



Appeal Decisions

Site visit made on 12 March 2025

by **David Murray** BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 APRIL 2025

Appeal A - Ref: APP/Y3615/W/24/3350157

Heath Drive, Send, Woking, GU23 7EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Denton Homes Ltd against Guildford Borough Council.
 - The application Ref is 22/P/01069.
 - The development proposed is outline planning application for up to 29 residential units with all matters reserved except for access.
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Appeal B - Ref: APP/Y3615/W/24/3350162

Heath Drive, Send, Woking, GU23 7EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Denton Homes Ltd against Guildford Borough Council.
 - The application Ref is 24/P/00657.
 - The development proposed is outline planning application for up to 40 residential units with all matters reserved except for access.
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Decisions

Appeal A - Ref: APP/Y3615/W/24/3350157

1. The appeal is dismissed.

Appeal B - Ref: APP/Y3615/W/24/3350162

2. The appeal is dismissed.

Preliminary Matters

3. The Appeal A scheme was originally submitted for the erection of 40 residential units but this was revised during the course of the application to 29 units to align with a previous appeal scheme as set out in paragraph 8 below.
4. Both applications are in outline format with all detailed matters, other than the access to the site, reserved for subsequent consideration. I have therefore treated the plans of the layout of the development for illustrative purposes only.
5. A formal Agreement by Deed made under Section 106 of the Act has been submitted with each appeal. These are signed by the Council, the appellant company and the specific owners of the land, and are dated 5 December 2024. The Agreements deal with various matters including in general terms: the provision

for affordable housing; and contribution towards the provision of Strategic Access Management and Monitoring (SAMM), Natural Green Space and Recreational Space, highway improvements, educational facilities; and the implementation of a Biodiversity Net Gain Strategy.

Main Issues

6. The appeals are against the non-determination of the applications, however, the Council has set out the reasons why the appeals are contested. From these the main issues are:
 - The effect of the proposal on habitats for protected species, particularly badgers and bats;
 - Whether the quantum of development proposed is acceptable for the site having regard to the effect on the character and appearance of the area and the living conditions of the occupiers of neighbouring properties;
 - The effect on the Thames Basin Heaths Special Protection Area;
 - whether the proposal makes reasonable mitigation of the effects on highways, social and recreational infrastructure through a formal mechanism.

Reasons

Background

7. The appeal site is an area of open land which is bounded by the River Wey Navigation to the north and west and existing residential development to the south. Access is shown to be from Heath Drive a residential cul-de-sac. The site is heavily wooded at the moment where the majority of the trees in the central part of the site appear to be regenerated trees previously pollarded, but there is a belt of more mature and indigenous trees alongside the river-bank. The trees are the subject of a Tree Preservation Order (TPO). The area around the river forms part of the River Wey and Godalming Navigations Conservation Area.
8. A previous appeal decision is a material consideration to these cases. An outline application for the erection of 29 dwellings under ref. APP/Y3615/W/21/3269208 was dismissed in October 2021. In this the inspector concluded that the principle of housing development on the site was acceptable in relation to designated open space, protected trees, and woodland diversity generally, and there would be specified benefits with the proposal in terms of affordable housing. However, at that time it had not been demonstrated through a proper badger survey that the proposal would have an acceptable effect on this protected species. Therefore, the potential harm to a badger habitat outweighed the other factors in favour. On this basis the inspector concluded that the proposal conflicted with the development plan when read as a whole.
9. The present appeal schemes, with further evidence on protected species, have therefore been submitted by the appellant as a means of overcoming the objections previously raised.

