



# Appeal Decision

Hearing held on 19 April 2023

Site visit made on 20 May 2023

**by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 May 2023**

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## **Appeal Ref: APP/R3650/W/22/3312128**

### **Land at Green Lane, Weybourne, Farnham**

- 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 Lamron Developments Management Estates Ltd against the decision of Waverley Borough Council.
  - The application Ref WA/2022/00325, dated 21 December 2021, was refused by notice dated 30 May 2022.
  - The development proposed is Outline planning application for 131 dwellings with associated parking, amenity and landscaping with all matters reserved except access.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. During the course of the appeal the Council adopted the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (the Part 2 Local Plan). I have taken this updated policy position into account in making my decision.
3. The application was submitted in outline form with all matters reserved except for access. During the Hearing, due to issues arising in respect of access, the appellant suggested I could revise the description of development so that all matters were reserved. However, this would be a different application to the one before me and would be procedurally unfair on the basis of the Wheatcroft<sup>1</sup> principles. The revision was therefore not accepted, and this was agreed with the main parties in the Hearing.
4. The appellant had submitted technical engineering drawings prior to the Hearing to demonstrate the access proposals were achievable and safe. These were received late in the appeal process, but both Surrey County Council (SCC) and the Council stated they had reviewed the contents. On the request of SCC, to enable a review of arboriculture and watercourse implications, I allowed for written comments to be submitted to the Hearing by 2 May 2023. This included an invitation for members of the public to comment as well. Subsequently, the appellant had the final word on 5 May 2023, after which I formally closed the Hearing in writing. The additional information has been taken into account in the decision.

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<sup>1</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

5. Two legal agreements pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) were submitted with the appeal. I shall return to these later in my decision, noting here that the agreements were signed and executed on 2 May 2023.
6. Through the submitted statement of common ground, the main parties indicated that reasons for refusal 4 to 9 had been resolved through various submissions during the course of the appeal. Opportunity was nonetheless given to interested parties to comment on these aspects at the Hearing if they wished. Consequently, the main issues originally stated for the Hearing are revised in this decision to reflect matters where disagreement remained between the main parties.

### **Main Issues**

7. The main issues for the appeal are the effect of the development upon:
  - highway safety; and
  - the character and appearance of the area.

### **Reasons**

#### *Highway Safety*

8. The appeal site sits to the east of Green Lane, which is a public highway in the ownership of SCC as the Local Highways Authority. Green Lane itself is unsurfaced outside the appeal site and is an unmade track for a modest distance north. It connects at a bend within Bartlett Avenue, which is a new section of highway constructed to serve a housing development built by Taylor Wimpey<sup>2</sup> to the northwest of the appeal site.
9. Access is a matter submitted for determination. The appeal development shows that vehicular and pedestrian access would be taken from a sole entry point onto Green Lane. However, since Green Lane is not currently in a condition to accommodate the traffic predicted to be generated by the proposed development, the appellant proposes upgrades to the carriageway. Such improvements include road widening and surfacing, footpaths and a new junction onto Bartlett Avenue allowing two-way traffic. Green Lane itself would be closed to vehicular traffic south of the site entrance through the erection of bollards.
10. All of the proposed improvements to Green Lane are shown within a blue line boundary on the submitted plans, outside of the red line application site boundary. The plans relating to the blue line boundary are all marked as 'potential' access arrangements, with only those access details at the entrance to the appeal site marked as being proposed<sup>3</sup>. The appellant explained that all the works proposed in the blue line fell within the public highway, thus could be implemented under an agreement via Section 278 of the Highways Act 1980 (as amended) (S278). To this extent, the appellant submitted that further revisions to the access, and consideration thereof, could reasonably be made under the S278 process were I to allow the appeal.

