



Compulsory Purchase Order Decision

Site visit made on 3 November 2021

by **John Felgate BA(Hons) MA MRTPI**

Decision date: 17 November 2021

The Wokingham Borough Council (Land at Gorse Ride South, Finchampstead, Wokingham) Compulsory Purchase Order 2021

Case Ref: APP/CPU/CPOP/X0360/3270069

- The Order is made under Section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981.
 - The Order is made by Wokingham Borough Council and is dated 24 February 2021.
 - The Order authorises the compulsory acquisition of 30 properties or land parcels within the Gorse Ride estate, as shown on the Order Map and described in the Order Schedule.
 - The Order's stated purpose is for the development, redevelopment or improvement of the land, by the demolition of the existing buildings and the erection of new residential dwellings, together with associated access, parking, landscaping and public open space.
 - There are two remaining objections, from four qualifying objectors, being the owners and occupiers of two residential properties affected by the Order.
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Decision

1. The Order is not confirmed.

Procedural Matters

2. The Council, as the Acquiring Authority, has certified that notices regarding the making of the Order, in the prescribed form, were served on all relevant persons in February 2021, and also posted on site and published in a local newspaper, and that the required period for objections has expired. The Authority has also confirmed that details of the Order and the Statement of Reasons were deposited on the Council's website at that time and have remained available since then.
3. It does not appear to be disputed by any party that these and all other relevant procedural requirements relating to the making of compulsory purchase orders have been carried out, in accordance with the provisions of the relevant legislation, including the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981. I am satisfied that these legal formalities have been fully complied with.
4. I note that the Council also intends to pursue a related application under S. 247 of the 1990 Act, for the stopping-up and diversion of certain highways within the Order site. That application is not before me and is not the subject of my decision.

The Objections

5. The objections which remain outstanding are as follows:
 - Mr Zaheer Sheikh and Mrs Ayesha Zaheer, freehold owners and occupiers of No 11 Billing Avenue (Plot No 17 on the Order Map)
 - Mr Douglas Bates and Mrs Carole Bates, freehold owners and occupiers of No 10 Dart Close (Plot No 22 on the Order Map)
6. One further objection, made by Southern Gas Networks PLC, has since been withdrawn and is no longer before me for consideration.

Background to the Order

7. The Council's reason for seeking the compulsory acquisition of the Order lands is to facilitate the redevelopment and regeneration of the Gorse Ride South estate, a 1970s development comprising 178 houses and bungalows. Originally the estate appears to have been wholly Council-owned and managed. Over time, 38 of these dwellings were sold under 'right-to-buy' legislation.
8. The Council states that the redevelopment of Gorse Ride South has been an objective for many years. With this in mind, public consultation was commenced in the summer of 2015. In the same year demolition notices were issued to occupiers of the remaining Council-owned properties, and in 2018 the Council began re-housing some existing tenants to another nearby development, at Arnett Avenue.
9. On 19 February 2021, full planning permission was granted for the demolition of all of the existing buildings on the estate, and the provision of 249 new dwellings with associated access, parking, landscaping and public open space.
10. By May 2021, according to the Council's evidence, final detailed design work was well under way, and the discharge of planning conditions was said to be about to commence. Contracts had been let for pre-construction services and the removal of asbestos.
11. Subsequently, as I saw on my visit, the asbestos removal has been commenced, which has required the internal gutting and stripping of some of the dwellings in Dart Close and Firs Close. Three units, on the corner of Dart Close and Billing Avenue, have been fully demolished for test purposes.
12. As at May 2021, it was stated that 20 dwellings had been re-acquired by the Council, by voluntary agreement with the owners, and terms had been agreed on a further five. This would appear to have left 13 residential properties not agreed at that date, of which two were the subject of the objections which are before me now. In addition, the Order Schedule identifies 11 other parcels, comprising statutory undertakers' land, highway land and miscellaneous non-residential land, none of which are the subject of objections.

Legal Framework and Guidance

13. S.226(a) of the Town and Country Planning Act 1990 confers on local authorities the power to acquire land to facilitate carry out the development, redevelopment or improvement of that land. S.226(b) requires that this power is only used where the intended works will contribute to the promotion or improvement of the economic, social or environmental well-being of the area.