Effect on badger habitat

10. The appeal documents include a Technical Note (TN) which reports on the results of an extensive badger survey undertaken in 2024 by an appropriately qualified consultant on behalf of the appellant. The TN is confidential because it is commonplace not to make public details of information on badger setts, however, in general terms the results are crucial to the assessment of this issue.
11. The TN concludes that the appeal site is of local importance for its badger population. The site supports intermittent badger activity with two currently active setts although the location of the main sett could not be determined. The two active setts are classed as one being 'subsidiary' and one an 'outlier'. In total there were 5 active holes and evidence of many other non-active or currently unused holes.
12. The TN has been reviewed by Surrey Wildlife Trust (SWT) on behalf of the Council. Doubt is cast over whether sett 2 is not a main badger sett rather than a subsidiary sett, given the level of badger activity associated with it and the restrictions on surveying outside the site. However, the SWT concludes on the evidence that there does not appear to be robust evidence of a main sett currently active on the site.
13. Spatially the active setts and most of the non-active holes lie in an area where the illustrative layout plan shows to be directly affected by the housing development footprint in both schemes. The TN acknowledges that (subject to the licencing provision through Natural England) the proposal could result in the risk of killing or injury to the badgers, likely destruction of their setts and likely disturbance of badgers occupying the setts.
14. The TN sets out what work would be needed to facilitate the development but the recommendations appear to be measures to prevent badgers from being trapped in building works. The impact assessment in the TN suggests that the land forming the better quality woodland and undeveloped land could accommodate long term foraging and sett creational opportunities following construction. Two potential locations are shown for an artificial and replacement badger sett in the western area of the appeal site.
15. However, the proposed suggested housing site layout includes paths alongside the river and into the retained woodland areas which would be made available for public use. The sites for the setts are also reasonably close to the new housing areas and the driveways to houses. Given these factors I agree with the initial conclusions of the SWT that there is therefore likely to be human activity in these areas which appears to be incompatible with badgers using these areas as a replacement habitat in the long term.
16. On the specialist evidence submitted by the appellant and reviewed on behalf of the Council, there is significant doubt in my mind about whether the badger activity currently on site includes a main sett or not. Moreover, taking all of the evidence as a whole, I find that the proposed housing development would be likely to result in the destruction of the present badger habitat, which is recognised to be of local importance, without reasonable mitigation or replacement habitat. On this basis I conclude that the proposed housing development in either appeal scheme would conflict with the provisions of Policy P6 of the Local Plan Development Management Policies (LPDMP) in terms of protecting important habitats for hosting priority species.

Effect on bats habitat

17. The ecological objections to the proposed housing development put forward by the Council now include one that there has been insufficient survey information to demonstrate that the development would protect and enhance bat species and habitats. The appellant has therefore commissioned a further field survey based on an Aerial Tree Inspection.
18. The assessment of the survey concludes that the site is of local significance for roosting bats in trees. Suitable and particular trees provide a valuable roosting resource within highly sustainable habitats. The appellant says that all of these particular trees are shown to be retained as part of the development and therefore no direct impacts on bats using particular trees is foreseen. However the survey report recognises that there is potential for bat roosting within the trees to be displaced by increased lighting during the construction and operation phases. The survey concludes that the 1.03ha of woodland corridors and treelines to be retained adjacent to the River Wey Navigation will mitigate the impact of development on bat species including those that require woodland and dark habitats. Specific avoidance and mitigation measures are recommended.
19. The survey results have been appraised by Surrey Wildlife Trust on behalf of the Council. The SWT says that the surveys indicate that the whole of the present woodland is used by *Soprano Pipistrelle* bats as a resource and not just that on the northern and western boundary of the site. With the removal of 54% of the present woodland, it is disputed that the retained woodland would be adequate to maintain the maternity roost for *Soprano Pipistrelle* bats located just to the west of the appeal site. The SWT advises that the appeal site lies within the 'core sustenance zone' of this roost.
20. The SWT also contests the feasibility of designing and producing dark corridors around the northern and western retained woodland. The SWT remain concerned about the degree of woodland to be removed to facilitate the housing development and the levels of lighting that are likely to stem from the housing and its use. The SWT submits that there is insufficient evidence on the impact of lighting to find that the development will not have a significant influence on the resilience and conservation status of the colony using the roost.
21. On the specialist evidence presented, I have concerns about the degree of existing woodland that would be lost to facilitate the scale of housing development proposed. Moreover, the tract of woodland that would remain would be a relatively narrow and the illustrative layout plans shows the retained woodland is likely to be very close to houses, gardens and driveways, where general activity and the spread of light from vehicle headlights can be expected. It is also proposed for new footpaths accessible by the public to be created thorough this woodland. Given all of these factors I have great doubt over the remaining woodland being an adequate and practical habitat for bats with limited light and noise disturbance.