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<sup>2</sup> Council reference WA/2015/2283

<sup>3</sup> Drawing 6576.SK01

11. I am mindful that Article 2 of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended) defines access as "*the accessibility to and within the site.*" In addition, the planning practice guidance states that an application site boundary "*should include all land necessary to carry out the proposed development (eg land required for access to the site<sup>4</sup>).*" On this basis and that the application was submitted with the matter of access to be determined, I resolved in the Hearing that access had to be considered as a whole and the works within the red and blue lines were indivisible in this consideration. The Hearing proceeded on this basis.
12. I am cognisant that matters may well progress in a S278 process that vary from a granted planning permission, and that conditions or obligations could require more information at a detailed design stage. However, given that access is for determination and that there is great public interest regarding the potential future use of Green Lane to strengthen the local cycling network, it would be procedurally unfair to leave such important access details to the privately conducted S278 process. Consequently, it was agreed with the main parties at the Hearing to proceed to determine 'access' incorporating both the proposed entrance into the appeal site off Green Lane and the proposed schedule of improvements to Green Lane shown on plan 6576.009.
13. The plan 6576.009 showed a junction between Green Lane and Bartlett Avenue, with a new footpath connection on the western side of the carriageway and a culvert of the ordinary watercourse underneath it. SCC submitted that, in respect of this path and the culvert, not all of the land required to deliver the access fell within the highway boundary, thus would be outside the scope of any S278 and render the proposal undeliverable. The appellant contested otherwise but the main parties were unable to agree at the Hearing whether the land was, or was not, within the highway boundary. Submissions made up to 5 May 2023 did not wholly rectify the dispute, though it appeared agreement had been reached between the main parties that the proposed works would extend beyond the public highway limits<sup>5</sup>.
14. The appellant did propose a way of avoiding the dispute by narrowing the footpaths on both sides of the proposed access, thus shifting the access fully into the public highway. However, such plans were not before me in the appeal and to accept such verbal revisions, without any interested party being able to assess the consequential changes, would be procedurally unfair and against the Wheatcroft principles. This also could create further concerns regarding the useability of the junction, which SCC already stated would be unsafe for highway users on the basis of the results of an independent Road Safety Audit.
15. My role in the appeal is to look at planning merits and not to determine land ownership. It has not been demonstrated to me with any certainty that the whole of the proposed access works would fall within the public highway. Whilst there may be an option for non-registered land to be adopted by the Highway Authority via Section 228 of the Highways Act 1980, this must follow a separate statutory process. As reported above, I am not content to leave such matters to any post-consent discussion.
16. Taking a precautionary approach in light of the evidence before me, I must agree with the Council that the junction would not be deliverable within the

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<sup>4</sup> NPPG Paragraph 24 Ref ID: 14-024-20140306

<sup>5</sup> Paragraph 1.6 Rebuttal Evidence of David Wiseman

public highway. I am also not confident that a satisfactory access within the highway boundary, capable of meeting all the necessary safety standards, could be achieved in the future. Irrespective of SCC's current safety concerns regarding visibility splays and larger vehicle manoeuvres at the proposed junction, without a constructable or deliverable junction to enable access to the appeal site, the details submitted are unacceptable.

17. The proposal would therefore lead to an unacceptable impact to highway safety contrary to policies ST1 of the Waverley Borough Local Plan Part 1 2019 (LP) and FNP30 of the Farnham Neighbourhood Plan 2020 (FNP), which together seek to ensure safe and accessible developments for all highway users.

