



Appeal Decision

Site visit made on 12 October 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2022

Appeal Ref: APP/Y3615/W/21/3269208

Land to the North of Heath Drive, Send GU23 7EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Send Surrey Limited against the decision of Guildford Borough Council.
 - The application Ref 20/P/01011, dated 22 June 2020, was refused by notice dated 19 August 2020.
 - The development proposed is 29 residential dwellings including means of access, layout, and scale (appearance and landscaping to be reserved).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved apart from access, layout, and scale. The quantum of the proposal is clear from the description of development, and all drawings relating to those matters reserved for future approval have been treated indicatively. The site address has been taken from the Council's decision notice because it more accurately describes the location of the site.
3. New evidence was submitted by the appellant at final comments stage and included an update note on the preliminary ecological appraisal. Whilst new evidence is not normally permitted at this stage of an appeal, minor updates verifying existing evidence are unlikely to introduce new material considerations or prejudice other interested parties, indeed verification of recent surveys can sometimes be subject to planning condition. The new evidence was accepted on this basis.
4. However, the Council and Surrey Wildlife Trust were given an opportunity to comment on the new evidence, and in response gave rise to unexpected and substantive issues about badgers. The appellant was given an opportunity to respond and took it upon themselves to prepare and submit a badger survey.
5. This is new evidence of significant substance giving rise to a new material consideration and I cannot accept it at this stage of the appeal. This is because an appreciable number of other interested parties have made representations about the proposal and accepting new evidence of such substance and dealing with a new and potentially determinative material consideration at this stage of the appeal would be procedurally unfair.

6. Guidance¹ is clear that if an applicant thinks that amending their application proposals will overcome the Council's reasons for refusal they should normally make a fresh planning application.
7. The site is located within the Thames Basin Heaths Special Protection Area's (SPA) zone of influence. Consequently, the proposal has been considered in the context of statutory duties set out within the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and dealt with later under the appeal.
8. A Section 106 planning agreement was submitted during the appeal and seeks to address a number of the Council's reasons for refusal. Upon initial review of the planning agreement, it was not clear whether it was effective in securing affordable housing planning obligations. The parties were given an opportunity to make further comments, and these have been considered when assessing the planning agreement and determining the appeal.

Main Issues

9. The main issues are:
 - (a) the effect of the proposal on designated open space including protected trees, biodiversity, and protected species; and
 - (b) whether planning obligations are necessary and have been suitably provided in all other respects.

Reasons

Open Space

10. The site is located in Send and designated as open space within Guildford Borough Local Plan: Strategy and Sites 2019 (LPSS). It comprises unmanaged woodland that is also protected by tree preservation order. Policy ID4 of the LPSS is clear that open space will be protected from development in accordance with the National Planning Policy Framework (the Framework). Paragraph 99 b) of the Framework is clear that any loss resulting from a proposal should be replaced by equivalent or better provision.
11. The land is privately owned and any public access to the open space that currently exists is at the discretion of the land owner. Consequently, any value from such access would only carry limited weight because it may not endure. For example, the land owner would be within their rights to cease public access at any time. Consequently, the de facto value of the open space relates to its visual contribution to the area. In this context, the protected area of unmanaged woodland provides a verdant buffer between the River Wey and open fields in the north and mixed use commercial and residential development along Send Road in the south.
12. The Council states that its Assessment of Sites for Amenity Value 2017 establishes the site is of biodiversity value as a deciduous woodland. This corresponds with its identification as priority habitat by Natural England and its location on the periphery of the River Wey Biodiversity Opportunity Area (BOA).

¹ Annexe M.1.1 of Procedural Guide: Planning Appeals – England 2021

13. The Council's tree officer has advised that the site takes in an area of low quality trees and that without active management these trees are unlikely to improve in condition. This is due to low structural and species diversity, understorey, and ground flora. Consequently, despite the broader designation, the quality presented on the ground would appear limited.
14. The proposal would develop a proportion of the site and fell around 40% of the woodland. This would have an appreciable effect on the site's visual contribution to the area by reducing the buffer between the developed south and undeveloped north. However, the proposal would enhance the retained woodland so that it remained an effective visual buffer despite being reduced in extent.
15. Furthermore, the proposal would deliver formalised public access to the remaining woodland and this would be secured by legal agreement so that it endured. This would fundamentally improve how the open space functions, where public access is not currently secured.
16. It is clear that the area of woodland to be lost is of low quality and limited in its contribution to biodiversity despite the identification of the wider woodland as priority habitat. There are opportunities to enhance the quality and biodiversity value of the retained woodland, through the introduction of native species, removal of invasive species, and ongoing management.
17. Altogether, harm derived from reducing the area of woodland would be mitigated by enhancing what is retained, and this would have a neutral effect in the balance.
18. However, it is clear from the evidence before me that the site also has the potential for badger habitat and without a badger survey I cannot conclude that the proposal would have an acceptable effect on these protected species.
19. I have considered the appellant's contention that such evidence could be secured by condition. However, Paragraph 98 of Circular 06/2005 states that the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat.
20. Paragraph 99 goes on to say that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
21. Consequently, it is advised that surveys should only be required by condition in exceptional circumstances. The only circumstance where it may be acceptable to use a condition is if a recent survey for protected species has already been undertaken and it is proposed to undertake final checks just before construction begins.
22. This is in order to make sure that no species have colonised the development site during the interim period. This is not the case here and a condition would not be appropriate.