Conclusions on habitat

22. Overall I find that the proposed housing development in both schemes would materially and substantially encroach into woodland which has been shown to be a locally important habitat for badgers and bats. The housing schemes would result in the direct loss of much of this habitat. Neither has it been demonstrated that the

remaining woodland would be adequate, or remain sufficiently undisturbed, to properly mitigate the effect on this habitat or deliver adequate replacement.

23. On this basis I find that the adverse impacts that both proposals would cause to the habitat for bats and badgers result in each proposal being in conflict with the provisions of LPDMP Policy P6 regarding protecting important habitats and species.

Quantum of development

24. Both appeal schemes are in outline format with the detailed aspects of the scale and layout of the development proposed reserved for subsequent consideration. Nevertheless, it has to be demonstrated at this stage that the quantum of development proposed can reasonably be accommodated on the site.
25. In the previous appeal, the quantum of development proposed at 29 units was not a determinative issue and was not considered in detail by the inspector. The 29 units then proposed was similar in nature to that now proposed in Appeal A.
26. The Appeal B scheme proposes 40 units within a similar overall footprint of development; the additional units being achieved by a greater use of semi-detached rather than detached units and terraces rather than 'semis'. The Council takes issue with part of the development being 2.5 storeys in height but the illustrative street-scene shows that the type of unit proposed need not be uncharacteristic of the area.
27. However, I do share some of the Council's concerns about the extent of hard-surfacing involved and the degree to which the street scene would be dominated by parking along each property frontage in units 5-11. Although there is similar parking shown on the illustrative appeal A scheme this is offset by the more spacious development opposite (plots 13-18) with a mixture of detached and semi-detached houses. There is likely to be a much greater physical presence of built development which would not be characteristic of existing housing around Heath Drive.
28. The additional residential units in appeal B would also be sited closer to the retained woodland and this reinforces my concern expressed in the first issue about the likely disturbance to the badger and bat habitat. In practice the intensity of development proposed in this scheme would be unlikely to give rise to a well-landscaped and appropriate development which reflects the setting of the site on the rural edge of the settlement.
29. I find that it has not been shown that 40 units can be accommodated on site in a manner consistent with the guidance in paragraph 135 (parts (b) and (c) of the National Planning Policy Framework (the Framework) which concerns the need for visually attractive development as a result of an appropriate layout and effective landscaping which are sympathetic to local character.
30. As the Council points out the illustrative layout of the site also appears to rely on, in parts, a very close relationship with the existing housing in Heath Drive. The fronts of the properties on plots 38/40 are shown to be sited very close to the rear garden boundary of No. 7 Heath Drive and this relationship would cause the overlooking of that property and garden and a loss of privacy for the occupiers. In respect of the Council's concern about the relationship with no. 12 Heath Drive, siting of the

proposed house appears to be very close to the party boundary and will have an overbearing impact, although issues of overlooking are likely to be overcome by control over the fenestration in side facing windows which can be conditioned to be obscure glazed.

31. In summary, although considerable detail has been submitted with this outline scheme, I find that it has not been demonstrated that 40 residential units in appeal B could be developed in an acceptable manner that would maintain the character and appearance of the wider area given the edge of village location, nor maintain the living conditions of the occupiers of neighbouring properties. This proposal would not accord with the provisions of LPSS Policy D4 in terms of securing a high-quality design that respects local distinctiveness or LPDMP Policy D5 (particularly parts 1a and 1b) on the protection of amenity.