#### *Character and appearance*

18. The appeal site consists of a large open field to the east of Green Lane and south of Lower Weybourne Lane. The Farnham Landscape Character Assessment considers the appeal site and the surroundings to fall within the East Farnham Mosaic, which is a network of small fields in pasture and agricultural use. In this particular location, the appeal site and immediate fields to the east and west once formed part of a designated strategic gap between the settlements of Hale, Badshot Lea and Weybourne. Whilst the designation lapsed once the Part 2 Local Plan was adopted by the Council, the field remains part of an important gap identified under policy FNP11 of the FNP.
19. The appeal site itself is largely open and in a natural state, although with some notable man-made features around its boundaries. The eastern boundary is defined by a railway line and embankment together with a line of overhead power cables, although such features are understated in their appearance and are not significantly intrusive in the landscape. Development to the south around the junction of Green Lane with Crown Lane is mostly obscured by trees and does not appear prominent. The appeal site's northern boundary is shared with the Scottish and Southern Electric Networks (SSEN) depot, which is the most prominent built form in the area despite the landscaping around it.
20. I acknowledge that the appeal site, due to detracting elements of built form in the vicinity, is not of a high landscape value. I am also not presented with any evidence to suggest the East Farnham Mosaic is a rare or scarce landscape type. Nonetheless, the appeal site forms part of a green and open corridor together with contiguous fields to the east, west and south between Hale and Badshot Lea. It therefore contributes positively to the landscaped character of the area, providing relief from residential development in the wider area.
21. The appeal scheme is in outline, with matters of layout, landscaping, appearance and scale reserved. Notwithstanding, during the discussion relating to planning conditions were I to allow the appeal, it was suggested a limit was imposed on the height of any new proposed dwelling. The main parties agreed that references to a limit of 2.5 storeys in height would translate into a dimension of 9.5 metres. If I were to allow the appeal, it would be on the basis of the description of development that would allow for up to 131 dwellings.
22. Whilst potentially subject to change at the reserved matters stage, I am making an assessment on the prospect of 131 dwellings being built of anything up to 9.5 metres in height. I agree with the Council that the proposal would result in a fundamental change in the character of the site from semi-rural to urban, and that the development would substantially impact on the landscape

character and appearance of this area. The proposed development would be a significant urban expansion resulting in the complete loss of the appeal site's landscape contribution. The proposed dwellings would be significantly higher than any building at the SSEN depot and would project deep into the open landscape, as well as appearing prominent to residents in Badshot Lea above the railway embankment.

23. I disagree with the appellant's conclusion that a moderate beneficial landscape effect would occur after 15 years, particularly when years of growth have yet to fully screen the SSEN depot, which is of reduced scale compared to what is currently proposed. I do not agree that any future landscaping scheme under reserved matters or condition would meaningfully reduce the appearance of the development, which would be stark and intrusive. The proposed development would be harmful to the character and appearance of the locality.
24. In terms of the appeal site being part of an important gap, I note that FNP11 seeks to prevent coalescence between Badshot Lea and Weybourne. It states that proposals which either fail to demonstrate that impacts can be satisfactorily addressed or which clearly lead to the increased coalescence of settlements within the Plan area and beyond will not be supported. The accompanying text states that residents of these areas are keen to ensure the retention of the separate identity of these areas.
25. The appellant submits the dismissed appeal for 140 dwellings on the eastern side of the railway line serves to retain the gap between the settlements and that the circumstances are different on the western side of the railway line<sup>6</sup>. I consider though that the appeal site, taken together with the fields to the east and west, are inherently part and parcel of the gap serving the function of settlement separation. To this extent, I do not see there being any difference in the significance of the spaces either side of the railway line since all serve the same purpose.
26. I acknowledge that physical separation between Hale and Badshot Lea is limited at present, particularly to the north of the appeal site because of the SSEN depot. However, the loss of open land between the two settlements and the reduced physical distance on the ground between built development in Badshot Lea and Weybourne would conflict with Policy FNP11.
27. The appellant points to a green margin of land being retained within the appeal site between the proposed houses and the railway line, thus keeping an essence of physical separation between the settlements. I note this margin would be provided underneath the overhead power cables and so would be a no-build zone in any event, let alone being an area where landscaping potential is strictly limited. Nonetheless, the proposal would extend to the buildable width of the appeal site and, in my view, would lead to increased coalescence between the settlements.
28. My attention has been drawn to other permissions in the locality, granted by the Council or on appeal, that are said to have changed the character of the locality. None of these decisions share the same spatial characteristics as that of the appeal site, which is a central piece of the important gap identified by the FNP.