23. Overall, the proposal would accord with Policy ID4 of the LPSS and Policy NE5 of the Guildford Borough Local Plan 2003 (LP) and Paragraph 99 b) of the Framework in relation to designated open space, protected trees, and woodland biodiversity generally.
24. However, Policy NE4 of the LP is clear that planning permission should not be granted for any development that would be liable to cause any demonstrable harm to a species of animal or plant or its habitat.
25. Consequently, having established that the use of a condition to secure the necessary badger evidence would not be appropriate, I cannot determine the proposal would avoid demonstrable harm to badgers or their habitat or that conflict with the development plan can be avoided.

Planning Obligations

26. In accordance with Paragraph 57 of the Framework and pursuant to the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, among other things. The submitted Section 106 planning agreement and planning obligations have been assessed in this context.
27. Affordable housing planning obligations are necessary pursuant to Policy H2 of the LPSS, which requires the provision of at least 40% affordable housing, including an appropriate tenure mix. A suitably worded condition could supplement the planning obligations to ensure the type of affordable housing was targeted at those in need. Consequently, the submitted planning obligations are also directly related, fairly and reasonably in scale and kind to the development proposed.
28. Open space and play space planning obligations are necessary pursuant to Policy R2 of the LP, which requires new residential development of 25 or more dwellings to deliver a specified amount of open space provision including 1.6ha of formal playing field space, 0.8ha of children's play space and 0.4ha of amenity space per 1000 people.
29. Some elements will be provided on site, whilst other elements will be supported offsite by way of contribution in accordance with Guildford Borough Council Supplementary Planning Document on Planning Contributions 2011 (as amended and updated). Consequently, the submitted planning obligations are also directly related, fairly and reasonably in scale and kind to the development proposed.
30. Highways planning obligations are necessary pursuant to Policy ID1 of the LPSS, which requires highways contributions to mitigate the increased demands of additional residential development on existing infrastructure. The contribution would facilitate the delivery of a traffic island and signage to preserve highway safety. Consequently, the submitted planning obligations are considered directly related, fairly and reasonably in scale and kind to the development proposed.
31. Education planning obligations are necessary pursuant to Policy ID1 of the LPSS, which requires education contributions to mitigate the increased demands of additional residential development on existing infrastructure.

32. The contributions are calculated in accordance with accepted formula as detailed by Surrey County Council and are considered directly related, fairly and reasonably in scale and kind to the development proposed.
33. Council monitoring planning obligations may be necessary and directly related insofar as there is provision for such planning obligations within the regulations. However, the compliance schedule submitted by the Council does not demonstrate that the contributions sought are reasonably related in scale and kind to the development proposed.

Other Matters

34. The site is located to the south of the River Wey and Godalming Navigations Conservation Area. The proposal would come forward on the southern part of the site, whilst the retained and enhanced woodland would provide a significant buffer to the river corridor. This ensures that the proposal would preserve the setting of the conservation area.
35. The site is located within the Thames Basin Heaths SPA's zone of influence. However, as I am dismissing the appeal for other reasons it is not necessary for me to make a finding on this matter.

Conclusion

36. The proposal would be acceptable in relation to designated open space, protected trees, and woodland biodiversity generally, which would be neutral in the planning balance. The majority of planning obligations would provide mitigation to offset additional pressure on existing infrastructure, which would also be neutral in the planning balance.
37. Additional market housing and the component of affordable housing secured by planning obligations would provide a benefit in favour of the proposal. However, given the modest scale of the proposal, these benefits would carry moderate weight in the planning balance.
38. Potential harm to badger habitat would carry the highest level of significance and weight due to the national protections afforded to these species, where the development plan is clear that planning permission should not be granted for any development that would be liable to cause any demonstrable harm to a species of animal or plant or its habitat. Consequently, and on balance, the proposal would conflict with the development plan as a whole and the appeal is dismissed.

Liam Page

INSPECTOR