



Appeal Decision

Inquiry Held on 22 - 24 January 2019

Site visit made on 24 January 2019

by Kenneth Stone BSC Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2019

Appeal Ref: APP/R3650/W/18/3203951

Land at Firethorn Farm & No's 44-45 Larkfield, Plough Lane, Ewhurst, Surrey GU6 7SG

- 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 Fairfax Acquisitions Limited against the decision of Waverley Borough Council.
 - The application Ref WA/2017/2362, dated 12 December 2017, was refused by notice dated 1 March 2018.
 - The development proposed is for 49 new dwellings, including 15 affordable dwellings, public open space and landscaping with vehicular access via The Green, Horsham Lane; following the demolition of No's 44 & 45 Larkfield.
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Decision

1. The appeal is allowed and planning permission is granted for 49 new dwellings, including 15 affordable dwellings, public open space and landscaping with vehicular access via The Green, Horsham Lane; following the demolition of No's 44 & 45 Larkfield at Land at Firethorn Farm & No's 44-45 Larkfield, Plough Lane, Ewhurst, Surrey GU6 7SG in accordance with the terms of the application, Ref WA/2017/2362, dated 12 December 2017, subject to the conditions contained in the schedule at the end of this decision.

Procedural matters

2. The application seeks outline planning permission with all matters, except for access, reserved for future consideration. The plans on which the Council took its decision, and which are the subject of this appeal, were confirmed at the start of the Inquiry as Site location Plan No. FD16-1367-P2-50 and Site Access & Off-site speed limit measures plan SK21610-01A. The application was supported by Indicative Site layout FD16-1367-P2-55 revision B, Parameter Plan – Height FD16-1367-P2-60 revision A, Parameter Plan – Mix FD16-1367-P2-61 revision A and Parameter Plan – Tenure FD16-1367-P2-62 revision A. These are illustrative plans identifying one way in which the scheme could come forward but do not form part of the formal details for which approval is sought.
3. A completed planning obligation in the form of an agreement under section 106 of the Town and Country Planning Act 1990 as amended was submitted on the final day of the Inquiry and I deal with its provisions in my reasoning below. On this basis reasons 2, 3 and 4 of the Council's original decision were agreed to have been overcome and were not contested at the Inquiry.

4. Following the close of the Inquiry the Council drew my attention to a draft version of the emerging Ewhurst & Ellen's Green Neighbourhood Plan 2018-2027. The Council subsequently confirmed that it was a draft and that it should carry no weight. In the interest of openness and fairness I sought comment from the appellant who confirmed their understanding that this was an initial draft and was not yet in the public domain and was not currently subject to any regulation 14 consultation. They similarly were of the view it should carry no weight in this appeal.
5. The Government published its response to the technical consultation on updates to the National Planning Policy Framework (the Framework) on 19 February 2019, which has resulted in the publication of an updated revised Framework. At the same time it also published the results of the Housing Delivery Test (HDT). I address these matters in my reasoning below.

Main Issue

6. On the basis of the above the main issue in this appeal is the effect of the proposed development on the character and appearance of the area, including having regard to the quantum of development, loss of trees and the Council's spatial strategy.

Reasons

7. The development plan for the area comprises the saved policies of the Waverley Borough Local Plan, adopted 2002 (WBLP) and the Waverley Borough Local Plan Part 1 – Strategic Policies and Sites, adopted 2018 (LPP1).
8. The Council is currently in the process of replacing the WBLP with a new part 2 document however this is at an early stage of plan preparation with preferred options consultation having only recently been completed. The Ewhurst and Ellen's Green Neighbourhood Plan is at a very early stage of preparation with early consultation on site and housing criteria having taken place. It was suggested by Councillor Henry that the proposal was premature to the adoption of the neighbourhood plan. The main parties in the statement of common ground agree that these emerging plans are at an early stage of preparation and carry very limited or no weight in the determination of this appeal. These conclusions are not changed by the later provision of the initial draft plan that I was provided with and the main parties reiterate the view in the statement of common ground. Given the advice in the Planning Practice Guidance on these matters I agree with the conclusions of the main parties as to the weight to be afforded to these emerging plans.
9. The Council's Spatial Strategy is therefore set out in the LPP1 and in the context of this appeal is most appropriately concluded by reference to policies SP2 and ALH1. SP2 sets out the Spatial Strategy creating a settlement hierarchy, wherein Ewhurst is at the third tier, and including at which level the strategy allows for 'limited levels of development in/around other villages'. ALH1 distributes the amount and location of housing, identifying that provision will be made for at least 11,210 net additional homes, allocating Ewhurst (a smaller village) a minimum of 100 new homes to accommodate.
10. The figures in ALH1 are expressed as minimum and there is no express cap in the policy. However, the plan has to be read as a whole and the strategy is set in the context of the plan making provision for the objectively assessed need

