



## Appeal Decision

Site visit made on 23 July 2019

by **C Osgathorp BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 September 2019

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**Appeal Ref: APP/M2270/W/19/3228382**

**Land rear of Red Lion Public House, 82 Lower Green Road, Rusthall TN4 8TW**

- 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 Mr George Barnes (Shepherd Neame Ltd) against the decision of Tunbridge Wells Borough Council.
  - The application Ref 18/03853/FULL, dated 26 November 2018, was refused by notice dated 5 April 2019.
  - The development proposed is the erection of 3 x 3 bed terrace houses; new vehicular access / car parking; bin / cycle store; hard & soft landscaping works; works to existing boundary wall (listed).
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 x 3 bed terrace houses; new vehicular access / car parking; bin / cycle store; hard & soft landscaping works; works to existing boundary wall at land rear of Red Lion Public House, 82 Lower Green Road, Rusthall TN4 8TW in accordance with the terms of the application, Ref 18/03853/FULL, dated 26 November 2018, subject to the conditions set out in the attached Schedule.

### Main Issue

2. The main issue is the effect of the proposed development on highway and pedestrian safety.

### Reasons

3. The appeal site is located within the defined Rusthall limit to built development and relates to land within the curtilage of the Red Lion Public House, which is a Grade II listed building. The public house is served by an existing vehicular crossover onto Lower Green Road, which is positioned on the inside of a road bend opposite the junction with Ashley Gardens. Lower Green Road is a local distributor road with a speed limit of 30mph and the appeal site is positioned between 2 road bends. The gradient of the road slopes up from the junction with Ashley Gardens towards the south. There is a pedestrian footway adjoining the front boundary wall of the appeal site, however on the opposite side of the road the front boundary wall of the houses adjoins the edge of the carriageway and there is not a footway.

4. The appellant's transport statement<sup>1</sup> includes visibility splays from the proposed vehicular access; traffic and speed survey data; traffic generation from the proposed development; and forward visibility calculations along the eastbound and westbound carriageways. The Council has raised no objection in relation to visibility, however it states that visibility is not the single deterministic factor as to whether the proposed access is safe. The Council has referred to road conditions, including road bends, gradient and the position of the wall adjoining the carriageway, which I have had regard to. I have taken into account the comments from the Highway Authority.
5. The transport statement shows that the recorded 85<sup>th</sup> percentile speeds were surveyed as 19.1mph for eastbound traffic and 24.6mph for westbound traffic. The surveyed road speeds are considerably below the speed limit of 30mph, which indicates that drivers are travelling at lower speeds having regard to road conditions.
6. During my site visit I drove past the appeal site in eastbound and westbound directions and observed that vehicles were generally travelling around the surveyed speeds. There is no substantive evidence before me to indicate that vehicle speeds are markedly different from the speed surveys in the transport statement. I have had regard to representations from interested parties who state that a Speedwatch team observed vehicles travelling more than 30mph, however there are no alternative speed surveys before me. The transport statement shows the speed up to which 85% of traffic is travelling at the measuring points, which provides a robust indication of vehicle speeds.
7. Drawing No 2017/3752/002 Rev C of the transport statement shows that there is suitable forward visibility for eastbound traffic to stop safely behind a vehicle turning left into the appeal site and for westbound traffic to stop safely behind a vehicle turning right into the appeal site. The Council has referred to the gradient of the road, however I observed that this does not restrict visibility from the position of the proposed vehicular access or along the westbound or eastbound carriageways. Furthermore, given that the proposed development only consists of 3 dwellings, the transport statement shows that there would be a small number of daily vehicular movements into and out of the appeal site.
8. The traffic survey in the transport statement shows that during the AM peak hour there were approximately 6 two-way vehicle movements in Lower Green Road per minute. I have had regard to representations from interested parties that a Speedwatch team surveyed 400 cars per hour at peak times, which is only a modest amount more than the movements surveyed in the appellant's transport statement. Nevertheless, during my site visit in the AM peak time I observed that there were frequent gaps in traffic flow.
9. Taking into account the small number of vehicular movements generated by the development; the traffic flow in Lower Green Road; and that the proposed vehicular access has been designed to enable 2-way passing of vehicles, the amount of time that vehicles would wait in Lower Green Road to turn into the appeal site would be minimal. Accordingly, these factors, together with the appropriate visibility splays and forward visibility, I find that the proposed development would not be harmful to highway safety.

