is undeveloped open countryside. When this is combined with the verdant spaces between existing dwellings, and the variety found in the layout of houses, the character and appearance is one of a pleasant, transitional environment between edge of settlement and open countryside, to which the appeal site contributes positively. However, as identified above, the appeal site also forms part of a broader allocation for housing development, and accordingly, its character and appearance will evolve and change over time.
10. The proposal would introduce 30 new dwellings onto the site. To the south, Oldlands would be retained and an arc of four houses would run from the retained dwelling towards the highway. Opposite Oldlands, plots 5 and 6 would look towards the retained dwelling and into the proposed development.

Accordingly, these dwellings would present their rear elevation and amenity space to the existing highway. This would contrast with the prevailing nature of the surrounding development as houses generally front, or at least run perpendicular to, Burnt Common Road. However, despite this, the proposal details that existing trees and landscaping would be retained at this location and the retention of these features would soften the appearance of plots 5 and 6.

11. To the north of these two properties would be an area of public open space. This would be set forward of plots 7 – 12 and due to its size and central location, it would provide a spacious quality to the proposed layout. Retained trees would be supplemented by proposed landscaping and the resultant space would assist in partially retaining the transitional verdant quality of the existing environment.
12. Plots 17 – 20 would sit forward of the main run of houses which would back on to the eastern boundary of the site. Due to this siting, on plan they occupy a somewhat awkward location. However, the design of the houses is such that they would front Burnt Common Lane. They would also be set back from the road behind a linear open space that would be landscaped and contain a meandering footpath. The mature hedgerows would also be retained along with important trees. Accordingly, rather than appearing as an incongruously sharp arrangement, the landscaping and space to the front of the site would generate a pleasant setting for the two pairs of houses, and one that would complement the verdant surroundings. The rear elevations would be of less visual interest, however, the dwellings opposite would provide interest within the street and would therefore ensure a suitably active frontage.
13. Moving to the north of the proposed layout, I note the concerns in relation to Plots 23 – 30. The siting of these buildings does run contrary to the more linear nature of the rest of the proposal. However, their flank elevations would have some visual interest, and as identified above, the immediate surroundings do exhibit variety within the street scene in terms of the positioning of buildings. When assessed in this context, I am satisfied that the buildings would be experienced as an additional example of such variety. An area of hardstanding would also be located between the facing buildings and in isolation, this could be considered to represent a stark piece of urban design. However, the site layout would introduce sufficient pockets of openness to compensate for an isolated area of hardstanding. Consequently, this element of the proposal would not appear fragmented or cramped, and instead, due to the spacious surroundings, it would be suitably integrated with the rest of the proposal. The buildings would be located close to the eastern boundary of the site, however, I have no reason to consider that future proposals could not be adequately designed around this minor constraint.
14. The dwellings themselves would include a mixture of detached and semi-detached houses, with some short terraces also proposed. In my view, such an arrangement compares favourably with the surrounding grain, and for the reasons identified above, I am also satisfied that it would connect in an appropriate manner with the local street scene.
15. I note the concerns regarding the height of some of the properties, but there are examples of 2.5 storey dwellings in the immediate surroundings and due to the limited use of dormer windows, this would not be an overwhelming feature

of the development. Hipped roofs are also commonplace within the existing built environment. Consequently, their use in this proposal would be entirely sympathetic and complementary to the existing street scene.

16. The Council refer to what they perceive as a lack of a special over-arching story for the new settlement and that the proposal would introduce uniform and standardised design that would not reflect the local vernacular. However, for the reasons identified above, in my judgement the proposal would retain important landscaping which would provide a somewhat spacious setting for the development. This would aid the transition from the existing semi-rural environment to what will become a larger housing development. I note the reservations about particular events within the proposed street scene, however, the context opposite is sufficiently varied to accommodate these elements satisfactorily. Moreover, the proposed pedestrian links would enable integration with the broader development and subject to suitable landscaping and boundary enclosures, I have no reason to consider that these would not be well-used and inviting spaces.
17. Paragraph 127 of the National Planning Policy Framework (the Framework) establishes a series of criteria to help achieve well-designed places. In addition, the National Design Guide places distinct emphasis on context, identity and built form. For the reasons identified above, there is nothing compelling in the evidence to persuade me that the proposal would not represent an appropriate layout for the site, or that it would not complement the surrounding character and appearance of the area. Consequently, the proposal would provide a sensible transition between the existing settlement and the broader housing allocation. I therefore conclude that the proposal would not harm the character and appearance of the area. On this basis, there would be no conflict with Policy D1 of the Guildford Borough Local Plan: Strategy and Sites (2019) and Saved Policy G5 of the Guildford Borough Local Plan (2003), as well as Paragraph 127 of the Framework. Taken together, these require all new developments to achieve high quality design that responds to distinctive local character.