14. Alongside these provisions, authorities exercising compulsory purchase powers are required to have regard to the 'Guidance on Compulsory Purchase and the Crichel Down Rules', published by the Ministry of Housing, Communities and Local Government in 2019 (referred to here as 'the Guidance').
15. The Guidance recognises that, in all cases, the exercise of compulsory acquisition powers will necessarily involve an infringement of the rights of the lawful owner to the peaceful enjoyment of his or her possessions. Such rights are protected by Article 1 of the First Protocol to the European Convention on Human Rights (the ECHR), which was incorporated into UK law by the Human Rights Act 1998. In addition, in the case of dwellings, compulsory acquisition will interfere with the occupiers' rights to respect for their private and family life, under ECHR Article 8. Because of this, the Guidance makes it clear that such powers should only be used as a last resort, and will only be justified where there is a compelling case in the public interest.

Main Issue

16. Having regard to the above, and in the light of the submissions before me, the main issue in the present case is whether a compelling case for the confirmation of the Order has been demonstrated, so as to justify the resultant infringement of the objectors' human rights.

The Acquiring Authority's case

17. The Council argues that the existing dwellings on the Gorse Ride South estate were built to standards that are no longer acceptable. In particular, it is said that the prefabricated, timber-framed construction method used throughout the estate provides inadequate thermal insulation, thus causing wastefully inefficient use of energy in home heating, with consequent high running costs and unnecessarily high carbon emissions. In addition, the buildings are said to suffer from problems with condensation, damp, drainage and the transfer of noise between neighbouring occupiers. Mortgage lenders are said to be reluctant to offer finance for house purchases on the estate, due to concerns about the properties' non-traditional construction.
18. In the Council's submission, it would not be economically viable to bring these existing properties up to acceptable modern standards by means of repair, retro-fitting or refurbishment. The level of investment needed would be substantial, not only in the short term but on a continuing basis. Even then, the Council suggests that the resulting quality of the accommodation would not match that of modern new homes, and thus the question of redevelopment would inevitably have to be considered again in future years. On this basis, the Council submits that spending money on the existing properties would not represent good value.
19. In addition, the Council considers the visual appearance of the estate to be poor, adversely affecting the character of the surrounding area, and that the layout under-utilises the land available.
20. In the Council's view, the redevelopment scheme now proposed would offer numerous benefits. It would increase the amount of housing provision on the site, in both the affordable and market housing sectors, with a net gain of 41 affordable units and a net gain of 30 private dwellings. The mix of sizes and tenures would be geared towards the District's present-day needs, including

those of the elderly, the less able, and smaller households. The quality of the new homes, in all aspects of design, technical performance and visual appearance, would be higher than the existing dwellings. The scheme would incorporate new public open spaces, play areas, a sensory garden and new landscaping, all of better quality than the existing. The development would offer new opportunities to revitalise the local community and foster a sense of pride in the area. It would also provide a boost to the local economy through construction jobs, training opportunities and supply-chain impacts. In addition, the scheme would comply with relevant national and local planning policies, and mitigate all identified impacts through conditions and obligations.

21. In the Council's view these benefits could only be achieved through the complete redevelopment of the whole estate, including all of the privately owned properties. The Council has attempted to acquire all of the necessary interests by negotiation, and has reached agreement with a number of owners through this means. In the case of the remaining properties, offers have been made in line with the national Compensation Code, and fair valuations have been undertaken, in accordance with the relevant legislation. A support package has also been offered, including equity loans repayable only upon any future sale.
22. The Council acknowledges that compulsory acquisition would infringe the owners' rights, but argues that the scheme can only succeed if it is fully comprehensive. Through consultation and engagement over a period of years, the Council is satisfied that the scheme is supported by the majority of the estate's residents. It is therefore considered that the Order strikes a fair balance.