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<sup>1</sup> Ref 17/3752/TS01 dated November 2018

10. I acknowledge that there is no pedestrian footway to the front of Nos 51 – 57 Lower Green Road and pedestrians can only access the properties by crossing from the footway on the opposite side of the road. However, the appeal proposal is for 3 dwellings, which would generate a small number of vehicular movements. Taking the above factors into consideration, I find that the proposed development would not be detrimental to pedestrian safety.
11. For the above reasons, I conclude that the proposed development would not be harmful to highway and pedestrian safety. The proposal therefore complies with saved Policy TP4 of the Tunbridge Wells Borough Local Plan 2006, which, amongst other things, seeks to ensure that access is safely located with adequate visibility and proposed development does not compromise the safe and free flow of traffic or the safe use of the road by others. The proposal also accords with paragraphs 108 and 109 of the National Planning Policy Framework 2019 ("Framework"), which, amongst other things, seeks to ensure that safe and suitable access to the site can be achieved for all users.

### **Other Matters**

12. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, states that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be had to the desirability of preserving the building or its setting.
13. The proposed development involves works to the boundary wall, which is within the curtilage of the Grade II listed public house. An opening would be created in the wall to create the new vehicular access and it would be demolished and re-built in a set-back position to provide appropriate visibility splays from the new vehicular access. The Council has already granted listed building consent on 4 March 2019, Ref 18/03854/LBC, for the works to the boundary wall.
14. The Red Lion public house is a Grade II Listed Building and nearby there is the Grade II listed terrace at Nos 55- 63 Lower Green Road. The Council concluded that the appeal proposal would result in less than substantial harm to these designated heritage assets. From the evidence presented to me, I see no reason to disagree with this conclusion.
15. Paragraph 196 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The proposed development would provide 3 houses within the defined Rusthall limit to built development, which would make a contribution towards the supply of housing in the borough and assist in meeting local housing needs. On balance, given this public benefit I find that the benefits of the proposed development outweigh the harm. In this respect my finding reflects that of the Council.
16. I have had regard to the representations from the occupiers of neighbouring properties, which, in addition to the above matters, raise concerns relating to overdevelopment and the impact on the character and appearance of the area; overlooking of neighbouring houses; high value houses would not help the Borough's housing situation; and the construction phase would cause significant noise and disturbance. However, in my judgment, the proposed development is well-designed and respects the context of the site. The proposed dwellings would not cause significant overlooking due to the distance

and relationship of their habitable windows to neighbouring properties. The proposal would make a contribution towards the supply of housing in the borough. There is no requirement for a contribution towards affordable housing to be made in this case. There may be some disruption during construction works, however this is not uncommon and would not be grounds to dismiss the appeal.

### **Conditions**

17. The Council has suggested 13 conditions which I have considered against the Framework and the advice in Planning Practice Guidance, amending where necessary in the interests of precision. I am satisfied that all of my conditions set out in the attached Schedule are necessary, relevant and reasonable to make the approved development acceptable. I have received confirmation from the appellant that they are agreeable to the pre-commencement conditions.
18. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.
19. Conditions dealing with the further approval and implementation of external materials, hard and soft landscaping, and specification of works to restore steps adjacent to the south-western boundary of the site are necessary to maintain the character and appearance of the area. I have also imposed a site levels condition in the interests of the character and appearance of the area and the setting of the listed buildings. I am satisfied that this needs to be a pre-commencement condition to ensure that appropriate site levels are agreed before any ground works are carried out.
20. A condition requiring a scheme for the mitigation of impacts on ecology and biodiversity enhancements is necessary in order to mitigate the effect of the development on ecology. This is a pre-commencement condition to ensure that mitigation measures are agreed before the carrying out of construction work which may affect ecology. A condition requiring tree protection measures and arboricultural works to be carried out in accordance with the submitted Arboricultural Impact Assessment and Method Statement is required to protect trees and the character and appearance of the area. Having regard to the proximity of the proposed development to nearby plant and machinery, a condition requiring the approval and implementation of a scheme of acoustic mitigation is necessary to protect the living conditions of the future occupiers of the proposed development.
21. Conditions to secure the implementation of visibility splays of the new vehicular access; the gradient, surfacing and drainage of the driveway; and the parking and manoeuvring area are necessary in the interests of highway safety.
22. I have also attached a condition to require the installation of bin and cycle storage in accordance with the approved drawings to ensure that future occupants have access to these facilities.
23. The Council has suggested a condition to remove permitted development rights under Schedule 2 Part 1 & Part 2 of the Town and Country Planning (General Permitted Development) Order 2015. Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. I have

attached a condition to prevent the installation of gates in the vehicular access in order to prevent obstruction in the adjoining highway. I have been presented with no such clear justification for the blanket removal of other permitted development rights in this case.