Thames Basin Heaths Special Protection Area

18. The appeal site is located within the buffer zone of the Thames Basin Heaths Special Protection Area (SPA). The SPA is designated due to the presence of breeding populations of Dartford Warblers, Woodlarks, and Nightjars and due to the location of the appeal site, the requirements of the Conservation of Habitat and Species Regulations 2017 apply (the Regulations). This requires that I, as the competent authority, must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA.
19. The birds identified above nest on or near the ground and as a consequence, they are susceptible to predation of adults, chicks and eggs, and to disturbance from informal recreational use, including walking and dog walking. The proposal would increase the local population in the area and therefore taking a precautionary approach, and when combined with other development within the area, I am satisfied that the proposal would result in an increase in such recreational activity which would lead to a likely significant adverse effect on the integrity of the SPA.

20. Due to this effect, the Regulations place a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives. In this respect, and as identified above, the appeal has been accompanied by a legal agreement which would require the appellant to make a financial contribution per dwelling to mitigate the impact of the development. This approach is in full accordance with the Thames Basin Heaths Special Protection Area, Interim SPA Avoidance Strategy (September 2006) and I note that within the evidence, the approach has also been endorsed by Natural England.
21. Based on the evidence before me, I am satisfied that the obligations within the legal agreement would enable the delivery of suitable mitigation that would address the level of harm likely to be caused by the development. In this respect, the agreement is entirely compliant with Regulation 122 of the CIL Regulations 2010. Accordingly, subject to the necessary mitigation, I conclude that the proposal would not result in a significant harmful effect on the integrity of the SPA.

Other Matters

22. I note the comments in relation to the effect of the proposal on infrastructure, however, based on the evidence before me, I am satisfied that the terms set out within the legal agreement would adequately resolve these matters. I am also satisfied that through the use of suitably worded conditions, as well as through the provisions within the legal agreement, that matters regarding noise disturbance and highway safety will be suitably mitigated. Conditions are also set out below to safeguard biodiversity as well as to ensure the development is served by an adequate and safe drainage scheme.
23. It may well be the case that existing housing within the locality is empty, however, no specific evidence in relation to this point has been presented. Regardless of this matter, the site has been allocated for housing within the development plan and I have assessed the appeal on this basis.
24. Finally, I note concerns regarding air pollution, but through the use of planning conditions, I am satisfied that the development would promote sustainable means of both construction and living.

Conditions

25. In light of my findings set out above, conditions 1 and 2 are necessary in the interests of precision and clarity. Condition 3 is necessary to ensure a high quality design, although I have amended the suggested trigger to require the details prior to their installation rather than prior to the commencement of development.
26. Conditions 4 and 5 are necessary to ensure the appropriate use of sustainable construction methods, and conditions 6 and 7 are necessary to ensure high quality design and layout, as well as to ensure suitable refuse provision. Conditions 8, 9, 10, and 11 are necessary in the interests of highway safety, and condition 12 is necessary in the interests of sustainable development. I note the reservations of the appellant in relation to condition 11 and the content of the legal agreement. However, the legal agreement refers to the implementation of 2 bus shelters whereas the condition refers to relocation as well as the provision of accessible kerbing. Accordingly, it is not clear from the

evidence whether there is duplication and therefore I have attached the condition as suggested by the Council.

27. Conditions 13 and 14 are necessary to ensure a suitable landscaping scheme is implemented, and condition 15 is necessary in the interests of tree protection. Conditions 16 and 17 are necessary to ensure the provision of suitable drainage, and conditions 18, 19, 20, 21, and 22 are necessary to protect the landscape, ecological, biodiverse, and archaeological interest of the site.
28. Where conditions require work to be carried out prior to the commencement of development, the appellant has confirmed their acceptance within the evidence before me.

Conclusion

29. The appeal should be allowed, and planning permission be granted.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P18/28/S/300, 302, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, and 328 and additional information received 27 January 2020 and amended site layout plan, drawing no. P18/28/S/301 rev B received 7 April 2020.
- 3) Prior to their installation, details and samples of the proposed external facing and roofing materials and hard surfacing materials including colour and finish 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 and samples.
- 4) Prior to the first occupation of development, an energy statement shall be 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 Regulation requirements (for types of development where there is no TER in Building Regulations, predicted energy usage for that type of development should be used) and how a minimum of 20 per cent reduction in carbon emissions against the TER or predicted energy usage shall be achieved. The approved details shall be implemented prior to the first occupation of the development and retained as operational thereafter.
- 5) The development hereby permitted must comply with regulation 36 paragraph 2(b) of the Building Regulations 2010 (as amended) to achieve a water efficiency of 110 litres per occupant per day (described in part G2 of the Approved Documents 2015). Before occupation, a copy of the wholesome water consumption calculation notice (described at regulation 37 (1) of the Building Regulations 2010 (as amended)) shall be provided to the planning department to demonstrate that this condition has been met.
- 6) The development hereby permitted shall not be occupied until details of all boundary treatment have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development or phased as agreed in writing by the local planning authority. The approved scheme shall be maintained in perpetuity.
- 7) The development hereby permitted shall not be occupied until details of storage facilities for bins and recycling have been submitted to and approved in writing by the LPA and the facilities shown on the agreed details have been provided and made available for use. These facilities shall be maintained in accordance with the approved details thereafter.
- 8) The development hereby approved shall not be first occupied unless and until space (including garaging) has been laid out within the site in accordance with the approved plans, Drawing No. P18/28/S/301, for vehicles to be parked and for vehicles to turn so that they may enter and leave the

site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.