The effect on the Thames Basin Heaths Special Protection Area

32. The appeal site lies within the Buffer Zone of the Thames Basin Heaths SPA where additional residential development in proximity to the protected site has the potential to significantly adversely impact the integrity of the SPA through an increase in dog walking and in recreational use. Both developments have the potential, in combination with other development, to have a significant adverse impact on the protected site.
33. If I was minded to allow either appeal, as the Competent Authority I would need to undertake an Appropriate Assessment under the Habitat Regulations. However, I note that the appellant has submitted Agreements by Deed, made under Section 106 of the Act, which in part specify a contribution towards the provision of Strategic Access Management and Monitoring (SAMM) and arrangements for private alternative Green Space. On the face of it this contribution and provision would accord with the mitigation strategy set out in the TBHSPA Avoidance Strategy 2017 and the SPA Tariffs SPD 2024. This formal arrangement would provide the necessary mitigation of the increase in recreational pressures arising from the additional development.

Effect on infrastructure

34. The formal '106' Agreements mentioned above also make provision for the mitigation or improvement of various elements of social, recreational and educational infrastructure including: specified road safety measures; projects at Heathfield Nature Reserve; delivery of affordable housing; and a contribution towards the delivery and monitoring of Biodiversity Net Gain. The Council advises that with these formal agreements the related reasons for refusal fall away.
35. On the evidence presented, together with the relevant stated policies in the LPSS, LPDMP together with the Planning Contributions SPD I am satisfied that the contributions and other matters specified in the Agreements are necessary to make the development acceptable in planning terms, and they are directly, fairly and reasonably related to the development in scale and kind. As such, they accord with the guidance set out in paragraph 58 of the Framework and the Community Infrastructure Levy Regulations 2010.

Other Matters

36. In addition to the above issues, Send Parish Council also raises other objection to both housing proposals including the effect on the River Wey Conservation Area and the river buffer corridor, together with the loss of designated open space. However, these issues were appraised by the previous inspector in the 2021 appeal and I am not aware of material changes to these factors, or to the applicable development plan policies, which justify them being reconsidered at this stage.

Planning balance

37. These appeals need to be considered in the context of the 2021 appeal decision which is a material consideration.
38. On the main issues I have found that the proposed housing development would materially and substantially encroach into protected woodland which has been shown to be a locally important habitat for badgers and bats. The housing would result in the direct loss of much of this habitat and it has not been demonstrated that the remaining woodland would be adequate or remain sufficiently undisturbed to properly mitigate the effect on this habitat or deliver adequate replacement. Both Appeal schemes therefore conflict with the relevant development plan policy on habitat protection.
39. I have also found that in appeal B, although an outline proposal with details of scale layout reserved, it has not been demonstrated that 40 residential units can reasonably be accommodated on site in a manner which would be likely to maintain the character and appearance of the area or the living conditions of the occupiers of some of the existing neighbouring properties. Therefore this scheme conflicts with the local policies specified above.
40. Issues concerning the effect on the TBHSPA and local infrastructure have been addressed and overcome by the provision of the formal agreements submitted with each appeal case.
41. The conflict with the development plan has to be balanced with other considerations.
42. Both proposals would contribute to the supply of housing, which the Framework seeks to significantly boost and include a high proportion of (40%) of affordable houses. Both of these aspects carry significant weight. However, the Council advises that at the moment it can demonstrate an adequate supply of new housing land (6.64 years) and therefore the policies in the development plan are not out of date.
43. The proposals would also result in a public benefit in enabling public access to the woodland and the waterside edge of the River Wey Navigation to which I attach moderate weight. There would also be a short-term economic benefit through the construction period for the housing development.
44. However, in terms of the guidance in paragraph 193 of the Framework I find that the loss of the locally important habitat for badgers and bats would cause significant harm to biodiversity and it has not been shown that the effect on these protected species can be adequately mitigated.

45. The adverse effects therefore greatly outweigh the benefits of development and these effects cannot be addressed by the imposition of conditions. I conclude that the proposals conflict with the Framework when this is read as a whole and neither proposal amounts to sustainable development because of the environmental harm that would be caused.
46. The other considerations that apply in both cases do not outweigh the conflict with the development plan and this indicates that the appeals should not be allowed.

Conclusion

47. For the reasons give above I conclude that both appeals should be dismissed.

David Murray

INSPECTOR

Richborough