for housing. Reasonably understood, the policy would not provide for unlimited development at any point in the hierarchy; the purpose of the identification and distribution of numbers in the policy is to give an appropriate approximate level, with a minimum amount that is to be secured. However, there is a general proposition that the larger housing schemes should be directed towards higher order settlements. Moving down through the settlement hierarchy, the scale of development would be reduced; moderate levels of development in larger villages, limited levels in/around other villages and only modest growth in all other villages. Whilst not establishing a ceiling, a material exceedance of the figures could potentially skew the spatial strategy and result in excessive development at an inappropriate level in the hierarchy.

11. The scheme provides for some 49 new residential units (including affordable units) and would result in the loss of two; there would therefore be a net increase of 47 units. The parties agree that there are some 68 dwellings completed or provided for in relation to Ewhurst which would bring the total, if permission were forthcoming for this development, to around 115 units for the village. I have not been provided with a potential non-implementation rate for those units not yet provided, but if I take the worst case scenario and accept all would be provided, I am not convinced that an additional 15 units over the policy minimum, which gives a broad base as to judge what would be considered 'limited levels of development', would be such as to compromise the policy or the strategy.
12. Whether the fulfilment of the policy early in the plan period would neutralise the policy or unacceptably restrict opportunities for development over the remainder of the plan period could be a potential concern. However, I am satisfied that there is sufficient flexibility in the broader strategy and policies to enable flexibility and enough capacity within the settlement hierarchy to facilitate future growth such that this would not undermine the policy or the strategy.
13. I am satisfied that the proposal would not conflict with the overall strategy and that the quantum of development is at a scale that is consistent with the policy framework.
14. The proposal although in outline seeks permission for the means of access at this stage. The proposed details identify a new access to be created onto The Green and through an existing tree belt that fronts the road at this point. A number of the trees within this tree belt are subject to Tree Preservation Orders (TPO) and thereby make a significant contribution to the visual amenity of the area.
15. At this location the area is characterised by residential development fronting the road on the west side, with the east side of the road having an appearance dominated by the wooded area, grassed areas and a small pond. Residential development sits behind these, but it is not as evident in the immediate street scene as that on the western side and gives the road a semi-rural character.
16. The proposed development would result in the loss of trees from within that wooded belt, including trees the subject of TPO's. There was some dispute as to the total number that may be lost. It was the appellant's view that the impact on the root protection areas of a number of trees could likely be mitigated and that whilst there may be some crown reduction there was a good potential that only a limited number of trees would actually be lost. However,

if I take the Council's worst case scenario and accept that all those trees directly affected would be lost, there would be some 3 trees lost, T63, T71 and T72. Albeit the appellant's suggestion that not all of these trees may be required to be removed.

17. The trees that would be lost would be in an area of the wooded frontage and this would result in the creation of an opening that would give views into the site. This would be harmful to the appearance of the street scene at this point. The impact and harm, however, would be limited, as accepted by the Council, and would only be noticeable for a short distance away from the newly created junction. The wooded area itself would not be substantially reduced. There would be limited effect on the character of the road, which would retain its semi-rural character on this eastern side. Therefore, the proposal would not, in my view, conflict with policies D6 and D7 of the WBLP.
18. There would be some minor tree losses within the body of the site, but given the potential landscaping and anticipated level of replacement trees there would be a significant increase in the amount of tree cover across the site. With landscaping and layout details being subject to reserved matters additional planting within the site and the layout of the scheme could reduce straight views into the depth of the site from the entrance.
19. The proposal would see the demolition of two recently built large detached houses to facilitate access through to an open field that would be developed. Directly adjacent to the appeal site is the small estate of Larkfield a new development which backs onto the open countryside beyond the settlement. The rear boundary of Larkfield is relatively open and this development is readily visible in close and mid-range views of the settlement when looking back from within the open countryside beyond.
20. The appeal site straddles the settlement boundary partly within the open countryside. Policy RE1 of the LPP1 states that within areas shown as Countryside beyond the Green Belt on the Proposals Map, the intrinsic beauty of the countryside will be recognised and safeguarded. This must be read in the context of the spatial strategy if one is to understand the development plan as a whole. In that context, the spatial strategy allows for development outside the settlement boundary around the settlement. However, regard must be had to the intrinsic beauty of the area.
21. The open fields which form part of the site form part of a wider field area and which includes characteristics of the Wooded Low Weald Character Area within which the area lies. This includes field patterns, small wooded copses or shaws, tree belts and an intimate landscape of woodlands and hedgerows. The character assessment suggests these are features which should be conserved along with limiting the spread of settlements and other development. The settlement of Ewhurst is a feature in the existing landscape as are the wooded areas and undulating fields of the surrounding countryside. Longer views of the site are restricted by the woodlands, hedgerows and tree belts. The mid-range views are restricted to glimpsed views through wooded areas and the short-range views are seen in the context of the existing settlement edge and relatively exposed rear of Larkfield. In this context, I am satisfied that the proposed development would not materially harm the surrounding landscape or the visual amenity of receptors from the surrounding area.