The Objectors' case

23. Mr and Mrs Bates have lived in their home since a few years after it was built, and subsequently purchased it from the Council in 1985. Mr Sheikh and Ms Zaheer have owned and occupied their property since 2007.
24. The objectors contend that the majority of the privately-owned properties on the estate, including their own, have been well-maintained and are in good order. In terms of their physical fabric, the objectors believe these properties to be physically sound, and no reason is seen as to why they should not last for at least 40 or 50 more years. In the objectors' view, their homes do not have unduly high running costs or maintenance issues, and it is said that the homes have been rated good for energy efficiency. In the case of No 10 Dart Close, Mr and Mrs Bates have some time ago improved the thermal performance by replacing the original roof covering with new tiles, and strengthening the roof trusses accordingly.
25. The objectors suggest that there was no reason why the Council-owned properties could not have been maintained to the same standard. The Council has not produced any evidence to support its statements regarding the costs of renovating the existing properties, or the comparative energy use and running costs.
26. Although much of the estate now has a run-down appearance, this is seen as largely a result of neglect by the Council. In addition, in recent years private owners have been deterred from investing in maintenance, due to the blight caused by the redevelopment proposals.

27. With regard to mortgage finance, the objectors say there was never any problem in the past. They point out that the Schedule of Interests shows that several of the properties are subject to existing mortgage loans.
28. With regard to the proposed redevelopment scheme, the objectors dispute that the benefits would be as great as claimed. There is no evidence of widespread public support. At best, it is considered that the benefits are over-stated.
29. If the Order is confirmed, whilst compensation would be based on the properties' market value, the objectors fear that this valuation would be likely to be adversely affected by the estate's current condition, with some properties now having been vacated and boarded up, and others unmaintained. Even though the effects of the scheme itself are to be disregarded, it is felt that the current situation is unfairly weighted in favour of the Council. The objectors also understand that the current market valuation is likely to be reduced because of the non-traditional method of construction, whereas when the properties were bought there was no such adjustment. It is argued that this combination of circumstances makes it difficult for the objectors to have confidence in securing a fair price.

Inspector's Conclusions

30. To a large extent, both the Council's and the objectors' cases rely on assertions that are not substantiated with any detailed evidence. On the objectors' side, for example, whilst I saw on my visit that both 10 Dart Close and 11 Billing Avenue appear reasonably well maintained and comfortable, there is no actual documentary evidence before me as to their energy efficiency or running costs. Nor are there any surveyors' reports to confirm the properties' structural soundness, or the feasibility of making any necessary improvements. However, neither is there any clear evidence on these matters from the Council.
31. As already noted, the relevant Guidance makes the burden of proof in matters of compulsory purchase very clear. Where an owner is to be deprived of their property against their will, and especially where they stand to lose their home, the case for taking that action must be shown to be sufficiently compelling to justify such a severe infringement of those persons' human rights. The task of demonstrating a compelling case therefore falls not on the objectors, but firmly on the Acquiring Authority.
32. In the present case, the Council places great emphasis on the benefits that they see in terms of energy use, emissions and sustainability. To my mind, if those benefits were demonstrated and quantified, then they would deserve to be given weight. However, the evidence now presented on these matters by the Council contains little or no technical detail of any kind. Nor can I see any reference in any of the submitted documents to any detailed studies on these matters. Whilst on site, I was able to view one of the vacated properties, which had been opened up to expose the structure, but as the insulation and wall linings had already been stripped out, this was of limited value. Whilst the Council did belatedly provide photographs of another dwelling at an earlier stage in the dismantling process, that dwelling was no longer available to view on my visit; and in any event, the photographs were not accompanied by any technical report or commentary. I also note that there appears to be no reference in any of the Council's evidence to the question of whether the

