



Appeal Decision

Site visit made on 11 November 2024

by **H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/Y3615/W/23/3332905

Land at Cavendish Place, Guildford GU2 8NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Millen Homes Ltd against the decision of Guildford Borough Council.
 - The application Ref is 22/P/01653.
 - The development proposed is development of 10 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the definitive description of the proposal which has been taken from the application form, the appeal application was submitted in outline with all matters reserved for future consideration. As such, I have treated any plans depicting the layout and scale of the scheme as indicative in nature.
3. A unilateral undertaking (UU) made as a deed under s106 of the Town and Country Planning Act 1990, dated 2 July 2024, was submitted primarily to address the effects of the scheme on the Thames Basin Heaths Special Protection Area. An updated version of the same dated 3 December 2024, including minor amendments to terms as requested by the Council was also submitted. I address these further below.

Main Issues

4. The main issues are:
 - the effects of the proposal on the character and appearance of the area;
 - the effects of the proposal on the ecological value of the site and implications, if any, on the Broadstreet Common Site of Nature Conservation Interest (SNCI);
 - whether the scheme would be provided with satisfactory means of surface water drainage;
 - the effects of the proposal on trees within and adjoining the site;
 - whether the scheme would provide satisfactory living conditions for future occupiers;
 - whether safe and convenient access could be provided and whether there would be any effect on the parking provision for Cavendish Place residents; and

- the effects of the proposal on the Thames Basin Heaths Special Protection Area (TBH SPA).

Reasons

5. The site is situated on the north-eastern fringes of Guildford in a predominantly residential area. It comprises around 0.16 hectares of woodland which sits between *Cavendish Place*, *St Marys Way* and the commercial estate, *The Pines*. *Broadstreet Common*, an area of open space, lies to the north. The site has a watercourse running through it and is also sloping, with a fall from the south to the north.
6. As per the fixed description, the proposal is to construct 10 flats. The indicative plans show this as a single building towards the back of the site, broadly aligned with the commercial units to the east.
7. The submitted Design and Access Statement also refers to aspects such as sustainable construction materials, a wildflower roof, solar PV panels, and cycle storage forming part of the scheme.

Character and appearance

8. There are numerous buildings of both residential and commercial types and of a variety of scales that surround the site. However, the site is densely populated with trees and vegetation and the watercourse is a further constraint to the available developable space. As such, the site exists as a pocket of woodland that provides some separation between neighbouring built elements and provides a valuable visual backdrop in this regard. Whilst it is not publicly accessible open space, it is an open area which contributes to the area's visual amenities.
9. Though the evidence suggests that efforts have been made to retain as many trees as possible, the indicative design and submitted Arboricultural Impact Assessment (AIA) suggest that of the c. 57 individual trees surveyed, over half would be removed to facilitate the development. Even though the majority of the trees on the site are considered of low quality, and only a few moderate quality trees would be removed, the extent of the tree removal and its replacement with the building and associated hard landscaping would materially detract from the contribution the site makes to the character and appearance of the area. I do not consider that the extent of replacement planting, given the limited space available for such, would satisfactorily replace what would be lost in visual quality terms to the development.
10. I have seen suggestions that the parking area could be provided as a green cellular grid style system to maintain some greenness to the site. I have also seen suggestion that the scale and design of the proposed building would take reference from the flatted block at Cavendish Place and other dwellings in Barnwood road area, including the use of locally sourced materials where possible. Despite that these measures could be implemented at reserved matters stage, I do not consider that the scheme would offset the loss of the visual amenity provided by the pocket of woodland space that currently exists. Similarly, even if I consider that an alternative layout solution could be devised, the effects on the character and appearance of the area would still be comparable to the scheme before me given the constraints on the site and inevitable scale and form of a scheme of 10 flats.

11. For the above reasons, the proposal would conflict with, in particular, Policies ID4 and D1 of the Guildford Local Plan (2019) (Local Plan) and Policy D4 of the Guildford Local Plan: Development Management Policies (2023) (DMP). These Policies collectively seek to protect open spaces within urban areas, ensure new development responds to distinctive local character and takes account of built and natural features of interest. DMP Policy DM5 is referenced in the reason for refusal and requires the provision of amenity space for flatted developments. Whilst the prospects of resolving this policy requirement at reserved matters stage appear limited due to the densely wooded nature of the site, I do not conclude that there would be unavoidable conflict with this Policy at this juncture.