22. This view is supported by the lack of objection from the Council, in terms of landscape harm, and from the Surrey Hills Area of Outstanding Natural Beauty Advisor, who is reported as stating that it is not considered the application could justifiably be refused on the grounds of spoiling the views from the Surrey Hills AONB. The site lies outside the Surrey Hills AONB and it is not contended to be a valued landscape in the context of the National Planning Policy Framework.
23. The current appeal site field will become a small housing estate and as such will turn from open countryside to developed land and this will self evidently result in change. There will be some minor harm to visual amenity, but this would be restricted to close-by limited views. This harm needs to be considered in the context of the wider strategy, which allows for development in and around the settlement.
24. In terms of design related matters, these could reasonably be addressed through the reserved matters application. I find that there is no conflict with policy TD1 of the LPP1 or policies, D1 or D4 of the WBLP, which seek to address design matters, the details of which could be submitted and controlled through the reserved matters.
25. On the basis of the above, I conclude that the proposed development would not result in material harm to the character and appearance of the area, having regard to the quantum of development, loss of trees and the Council's spatial strategy. I have identified some minor harms in terms of visual amenity in the immediate environs of the site, through the loss of trees and the development of an open field, however, these are not significant or substantial in the context of the policy framework. Consequently, the proposal would not conflict with policies SP2, ALH1 or RE1 of the LPP1 or policies D1, D4, D6 or D7 of the WBLP.

Planning obligation

26. A completed signed agreement pursuant to section 106 of the Town and Country Planning Act 1990 dated 23rd January 2019 was provided before the close of the Inquiry.
27. The Obligation secures the provision of 15 affordable housing units, 10 of which would be affordable rented units and 5 of which would be shared ownership units. This equates to the 30% of the housing units as required by policy AHN1 of the LPP1.
28. Works to the highway, a travel pack and speed reduction measures, including financial contributions are secured through the obligation. The contributions are to fund the necessary improvements and travel pack and the measures together secure the implementation of the necessary access and safety measures required to ensure there would be no adverse effect arising from the development in respect of these matters.
29. The obligation further secures various financial contributions in relation to sports and leisure, environmental enhancement and recycling as well as for education. These contributions are directly related to the scale and development and are necessary. I was informed that there would be no issue with pooling restrictions in respect of these contributions.

30. The development proposals identify an area of open space and the obligation secures the details of the specification and its management as well as a Sustainable Urban Drainage system management strategy and plan.
31. The planning obligations are in accordance with CiL regulations 122 and 123 and the Framework advice and I can therefore take account of these obligations in my decision.

Benefits of the development

32. The economic benefits of the scheme, as set out by the appellant, include 120 FTE jobs in construction and over £1.2m per annum in residential spend. The Council did not dispute the quantum of these figures. These are not insignificant figures and they are resultant and related to this development and I therefore give them moderate positive weight in my decision.
33. Furthermore, the scheme would make provision for additional housing of which some 15 units would be affordable. There is a substantial affordable housing deficit and this situation is not improving, and with the latest figures provided to the Inquiry it is worsening. Given the housing need nationally, the HDT result for Waverley, and the affordable housing need locally, I give these matters substantial positive weight.
34. There would be additional public open space provision secured through the planning obligation and additional landscaping subject to reserved matters application that would come forward but these are of limited benefit or are for mitigation and are policy compliant. There is the loss of an existing field and some minor visual harm, but these are limited and the net benefit still results in a moderate positive weighting.