- 9) No part of the development shall be first occupied unless and until the proposed vehicular accesses to Burnt Common Lane have been constructed and provided with visibility zones in accordance with the approved plans, Drawing No. P18/28/S/301, and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.
- 10) No development shall commence until a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) programme of works (including measures for traffic management)
 - (e) provision of boundary hoarding behind any visibility zones
 - (f) HGV deliveries and hours of operation
 - (g) vehicle routing
 - (h) measures to prevent the deposit of materials on the highway
 - (i) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused
 - (j) no HGV movements to or from the site shall take place between the hours of 8.30 and 9.15 am and 3.15 and 4.00 pm nor shall the contractor permit any HGVs associated with the development at the site to be laid up, waiting, in Burntcommon Lane or Portsmouth Road during these times
 - (k) on-site turning for construction vehicles has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
- 11) The development hereby approved shall not be first occupied unless and until the bus stops on Portsmouth Road have been improved, to include relocation of the south-westbound bus stop and provision of accessible kerbing, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter shall be maintained.
- 12) The development hereby approved shall not be occupied unless and until the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
- 13) No development shall take place until full details, of both hard and soft landscape proposals, to include details of new / replacement tree planting (including number, type, size and species of tree) and including a schedule of landscape maintenance for a minimum period of 10 years, have been submitted to and approved in writing by the local planning authority. The

approved landscape scheme (with the exception of planting, seeding and turfing) shall be implemented prior to the occupation of the development hereby approved and retained.

- 14) All planting, seeding or turfing approved 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. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or diseased in the opinion of the local planning authority, shall be replaced in the next available planting season with others of similar size, species and number, unless otherwise agreed in writing by the local planning authority.
- 15) The development shall be carried out in accordance with the Arboricultural Method Statement from ACD Environmental (dated 17 May 2019) and Tree Protection Plan (dwg. no. LANG22486-03D) received 27 January 2020. No machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with the Tree Protection Plan. Within any area fenced in accordance with this condition, nothing shall be stored, placed or disposed of above or below ground, the ground level shall not be altered, no excavations shall be made, nor shall any fires be lit, without the prior written consent of the local planning authority. The fencing shall be maintained in accordance with the approved details, until all equipment, machinery and surplus materials have been moved from the site.
- 16) The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the planning authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include:
 - a) The results of infiltration testing completed in accordance with BRE Digest: 365 and confirmation of groundwater levels.
 - b) Evidence that the proposed final solution will effectively manage the 1 in 30 & 1 in 100 (+40% allowance for climate change) storm events and 10% allowance for urban creep, during all stages of the development. If infiltration is deemed unfeasible, associated discharge rates and storage volumes shall be provided using a maximum discharge rate of 2.3 l/s.
 - c) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.).
 - d) Details of the receiving watercourse including whether there is sufficient capacity, what condition it is in and if there are any flow restrictions downstream.
 - e) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected.

- f) Details of drainage management responsibilities and maintenance regimes for the drainage system.
 - g) Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational.
- 17) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 18) Prior to the commencement of development a Landscape and Ecological Management Plan (LEMP) for this site shall be submitted to and approved in writing by the LPA. This should include the following:
- a) description and evaluation of features to be managed;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management advised by the recommended mitigation/compensation actions for habitat and species as detailed in section 6 of the EIA;
 - d) appropriate management options for achieving aims and objectives;
 - e) prescriptions for management actions, together with a plan of management compartments;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period;
 - g) details of the body or organisation responsible for implementation of the plan;
 - h) ongoing monitoring and remedial measures.
- The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.
- 19) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the LPA. The CEMP (Biodiversity) shall include the following:
- a) risk assessment of potentially damaging construction activities;
 - b) identification of "biodiversity protection zones";

- c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) the location and timing of sensitive works to avoid harm to biodiversity features;
- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication;
- g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h) use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

- 20) Prior to the installation of any external lighting on the site, an External Lighting Plan for the site shall be submitted to the LPA for approval and the lighting shall be installed in accordance with the agreed details. Lighting for the proposed development should be designed in line with the Bat Conservation Trust guidelines on artificial lighting and wildlife (Bat Conservation Trust 2018). The lighting design should be reviewed by a suitably experienced ecologist and the impact of this on the bat population assessed.
- 21) No development shall take place until a scheme to enhance the biodiversity and nature conservation interest of the site, in line with the recommendations set out in the consultation response from Surrey Wildlife Trust dated 12 February 2020, has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in full prior to the occupation of the development hereby approved.
- 22) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the Planning Authority.