**Appeal Decision**

**Site visit made on 24 November 2015**

by J Dowling  BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 10th February 2016**

**Appeal Ref: APP/Y3615/W/15/3130189**

**Guildford Methodist Church, Woodbridge Road, Guildford, Surrey GU1 4RB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Shanley Homes Limited against the decision of Guildford Borough Council.
- The application Ref 15/P/00381, dated 4 March 2015, was refused by notice dated 3 June 2015.
- The development proposed is erection of part three storey, part four storey building comprising 25 one and two bedroom flats with basement car park following demolition of the existing building.

**Decision**

1. This appeal is allowed and planning permission is granted for the erection of a part three storey, part four storey building comprising 25 one and two bedroom flats with basement car park following demolition of the existing building at Guildford Methodist Church, Woodbridge Road, Guildford, Surrey GU1 4RB in accordance with the terms of the application ref 15/P/00381, dated 4 March 2015 subject to the conditions set out in the attached schedule.

**Application for costs**

2. An application for costs was made by both parties. These applications are the subject of a separate Decision.

**Procedural Matters**

3. After submitting the appeal, the appellant company submitted an executed Unilateral Undertaking concerning mitigation for the Thames Basin Heaths Special Protection Area (the SPA) and the provision of affordable housing either through a contribution towards off site provision(option A) or provision on site and a contribution to off site provision(option B). I have considered the undertaking at the relevant points in my decision.

4. The Council’s reason for refusal refers to the Thames Basin Heaths Special Protection Area Avoidance Strategy 2009-2014. However, on 6 January 2015 the Council’s Executive extended the strategy until 2016 and the date on the document has been amended to refer to 2009-2016 and it is this amended title that I have referred to in considering this appeal.

**Main Issues**

5. The main issues are whether the proposal should provide affordable housing units and the effect of the proposal on the Thames Basin Heaths SPA.
Reasons

Affordable Housing

6. Policy H11 of the Guildford Borough Local Plan (2003) (the Local Plan) states that an element of affordable housing will be negotiated with developers of all housing developments of 15 or more dwellings. At least 30% will be sought although the policy acknowledges that the final number of units to be provided may vary subject to a number of situations including marketing considerations. This approach is consistent with paragraph 50 of the National Planning Policy Framework (the Framework). Both the appellant and the Council agree that policy H11 is applicable; that there is a demonstrated need for affordable housing in the borough and that to comply with policy affordable housing should be provided. What is at issue is the amount of affordable housing or financial contribution that would be required in order for the proposal to comply with the policy.

7. The proposal would result in the creation of 25 flats and the Council have indicated that in order to comply with policy H11, they consider that nine of the units would need to be affordable. Following a Viability Assessment (VA) the appellant advocates that the provision of nine units would result in the scheme being unviable and has offered either a contribution of £210,000 towards the provision of affordable housing off site (option A) or a contribution of £119,114 and the provision of one, one bedroom flat (plot 4) for shared ownership on site (option B).

8. The Council consider that neither of the options offered by the appellant complies with the requirements of this policy and therefore they have an in-principle objection to the scheme. This conclusion was reached on the basis that the VA submitted by the appellant is flawed because when they purchased the site they did not, as advocated by the Framework, make an allowance in the purchase price for providing affordable housing in accordance with policy H11 even though they were aware of these requirements prior to purchasing the site. This resulted in an ‘in principle’ objection to both this and the previous scheme that was dismissed at appeal.

9. Central to the consideration of viability is the assessment of land or site value. Although the Council’s approach is consistent with the Planning Practice Guidance (PPG) which advises that the land value of a site should reflect policy requirements, planning obligations and where applicable any Community Infrastructure Levy (CIL) the VA submitted was not based on the purchase price of the site but on the Existing Use Value (EUV).

10. EUV is based on the current use value of a site plus the uplift in value or premium that is considered necessary to bring the site forward for development. For this site the appellant set this at 15%. I note that the Council’s Independent Assessor accepted that this was an appropriate level of uplift and consequently they considered that as a result the conclusions of the VA were correct in this respect.