Other matters

35. A good deal of Inquiry time was spent in seeking to address the issue of whether the Council could demonstrate a 5 year Housing Land Supply. With the publication of the HDT results this demonstrates the current poor performance in the area. However, given my conclusions above with regard to the main issue and the limited level of harm I have identified not being such as to conflict with development plan policy, there is no necessity for me to conclude on this matter as my decision does not turn on the issue of housing land supply. I confirm this position in my planning balance below.
36. The public open space element of the development would be primarily open space and would have limited visual impact on the residents of properties in Larkfield. The details required in the reserved matters and in terms of the specification through the obligation, will give control to the Council to ensure that any public pathways or other features are designed to protect the amenities of the adjoining occupiers. Security concerns could also reasonably be addressed at this stage.
37. Concerns were expressed regarding the proximity of the proposed access to Larkfield and drawing attention to local concerns that this is an accident blackspot. No evidence was presented in terms of accident records or of potential dangers to highway users. The Council and highway authority have reviewed the supporting transport information and not raised any concerns regarding highway safety. I have no evidence before me to demonstrate that there would be an adverse effect on highway safety.

Planning Balance

38. I am required by law to determine applications in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposed development would be in accordance with the Council's spatial strategy, the quantum and scale of development was appropriate and that it would not harm the landscape character of the area. Whilst I did identify some minor harm to the visual amenity of the area from the opening of the access, loss of trees and the development of the open field, overall these did not result in a conflict with policy and the development was in accordance with the plan as a whole.
39. The Framework advises, at paragraph 11c, that in such circumstances, development should be approved without delay. The benefits I have identified add further positive weight to the scheme and are material considerations which add to the justification for approval. I am satisfied that there are no material considerations that would indicate otherwise than a determination in accordance with the development plan.
40. As noted above, although there was time spent at the Inquiry addressing the position of the Council's 5 year housing land supply, the determination of this matter would not affect my decision. My decision does not turn on whether the Council can demonstrate a 5 year supply, as even if it could the result would mean the development plan policies would be given full weight, which I have done and I have found that the scheme is in accordance with them. The publication of the HDT results for Waverley result in a 20% buffer being required to be applied and this has consequences for the supply position. However, the position to allow the appeal in accordance with the development plan is not altered with a finding in relation to housing land supply; my decision does not turn on this matter.

Overall conclusion and conditions

41. A draft list of suggested conditions was provided and discussed at the Inquiry and further tree conditions were suggested by both main parties. I have considered the conditions in the context of the advice in the Planning Practice Guidance and the model conditions set out in the annex (which remains extant) to the otherwise now cancelled Circular 11/95, the use of conditions in Planning Permissions.
42. I note that the Council's approach to the timing and identification of reserved matters for outline permissions however I have adopted the standard format and these form conditions 1 – 3.
43. Condition 4 is an approved plans condition which includes reference to the access details and is required to ensure certainty.
44. Conditions 5 and 6 require the submission of a Construction Transport Management Plan and a Construction Environmental Management Plan. These are required to protect the amenity of surrounding residents and ensure highway safety. Condition 7 requires the provision of fast charging electric vehicle charging points in accordance with policy ST1 of the LPP1. Condition 8 requires the provision of Travel Packs in accordance with policy ST1 and condition 9 requires the removal of the existing access to 44 and 45 Larkfield in the interest of highway safety and to comply with policy ST1.

45. Condition 10 is required to ensure the development is satisfactorily drained. Condition 11 requires Archaeological investigation is undertaken to ensure buried remains or potential archaeology is satisfactorily addressed.
46. Condition 12 is required to safeguard the ecological interest of the area and ensure the ecological benefits of the scheme are realised. Condition 13 is required to ensure that the development is properly serviced. Condition 14 is required in the interest of the living conditions of future occupants of the development should occupation of units be proposed during construction.
47. Although landscaping is a reserved matter and much of the protection could be addressed through the reserved matters submission and potential conditions there in, condition 15 sets a general requirement for tree protection and details of tree works for the scheme to ensure such details are fully addressed.
48. A number of the conditions suggested by the Council are more properly matters that would be addressed through the submission of the reserved matters, including detailed design, or overlapped with other elements of conditions already imposed and I have therefore not imposed conditions which would require similar information.
49. Conditions 5, 6, 10, 11, 13 and 15 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the matters they address are of an importance or effect and need to be resolved before construction begins. The appellant provided written confirmation accepting these conditions.
50. For the reasons given above I conclude that the appeal should be allowed.

Kenneth Stone

INSPECTOR

Schedule of Conditions for Appeal Reference APP/R3650/W/18/3203951

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: FD16-1367-P2-50 Site Location Plan and SK121610-01A Site Access & Off-Site Speed Limit Measures Plan.
- 5) No development shall take place, including any works of demolition, until a Construction Transport Management Plan (CTMP) has been submitted to, and approved in writing by the local planning authority. The CTMP shall provide for:
 - i) the parking of vehicles of site personnel, operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) a programme of works (including measures for traffic management);
 - v) the erection and maintenance of security hoarding;
 - vi) measures to prevent the deposit of materials on the highway;
 - vii) details of working hours including HGV deliveries, demolition and construction;
 - viii) details of measures for the control of delivery, demolition and construction working hours; and
 - ix) On site turning for construction vehicles.