- embedded energy or embedded carbon in the existing buildings should be taken into account. The Council's statements on all of these matters therefore appear as assertions rather than reasoned conclusions. Those assertions might be right, and might be capable of being proven, but the necessary detailed information does not appear to have been made available, so that affected parties and others could examine it, and challenge it if they wished. From the evidence before me, I cannot tell how the Council has reached its conclusions as to the sustainability benefits of demolishing and replacing the existing buildings. Without any relevant detailed evidence, the Council's point about comparative energy use and emissions carries limited weight.
33. The Council also asserts that bringing the existing buildings up to modern standards, as an alternative to demolition, would not be economically viable. But in order to show that this assessment is justified, it would be necessary to show that it has been based on detailed technical evidence, such as structural and condition surveys, feasibility studies and costings. In this case, it is stated that costings and studies have been undertaken, but none of the evidence on these matters has been put before me, and I am not aware of it having been made available at any time to others. Again, in the absence of convincing evidence, the weight that can be given to the point is limited.
34. Similarly, it is stated that a partial scheme, which retained some of the existing dwellings would not be viable or feasible. However, there is no evidence of any such options having been investigated. I appreciate that the privately-owned properties are widely scattered around the estate, with some being mid-terraced units, and this would make a partial scheme more difficult. But that does not necessarily mean that 100% demolition, is the only worthwhile option. Given the inclusion of the owner-occupied properties, and the potential for objections, the Council could have investigated whether other options were feasible to mitigate the impacts on those parties. Without any evidence to go on, I have no basis to judge whether the Council's assertions on the matter are justified.
35. Reliance is placed on the alleged support of the majority of residents on the estate, and if this were substantiated I consider that this could potentially carry some weight. But yet again no documented evidence has been produced.
36. As far as the proposed new development is concerned, it is clear that the scheme would achieve a net gain to the District's housing stock, in all tenures, and including some additional provision for specialist needs. There would also appear to be an increase in the amount of public open space, albeit that this has not been quantified. And there is no doubt about the likely boost to the local economy. The development would therefore advance the area's social, environmental and economic well-being to some extent. However, none of the other benefits claimed by the Council are either clear-cut or fully substantiated. There might well be a qualitative enhancement of the overall residential environment within the site, but the extent to which that would be achievable only through the development now proposed has not been demonstrated. There would be opportunities for the renewal of local community spirit and social cohesion, but the realisation of these kind of benefits is by no means guaranteed. Together, the proposed development's benefits carry some weight. But nevertheless, in the context of a proposal for compulsory purchase, they fall a long way short of being compelling.

37. I note that the development is said to comply with all relevant planning policies, and indeed this is not in dispute. But the Order site is not identified for redevelopment in either the Core Strategy or the Managing Development Local Plan, and there is no suggestion that the achievement of the planning strategy set out in those plans is in any way reliant on the development now proposed. The Order therefore gains no specific support from the adopted development plan.
38. Matters relating to valuation and compensation are outside the scope of my decision. Where an Order is confirmed, the amount of compensation falls to be determined under the Code, and a separate procedure exists for settling that figure. However, where a property is to be acquired through negotiation and voluntary agreement, I am not aware of anything that restricts the amount that can be lawfully offered or accepted. In the present case, it is clear that offers have been made for the objectors' properties. But the evidence before me does not enable me to form any view as to whether the scope for reaching agreement through that process has been exhausted. It therefore seems to me that there remains some doubt as to whether the Order is needed only as a last resort.
39. Overall, I accept that the confirmation of the Order would facilitate the carrying out of the Council's proposed comprehensive scheme for the complete demolition and redevelopment of the Gorse Ride South estate, and this would have some benefits in terms of increased housing provision, open space and construction jobs. However, these benefits are not so great as to justify the compulsory acquisition of the objectors' properties at 10 Dart Close and 11 Billing Avenue. The redevelopment scheme would have the potential for some further benefits to the local community, but those are less tangible and less certain. The replacement of the existing dwellings might also bring sustainability benefits in terms of reduced energy use and emissions, but the extent of any such benefits is unproven and unquantified. And in any event, in the absence of any apparent consideration of alternatives, it has not been sufficiently demonstrated that the compulsory acquisition of the objection properties is necessary to achieve benefits of the kind sought.
40. I have no doubt at all that the Council's actions in seeking to redevelop the Gorse Ride South site are well-intentioned, and are motivated by highly respectable environmental objectives. I have no reason to doubt that the scheme that they seek to promote would produce a reasonably high-quality development, securing the area's long-term future, and making some contribution to sustainability. However, the scheme as currently proposed would involve dispossessing the owners of two owner-occupied residential properties, against their wishes. In this context, the case currently advanced by the Council in support of the Order is not compelling.

Conclusion

41. The confirmation of the Order would facilitate the implementation of the redevelopment of the Gorse Ride South estate, and that development would make some contribution to the area's well-being. However, the sustainability benefits claimed by the Council have not been substantiated; nor has it been shown that the demolition of the existing properties is the only or best way to achieve those benefits; nor that the inclusion of the objectors' properties is necessary.

42. A compelling case for the compulsory purchase of the properties in question has therefore not been demonstrated.
43. I have taken into account all the other matters raised, but none changes this conclusion.
44. The Order is therefore not confirmed.

J Felgate

INSPECTOR