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1 Paragraph 173 of the Framework
2 Appeal ref: APP/Y3615/A/14/2227280 dated 29 January 2015
3 ID 10-014-20140306 last updated 06 03 2014
11. It is acknowledged⁴ that EUV may not be the most accurate way to assess a schemes viability, as it does not reflect the workings of the market, as land is not released at EUV. Furthermore, EUV plus a premium can result in over-value or under-value of sites compared to market value and it fails to take into account policy requirements, planning obligations or CIL. However, EUV is an accepted approach for the assessment of viability⁵.

12. I note from the evidence before me that, even though the purchase price of the site would have been available, neither the Council nor their Independent Assessor when considering the application disagreed with the use of EUV as a benchmark to calculate the viability of this scheme or sought an amended VA based on purchase price.

13. Therefore whilst the previous Inspector may have had an ‘in-principle’ objection to the purchase price of the site not reflecting policy requirements this information has not been submitted and therefore it is not before me. Consequently, I consider that on the evidence that is before me that the findings of the VA submitted are correct and that if the level of affordable housing advocated by the Council to comply with the 30% minimum advocated by policy H11 were to be imposed then the scheme would be unviable.

14. As well as advocating a minimum requirement policy H11 also indicates that the final number of units to be provided may vary with regard to site suitability and any other material planning or marketing considerations. This approach is in line with the PPG which states that in order to encourage the effective use of land by re-using land that has previously been developed (brownfield land) local planning authorities should take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable⁶. This approach is also consistent with paragraph 173 of the Framework and the Guildford Borough Planning Contributions Supplementary Planning Document (2011) (the SPD)⁷.

15. Therefore to meet the requirements of policy H11 the appellant has offered two options either a financial contribution or the provision of one unit on site and a reduced financial contribution. Whilst the Council have stated that they reserve the right to choose the option that best suits their needs the wording of the submitted Unilateral Undertaking requires me to indicate which option is selected. Whilst I note the need for affordable housing units in the borough I share the same concerns as the Council with regard to the viability of providing one on-site shared ownership unit. As a result subject to payments in accordance with Option A I conclude that the proposal would accord with the requirements of Policy H11 of the Local Plan, the SPD and the Framework.

Effect of the proposal on the Thames Basin Heaths Special Protection Area

16. The appellant company has submitted an executed Unilateral Undertaking concerning the measures to mitigate the recreational pressure on the Thames Basin Heaths Special Protection Area. The Council have indicated that they consider that the proposal would now meet the terms of the Thames Basin Heaths Avoidance Strategy 2009-2016.

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⁴ Paragraph 3.4.1 RICS Professional Guidance, England Financial viability in Planning 1st edition (GN 94/2012)
⁵ ID 10-024-20140306 last updated 06 03 2014 and paragraph 3.17 of Guildford Borough Planning Contributions Supplementary Planning Document (2011)
⁶ ID 10-026-20140306 last updated 06 03 2014
⁷ Paragraph 2.22
17. I have considered the Council’s SPD and am satisfied that the Unilateral Undertaking accords with the relevant policies and the tests in regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. I consider that in accordance with Local Plan policy G6 and the SPD, the amounts proposed are directly related to the development and fairly and reasonably related in scale and kind. Consequently I consider that the effect of the proposal on the Thames Basin Heaths SPA would be mitigated and as a result the proposal would accord with saved policy NRM6 of the South East Plan (2009) policies NE1 and NE4 of the Local Plan and the Thames Basin Heaths SPA Avoidance Strategy 2009-2016 which protect the Thames Basin Heaths SPA and protected species.

Conditions

18. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council against Paragraph 206 and adjusted their wording where necessary in the interests of clarity. In addition to the standard time limit, for the avoidance of doubt and in the interests of proper planning, I have also imposed a condition requiring that the development be carried out in accordance with the approved plans.

19. To ensure the development respects its setting I have imposed conditions concerning materials and landscaping (including implementation and maintenance). In order to protect the trees shown to be retained and on the boundary I consider a condition requiring approval of an Arboricultural Method Statement and protective fencing is relevant.

20. To ensure highway safety I consider conditions requiring an appropriate access; on site car and cycle parking; visibility splays and the management of construction are necessary. To ensure the living conditions of the occupants of neighbouring properties are protected adequately I have imposed conditions concerning boundary treatments; obscure glazing; restricting the use of the roof and limiting the method and noise of piling.