The approved CTMP shall be adhered to throughout the construction period for the development.

- 6) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide for:
 - i) The arrangements for public consultation and liaison during construction works;
 - ii) Measures to minimise the noise (including vibration) generated by the demolition and construction process to include method of piling for foundations, the selection of plant and machinery and use of noise mitigation barrier(s);
 - iii) Details of any floodlighting, including location, height, type and direction of light sources and intensity of illumination;
 - iv) measures to control the emission of dust and dirt during construction;

- v) no burning of materials to take place on site during construction or demolition; and
- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 7) The development hereby permitted shall not be first occupied unless and until facilities have been provided in accordance with a scheme to be first submitted to and approved in writing by the local planning authority for fast charge electric vehicle charging points for every dwelling.
- 8) Prior to the first occupation of the development a Travel Plan Welcome Pack shall be submitted to and approved in writing by the local planning authority, in accordance with the sustainable development aims and objectives of the national Planning Policy Framework and Surrey County Council's "Travel Plans Good Practice Guide". The approved Travel Plan Welcome Pack shall be issued to the first time occupier of each dwelling, prior to first occupation.
- 9) The development hereby permitted shall not be first occupied unless and until the existing access from the site to Larkfield has been permanently closed and any kerbs, verge and footway fully reinstated.
- 10) 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 local planning authority. The development shall be carried out in strict accordance with the approved details. The submitted details shall include:
 - i) A detailed design that satisfies the Sustainable Drainage System (SuDS) hierarchy and is compliant with the national Non-Statutory Technical Standards for SuDS, National Planning Policy Framework and Ministerial Statement on SuDS;
 - ii) The results of infiltration testing completed in accordance with BRE:365;
 - iii) Evidence that the proposed solution will effectively manage the 1 in 30 and 1 in 100 (+CC% allowance for climate change storm events), during all stages of the development (Pre, Post and During), associated discharge rates and storage volumes shall be provided using greenfield discharge rates to the downstream water course of:
 - a. 1 in 1 year return period 18.5 l/s
 - b. 1 in 30 year return period 28.9 l/s
 - c. 1 in 100 year return period plus 40% climate change 28.9 l/s (as per the SuDS pro forma or otherwise agreed by the local planning authority)
 - iv) Detailed drawings to include: a finalised drainage layout detailing the location of SuDS elements, pipe diameters, levels details of how SuDS elements will be protected from root damage and long and cross sections of each SuDS element including details of any flow restrictions and how they will be protected from blockage;
 - v) Details of management and maintenance regimes and responsibilities; and

- vi) A plan showing exceedance flows and how property on and off site will be protected.

Prior to 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 SuDS has been constructed as per the agreed scheme.

- 11) No demolition/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 shall be first submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 12) The development shall be carried out in strict accordance with the recommended actions in the section 4 of the 'Bat Tree Roost Assessment, Bat Activity Survey and Bat Building Emergence Survey Report' dated 9 November 2017, Section 7 of the 'Great Crested Newt Survey and Population Assessment Report', dated 9 November 2017; Section 5 of the 'Reptile Survey Report' dated 9 October 2016; and the actions detailed within the 'Mitigation Statement and Habitat Creation and Management Plan' dated 10 November 2017.
- 13) Prior to the commencement of development, impact studies of the existing water supply infrastructure shall be carried out and the results of these studies shall be submitted to and approved in writing by the local planning authority. The studies shall determine the magnitude of any new additional capacity required in the system and a suitable connection point. The development shall be carried out in strict accordance with the approved details.
- 14) If any residential properties are to be completed and occupied prior to the development as a whole being finished, a scheme to protect those occupants from noise and vibration shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any dwellings on site. The development shall be carried out in strict accordance with the approved details.
- 15) No development shall take place unless and until there has been submitted to and approved in writing by the local planning authority full details of:
- A methodology statement to detail the measures for the protection of all retained trees during the course of development. In particular detailed proposals of the air spade excavation works around trees marked T63 and T72 in Arbortrack Systems Limited plan entitled 'Tree Protection Plan – Revision E' (Dated November 2018). These works to be supervised by a qualified arboricultural consultant; and
 - All tree works to be carried out which shall be carried out as approved in accordance with British Standards BS 3998 2010.
- The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.

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