
Appeal Decision

Hearing held on 16 August 2016

Site visit made on 16 August 2016

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 28 September 2016

Appeal Ref: APP/N1730/W/16/3151737

Clachan, Little Vigo, Yateley, Hampshire, GU46 6ES

- 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 Ms Shazia Latif against the decision of Hart District Council.
 - The application Ref 15/02913/FUL, dated 26 November 2015, was refused by notice dated 29 January 2016.
 - The development proposed is erection of a detached house and garage following the demolition of the existing double garage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the Hearing it was agreed that further time would be given to the appellant to finalise the three draft Unilateral Undertakings (UUs) that had been provided in draft format. After the Hearing, executed versions of the UUs were provided and I have had regard to these, along with the views of both parties on them, within my decision.

Main Issue

3. The main issue of the appeal is the effect of the proposal on the integrity of the Thames Basin Heaths Special Protection Area (SPA).

Reasons

4. The appeal site is located within Little Vigo and consists of a double garage and garden area associated with the property known as Clachan. The proposal seeks to demolish the existing garage and erect a detached property. The appeal site lies within 400 metres of the Thames Basin Heath SPA, which comprises a network of heathland sites that accommodate populations of ground nesting bird species (Nightjar, Woodlark and Dartford Warbler), which are of European importance and are protected by European Law (Directive 92/43/EEC). This protection is also transposed into UK law by the Habitat Regulations (2010)¹.

¹ The Conservation of Habitats and Species Regulations (2010).

5. Circular 06/2005² includes a flowchart that sets out the approach that should be taken when considering proposals that have the potential to affect the integrity of an SPA. The proposal is not related to the management of the SPA and therefore it is necessary to consider whether the scheme would be likely to have a significant effect on the internationally important features of the protected site, either alone or in combination with other plans or projects. If it has the potential to do so, an 'appropriate assessment' of the implications for the site in view of its conservation objectives is required, having regard to advice from Natural England.
6. There is also planning policy and guidance that is of relevance. Policies GEN1 and CON1 of the Hart District Local Plan (2009) (the LP), seek to enhance the District's ecology and set out that development which would adversely affect the nature conservation value of a European designated site will not be permitted unless there are no alternative solutions and there are imperative reasons of over-riding public interest. Policy NRM6 of the South East Plan (SEP) identifies a 400 metre 'exclusion zone' where mitigation measures are unlikely to be capable of protecting the integrity of the SPA. The policy also states that in exceptional circumstances the exclusion zone may be varied, however, it must be demonstrated that mitigation measures will be capable of protecting the integrity of the SPA. Further, such areas should be set out in Local Plans and Avoidance Strategies and agreed with Natural England.
7. The Council has produced an Interim Avoidance Strategy³ for the SPA that carries forward the principles of Policy NRM6 of the SEP. This identifies two zones, an Inner Exclusion Zone (IEZ) and a Zone of Influence (ZOI). The IEZ is the area within 400 metres of the SPA, where there is a presumption against new residential development. The ZOI is the area outside of the IEZ and within 5 kilometres of the perimeter of the SPA, where with mitigation measures new residential development may be appropriate. The appellant accepted at the Hearing that the Interim Avoidance Strategy is a material consideration of significant weight.
8. As set out above, the appeal site is located within 400 metres of the SPA and therefore lies within the IEZ, where there is a presumption against new residential development. Natural England has raised objection to the scheme and has provided undisputed evidence that there is a direct link between increased urbanisation and the degradation of the heathland habitats and that this is most applicable to new residential development within 400 metres of the SPA. The evidence explains that impacts on the heathland habitats from greater urbanisation, includes recreational pressures, domestic cat predation, garden waste dumping, fly tipping and accidental or malicious fires. In this case, Natural England and the Council have raised particular concerns with regard to increased disturbance to the ground nesting bird species from increased dog-walking, walking, jogging and cat predation. Natural England and the Council are both of the view that it is unlikely that the effects of the proposal in such close proximity to the SPA could be avoided or successfully mitigated, when considered in combination with other plans and projects.
9. The appellant accepted at the Hearing that the site does not lie within an area that has been 'varied' within the IEZ and that this should be a plan-led

² Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System, Figure 1.

³ Hart District Council Interim Avoidance Strategy for the Thames Basin Heaths Special Protection Area (2010).

approach. The appellant, nonetheless, considers that there are exceptional circumstances that suggest that the site should be treated as one within the ZOI. The appellant maintains that this is for a number of reasons, which will now be considered in turn.