21. To ensure the development contributes to minimising the effects of, and can adapt to a changing climate I consider that imposition of a condition detailing energy usage and how the development would achieve a reduction in carbon emissions is reasonable.

Conclusion

22. For these reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jo Dowling
INSPECTOR
Schedule - Conditions

1) The development hereby permitted shall begin no later than three years from the date of this decision.

2) The development hereby approved shall be carried out in accordance with the following approved plans: 1252_PLN_EXE, 1252_PLN_EXP, 12525_EBP, 1252_PLN_TOPO, 1252_PLN303, 1252_PBP, 1252_PLN302, 1252_PLN301, 1252_PLN304, 1252_PLN_305 and the additional information received on 04.03.15.

3) No development shall take place until details and samples of the materials to be used in the external surfaces and windows and external doors of the development have been submitted to and approved in writing by the local planning authority and the development shall be constructed using the materials so approved.

4) No development shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the local planning authority. The approved landscape scheme (with the exception of planting, seeding and turfing) shall be implemented prior to the occupation of the development hereby approved and retained.

5) All planting, seeding or turfing approved shall be carried out in the first planting season following the occupation of the development or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or diseased in the opinion of the local planning authority, shall be replaced in the next available planting season with others of a similar size, species and number, unless otherwise agreed in writing by the local planning authority.

6) No development shall start on site until the detailed treatment of all boundaries have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development or phased as agreed in writing by the local planning authority. The approved scheme shall be retained in perpetuity.

7) No development shall take place until an Arboricultural Method Statement (detailing all aspects of construction and staging of works) and Tree Protection Plan in accordance with British Standard 5837:2005 (or any later revised standard) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed method statement and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with the Tree Protection Plan. Within any area fenced in accordance with this condition, nothing shall be stored, placed or disposed of above or below ground, the ground level shall not be altered, no excavations shall be made, nor shall any fires be lit, without the prior written consent of the local planning authority. The fencing shall be maintained in accordance with the approved details, until the equipment, machinery and surplus materials have been removed from the site.

8) The development hereby approved shall not be commenced until the proposed vehicular access to Wharf Road has been constructed in accordance
with the approved plan 1252_PLN305 and thereafter permanently maintained. The above improvements will require the alteration of the Traffic Regulation Order prior to commencement of the development.

9) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles and cycles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking/turning areas shall be retained and maintained for their designated purposes.

10) Before any of the operations hereby approved are started on site, a pedestrian intervisibility splay of 2m by 2m shall be provided on each side of the access, the depth shall be measured from the back of the footway(or verge) and the width outwards from the edges of the access. No fence, wall or other obstruction to visibility between 0.6m and 2m in height above ground levels shall be erected within the area of such splays.

11) No development shall start on site until details of (i) the predicted energy use of the development; and (ii) the type(s) of low or zero carbon technologies to be used, have been submitted to and approved in writing by the local planning authority. These details will demonstrate how the development will achieve at least 10% reduction in carbon emissions. Such details as may be approved shall be implemented prior to the first occupation of the development and retained and maintained for the lifetime of the building.

12) In the event that piling works are necessary, before the commencement of the development a scheme for limiting the noise shall be submitted to and approved in writing by the local planning authority and shall be in accordance with BS 5228 (Parts 1 & 4) for noise control. The scheme shall specify the proposed piling method and the reason for its selection. This shall take into account the ground conditions of the proposed development and the proximity of residential properties. Please Note that silent piling is the preferred option and only in extreme cases will noisy methods such as driven piles be permitted.

13) The roof area shall not be used at any time as a balcony, roof garden or amenity area.

15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The statement shall provide for but not be limited to:

- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
- wheel washing facilities; and
- delivery, demolition and construction hours.

The approved Construction Method Statement shall be adhered to throughout the construction period of the development.
16) The windows in the Southern elevation (facing Dapdune Court) of the building, shown to be fitted with obscured glazing on the approved plans, shall be finished as such. No part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of opening. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority and once installed the windows shall be retained as approved thereafter.