Ecological value

12. The appeal application was not submitted with an ecological appraisal but detailed some suggested enhancements, such as bird boxes, wildlife friendly fencing, sedum and wildflower flat roofs and extensive native planting. The refusal was based on the absence of any demonstration that the species and habitats on site could be conserved and biodiversity net gain (BNG) achieved.
13. A Preliminary Ecological Appraisal (PEA) was undertaken in early 2024 and acknowledges the seasonal constraints concerning the identification of certain species on site. The PEA acknowledges the site's location adjacent to part of the SNCI, which supports significant areas of unimproved acidic and mesotrophic grassland as well as semi-improved grassland, broad-leaved semi-natural woodland. The SNCI also hosts ponds and a stream.
14. The PEA details that other than the stream, the site comprises lowland mixed deciduous woodland which is a priority habitat type and is considered to be in moderate condition. Evidence of historical badger setts was seen on site albeit no recent evidence of activity. A single tree was identified as having the ability to support roosting bats but other trees with such potential could not be fully inspected from the ground due to ivy coverage. Nonetheless, there would be removal of trees which may have the ability to support roosting bats without conclusive evidence that such would not be affected. In addition, the site was considered valuable to birds, and Great Crested Newt surveys were recommended due to the site's links to nearby ponds.
15. Given that there are a number of unanswered questions in terms of the sites value to particular species, particularly protected species, and an absence of follow up surveys where such have been recommended, I am unable to fully conclude on the effects of the proposal on the ecological value of the site and SNCI. Furthermore, whilst the submitted S106 indicates that a net gain in biodiversity units will be achieved, it is clear from the submitted BNG Report that this relies heavily on off-site compensation measures for which there is inadequate justification. Therefore, in the absence of clear evidence to the contrary, I can only conclude that the development would result in harm and thus conflict with Local Plan Policy ID4 and Policies P6 and P10 of the DMP. These Policies collectively seek to maintain, conserve and enhance biodiversity and seek opportunities for habitat restoration and creation.

Surface water drainage

16. The application site lies in Flood Risk Zone 1 where there is a low risk of flooding from rivers or the sea but is within an area that has been identified by

the Environment Agency as being at risk from surface water flooding. Given that the site is a woodland area, free of development, and which has a watercourse running through it, it appears to be a feature that plays a role in the surface water drainage network serving the wider area.

17. The appeal application was refused, in part, on the basis of an absence of information on the means of surface water drainage. As part of the appeal, a Flood Risk Assessment and SUDS/Drainage report (SUDS Report) has been submitted. The SUDS Report has been designed assuming a fixed layout as shown on the indicative plan but does not appear to have been informed by the site's topography. It states that it is proposed to provide an attenuation-based surface water drainage system to serve run-off from the new development with a restricted 1 l/s residual discharge to the public sewer, subject to the approval of Thames Water and that such will be designed not to be below the invert level to avoid pumping. However, the plan appended to the SUDS Report is labelled to show a foul drainage connection to the mains and a surface water outfall to the on-site watercourse, albeit at the higher end of the site, which would obviously require pumping.
18. Whilst the submitted SUDS Report does not appear fully informed of the site conditions and particularly given the outline nature of the scheme, I envisage that supplemental information could be secured by way of planning condition such to secure compliance with Policy P4 of the Local Plan and Policy P11 of the DMP. These Policies require development proposals to demonstrate that land drainage will be adequate and that they will not result in an increase in surface water run-off.