**Conclusion**

24. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed and planning permission be granted subject to the conditions contained in the attached Schedule.

*C Osgathorp*

INSPECTOR

### **Schedule of conditions**

1. The development to which this permission relates shall be begun within a period of three years commencing on the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings:-  
  
747/P01, 747/P02, 747/P03, 747/P04, 747/P05, 747/P06, 747/P07, 747/P08, 747/P10.
3. No construction works above damp-proof course shall commence until details of the materials to be used for all the external finishes of the building hereby permitted and details of external joinery have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved materials.
4. No part of the development hereby permitted shall be occupied until full details of a hard and soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The hard landscaping scheme shall include details of all site boundary treatments, surfacing materials, fences or walls within the site. The hard landscaping works shall be completed in accordance with the approved details prior to the first occupation of the development. The soft landscaping scheme shall show any existing trees, hedges and blocks of landscaping on and immediately adjacent to the site and indicate whether they are to be retained or removed. It shall fully detail all new planting, and shall include a planting specification, a programme of implementation and a 5 year management plan. The soft landscaping scheme shall be implemented in accordance with the approved details.  
  
Any tree planted in accordance with this condition, or in replacement for such a tree, which within a period of five years from the date of the planting is removed, uprooted, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, shall, in the same location, be replaced during the next planting season (October to February) by another tree of the same species and size as that originally planted.
5. No development shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority: a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals; full details of the proposed finished floor levels of the building and hard landscaped surfaces. The development shall be carried out in accordance with the approved details.
6. Tree protection measures and arboricultural works shall be carried out in accordance with the details set out in the Arboricultural Impact Assessment and Method Statement (Ref CAS/2018/125, dated November 2018) prepared by Cantia Arboricultural Services. The tree protection measures shall be implemented for the duration of the construction work.

7. No development or site clearance shall commence until a scheme for the mitigation of impacts on ecology and biodiversity enhancements has been submitted to and approved in writing by the Local Planning Authority. The approved scheme, including any mitigation and enhancement recommendations, shall be fully implemented in accordance with an agreed timescale and thereafter retained.
8. No part of the development hereby permitted shall be occupied until a scheme of acoustic mitigation to protect future occupiers of the new dwellings hereby permitted from the adverse impacts of noise from nearby plant and machinery has been submitted to and approved by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the development and shall be retained at all times thereafter.
9. Prior to the commencement of works to repair and restore the steps adjacent to the south-western boundary of the site, a specification of work shall be submitted to and approved in writing by the Local Planning Authority, including details of any new associated handrails and treads. The approved works shall be carried out in accordance with the approved details.
10. No part of the development hereby permitted shall be occupied until visibility splays for the vehicular access have been provided in accordance with drawing No 2017/3752/001 Rev D of the transport statement (Ref 17/3752/TS01 dated November 2018). Anything within the pedestrian visibility splays at a height greater than 0.6m above the level of the highway shall be removed; and anything within the vehicular visibility splays at a height of 0.9m above the level of the highway shall also be removed; and the approved visibility splays shall be maintained thereafter.
11. The vehicular access shall have a gradient of no greater than 1 in 10 for a distance of 1.5m from the back of the highway and 1 in 8 thereafter. The vehicular access shall be surfaced in a bound material and drained within the boundaries of the site.
12. No part of the development hereby permitted shall be occupied until the vehicular access, parking and manoeuvring area has been laid out and completed in accordance with the approved drawings. The parking area shall be made permanently available for the occupiers of, and visitors to, the development hereby permitted.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no gates shall be erected within the vehicular access road.
14. No part of the development hereby permitted shall be occupied until bin and cycle storage has been provided in accordance with the approved drawings. The storage facilities shall be retained at all times thereafter.