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<sup>6</sup> Paragraph 3.10 of the Appellant's Statement of Case

29. Whilst the proposed density, at 30 dwellings per hectare, would be commensurate with the surrounding built environment, it would be a stark and visually intrusive urban intervention within the gap. I acknowledge that such matters could be revised in any reserved matters submission were I to allow the appeal, but I am not satisfied a scheme for the 131 dwellings sought could be constructed without causing the harms I have identified.
30. I therefore find that the proposal would harmfully impact upon the character and appearance of the area. This would be contrary to policies RE1, RE3 and TD1 of the LP and policies FNP1, FNP10 and FNP11 of the FNP, which together seek to ensure high quality design compatible with local character and landscape.

### **Other Matters**

31. It is common ground that the Council cannot demonstrate a 5-year housing land supply. The Council also confirmed, because the FNP was adopted in 2020 over two years prior to the application being determined, the criteria under paragraph 14 of the National Planning Policy Framework (the Framework) were not met. Both parties therefore agree that paragraph 11(d) of the Framework is engaged, thus the so-called tilted balance applies.
32. The appellant points to the benefits of delivering market and affordable housing units in light of the current housing shortfall. Whilst the Council accept this, I heard evidence that the FNP had delivered in excess of the housing requirement allocated for Farnham in the Part 1 Local Plan. I note however that Farnham is a key settlement in the Council's spatial strategy and would therefore be a candidate location for further growth to address the overarching housing shortfall across the Borough. Therefore, I do not consider a need to reduce the significant weight given to the proposed development's contribution to housing supply.
33. Housing would generate economic benefits in terms of employment and increased footfall to shops and services. The appeal site is in an accessible location with public facilities to assist with day-to-day living within easy reach including by foot or bicycle. These aspects do weigh moderately in favour of the development.
34. I acknowledge that, via the legal agreements, contributions would be made to a number of transport measures as well as towards securing avoidance measures for the Thames Basin Heath Special Protection Area (SPA). I have reviewed the content and construct of the legal agreements and consider that the obligations meet the relevant tests<sup>7</sup>. The legal agreement would secure some benefits, although the mitigation for the SPA would be required in any event and so would be neutral in the planning balance.
35. In the same vein, the fact that other reasons for refusal have been resolved and the proposal has been agreed<sup>8</sup> to comply with other planning matters such as flood, drainage, ecology and noise, does not in itself merit positive weight.
36. On the converse, I have found that the proposal would lead to an unacceptable harm to highway safety, causing a hazard and placing all users of the highway network at risk. This would be contrary to policies of the Development Plan and

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<sup>7</sup> Set out in the Regulation 122 of the Community Infrastructure Levy Regulations.

<sup>8</sup> In the signed Statement of Common Ground

to paragraph 111 of the Framework, which firmly advises proposals should be refused if they cause an unacceptable harm to highway safety. In addition, I have found significant harm to the landscape character of the locality.

37. No issues were raised regarding the consistency of the recently adopted policies of the Council with the Framework. Therefore, the conflict with the adopted policies is material to the decision.
38. I conclude that the harms arising from the proposed development would significantly and demonstrably outweigh the benefits. I find that the proposal conflicts with policies of the Development Plan and the appeal should be dismissed on this basis. There are no other material considerations arising to indicate a decision otherwise than in accordance with the Development Plan.

### **Conclusion**

39. For the reasons given above I conclude that the appeal should be dismissed.

*D Wallis*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Michael Cole  
Adrian Draffin  
David Wiseman  
Rhys Donoghue  
Hannah Banyard  
Nigel Rowse  
Malcolm McPhail

### FOR THE LOCAL PLANNING AUTHORITY:

Chris French  
Ruth Dovey  
Robert Petrow  
Richard Cooper (on behalf of Surrey County Council)

### INTERESTED PARTIES:

Councillor Catherine Howell  
Councillor Carole Cockburn  
Mr David Howell  
Ms Janette Gallini