Effects on trees

19. There are around 5 individual trees protected by individual Tree Preservation Orders (TPOs) located within the site's southern and eastern boundaries. The site is otherwise occupied by a substantial number of low and moderate quality trees which have value as a pocket of mixed woodland, albeit, largely unmanaged.
20. The written submissions detail that the scheme seeks to retain as many mature trees and plants as possible, but an Arboricultural Impact Assessment and Tree Protection Plan (AIA) was only submitted at the appeal stage. The AIA details that over half of the trees on site would be removed, and whilst that would not include those protected by TPO, it would still be a material loss of the woodland character of the site. The indicative number of replacement trees and shrubs which could be secured by planning condition would not offset either the quantitative or qualitative loss of this number of trees. Even if I consider that an alternative layout solution could be devised, the loss of trees and limited opportunities for replacement would still be comparable to the scheme before me given the constraints on the site and inevitable scale of a scheme of 10 flats.
21. The Council's decision notice refers to Policy P6 of the DMP which seeks to protect irreplaceable habitats, ancient woodland and significant trees and priority species. It would appear that the most significant trees, protected by TPOs, would be avoided. However, insofar as the loss of trees would be material and result in harm, it would conflict with the objectives of the National Planning Policy Framework (paragraph 136) (the Framework) which recognises the important contribution that trees make to the character and

quality of urban environments and indicates that existing trees should be retained wherever possible.

Living conditions of future occupiers

22. I note the Council's concerns in respect of the proximity of the scheme to the windows of dwellings in St Mary's Way and the commercial units at The Pines. However, I do not consider that the scheme is fixed to the extent that a conclusion can be reached on the acceptability of future living conditions. I am mindful of the constraints of the site and the necessarily limited opportunities for repositioning the building to avoid such, but consider that this issue would be more properly addressed at reserved matters stage when the scale, layout and appearance of the scheme were fixed aspects.
23. In view of the above, I do not conclude that the scheme would conflict with Policies D5 and D8 of the DMP which seek to ensure that new development achieves acceptable living conditions for new residential properties, in respect of aspects including privacy and overlooking, visual dominance and overbearing effects of a development and access to sunlight and daylight.

Access and parking

24. The site is accessed via Cavendish Place, which despite limited detail is suggested to benefit from an uninterrupted right of access. This means that the proposal would not remove parking which would otherwise be used by existing residents.
25. There is a submitted tracking plan that shows a theoretical route for two-way passing vehicle traffic on a shared surface. The indicative plans also show a parking layout with 12 spaces in either a basement level arrangement or external to the building. The constraints of the site are such that the plans still leave some uncertainty as to how practical it would be to use some of the parking spaces and thus, whether the site can really support the quantum of development proposed. However, the appellant has confirmed that the future reserved matters application would meet the Policy requirement to provide at least 1 space per dwelling with additional visitors' spaces.
26. In view of the above, subject to details to be secured as part of a future reserved matters application, the proposal would comply with Policy ID3 of the Local Plan and Policy ID10 of the DMP. These Policies require vehicular parking for new developments to be provided such that the level of any resulting parking on the public highway does not adversely impact road safety or the movement of other road users and in terms of quantity, has regard to Parking Standards for New Development Supplementary Planning Document (2023).

Thames Basin Heaths Special Protection Area (TBHSPA)

27. The proposal would result in a net addition of one dwelling within the 400-5km buffer zone of the TBH SPA. Within this buffer zone, when combined with other development in the area, additional residents can harm the TBH SPA through increased levels of recreational activity. Therefore, effects on the TBH SPA cannot be screened out.
28. The TBH SPA Avoidance Strategy Supplementary Planning Document (SPD) sets out an approach whereby new residential development within the buffer zone of the SPA can avoid adverse effects by providing Suitable Alternative

Natural Greenspace as an alternative site for recreation, and by funding access management and monitoring measures on the TBH SPA itself.

29. The submitted UU provides for the avoidance and mitigation measures typically sought by Local Plan Policy P5 and the SPD. However, as the appeal is failing for other reasons in any event, I have not considered the suitability of the mitigation measures as part of an appropriate assessment.

Planning balance and conclusion

30. Insofar as the proposal would be harmful to the character and appearance of the area, to existing trees and the biodiversity interests of the site, it would conflict with the development plan when taken as a whole. The absence of other harms does not weigh in favour of the proposal.
31. There would be a public benefit of the proposal from the positive contribution of 10 flats to the local housing stock on a site within the urban area. Such a windfall development would also help to meet the identified need for smaller homes. In addition, there would be some limited economic benefits from the construction phase of the proposal.
32. However, the conflict with the development plan is not outweighed by the totality of public benefits or other considerations advanced in relation to the proposal, including the Framework. As a result, the appeal should be dismissed.
33. For the reasons given above the appeal should be dismissed.

H Nicholls

INSPECTOR