10. The first suggested reason is that the protected ground nesting bird species are unlikely to be present within proximity to the appeal site. The scheme is supported by an Ecological Appraisal, which identifies that the SPA habitat within 400 metres of the appeal site is unlikely to support the protected ground nesting birds that the SPA has been designated for. The reasons given for this is that the area of lowland heathland present within 400 metres of the appeal site is fragmented by the former airfield from the larger areas of heathland that make up the SPA and is too small to support the protected ground nesting birds. In addition, the report also considers that it is unlikely that such shy bird species would nest so close to the existing residential development.
11. At the Hearing, the appellant's ecologist confirmed that this assertion was based purely on probability and was not supported by any actual presence or absence surveys. It was also accepted that the presence of the protected bird species could not be definitively ruled out within 400 metres of the appeal site. Further to this, it can be seen from Appendix 1 of the Ecological Survey that the area of lowland heathland closest to the appeal site is directly connected to a much larger area of lowland heathland to the southeast. For this reason, I am not of the view that it is too small or fragmented to support the protected bird species. However, I do accept that there are many footpaths within the SPA and recreational activity was clearly evident on my site visit, which may deter the ground nesting birds from the immediate area. However, I have no conclusive evidence to confirm that the protected bird species are absent. Without such information, which has not been provided as part of this appeal, a precautionary approach must be taken. Consequently, from the evidence that I have before me, I cannot rule out the presence of the protected ground nesting bird species in close proximity to the appeal site.
12. I acknowledge that the Council's Ecologist did not raise any objection to the scheme and stated that there would not be any direct effects on the SPA. However, it was clarified at the Hearing that the Council's ecologist only considered direct effects of the scheme and did not consider effects such as urbanisation and the increased recreational use of the SPA.
13. I have been referred to an appeal decision (APP/P1750/A/05/1172208, dated 16 November 2005) for a residential development that was in close proximity to the Thames Basin Heaths SPA. In that case, the Inspector concluded that on the basis of the supporting ecological survey, the area of the SPA close to the appeal site had no areas of suitable habitat for the protected bird species and went on to find that the scheme would be unlikely to compromise the integrity of the SPA. I am mindful that the appeal decision was made a significant period of time ago, when the potential effects of urbanisation on the SPA were less understood. There was also a different planning policy context at the time. In addition, I am not satisfied in this case that there have been suitable ecological investigations, to sufficiently determine whether the protected bird species are absent from the SPA habitat that lies in close proximity to the appeal site. For all of these reasons, I afford the previous appeal decision very limited weight.

14. The appellant has suggested that there would be no increase in residential occupants in the area, as a result of the proposal. This is on the basis that the appellant would live alone and already lives adjacent to the appeal site in the property known as Clachan. Whilst I acknowledge this intention, there is no mechanism before me, in which such an arrangement could be permanently secured, nor would it be, in my view, appropriate or reasonable to do so and expect the proposed dwelling to be permanently restricted to only one occupant. Consequently, it is clear that should the scheme go ahead as proposed, there is the potential for increased occupants and residential activity in the area and there are also no means by which future occupants could be restricted from entering the SPA. This could include increased walking, jogging, cycling and general access and usage of the SPA, which could disturb the protected ground nesting bird species. The appeal site is located in very close proximity to the SPA and I observed on the site visit that there are many informal paths that can easily be used to enter the SPA. At the Hearing, the appellant pointed me to statistics that show only 6% of all recreational users of the SPA live within 400 metres of it. Whilst I accept that this is the case, this is not surprising as a much lesser proportion of people live within 400 metres of the SPA when compared to the number of properties within 5 kilometres. This does not, therefore, affect my findings on this matter.
15. The appellant has set out that there is a fall-back position, whereby permission has been granted (Council Ref: 14/02990/HMC) for the extension and conversion of the double garage to provide a home gym and study. However, this would not result in an increase in occupants at the host property. Consequently, the fall-back position is unlikely to result in any increased recreational activity within the SPA. For this reason, the fall-back position is not comparable to the appeal scheme and therefore carries little weight.
16. The appellant has set out that the keeping of cats and dogs at the proposed dwelling could be restricted by the use of a legal agreement. I have been provided with a signed and dated UU in relation to this matter. The Council has raised a number of concerns with regard to the suitability and enforceability of such a legal agreement, raising particular concerns with regard to potential visitors that may temporarily bring a dog on to the appeal site. Whilst I have some reservations with regard to the enforceability of the UU, even if I were to accept that this matter has been suitably addressed by the UU, it would not overcome my above concerns with regard to the increased recreational usage of the SPA and the associated disturbance that could be caused to the protected ground nesting bird species.
17. I acknowledge the personal circumstances of the appellant in relation to her sister and her wish to continue to live locally. However, it was apparent at the Hearing that all options to achieve such aims had not been fully explored and therefore, I afford only limited weight to such matters.
18. Given all of my above findings, I consider that there are no exceptional circumstances in this case, that justify a departure from the above planning policies, guidance and advice from Natural England. Further, from the evidence before me, I cannot be sure that the proposal, in combination with other plans and projects, would not have a significant adverse effect on the SPA.

19. I must therefore carry out an 'appropriate assessment' of the implications for the SPA having regard to its Conservation Objectives. These objectives are to maintain in a favourable condition, the habitats for the populations of bird species of European importance, with particular reference to lowland heathland. As set out above, the scheme has the potential to increase the recreational usage of the SPA and therefore has the potential to adversely affect its Conservation Objectives.
20. The appellant has provided signed and dated UUs to secure financial contributions for Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). The Council has, however, set out that there is not currently any SANG capacity within the district that the appeal scheme could utilise. Notwithstanding this, I agree with Natural England and the Council that securing the appropriate provision of both SANG and SAMM would, in any event, not be effective in mitigating adverse effects. This is because the appeal site is located in such close proximity to the SPA and given the easy access that can be gained, contributing to alternative greenspaces or managing and monitoring strategies would not deter the future occupants from utilising the SPA for recreational purposes. As a result, I cannot be sure that the scheme would not adversely affect the integrity of the SPA, having regard to its Conservation Objectives.
21. At the Hearing, the appellant accepted that other alternatives do exist for the delivery of one new dwelling in the district and that there are no matters of over-riding public interest. In overall conclusion, I cannot be certain that the proposal would not adversely affect the integrity of the SPA. The proposal therefore runs contrary to national and local policy and guidance, namely the Habitat Regulations, the National Planning Policy Framework, Policies GEN1 and CON1 of the LP, Policy NRM6 of the SEP and the Interim Avoidance Strategy.
22. The appellant has referred to other examples of development in the area⁴. However, these are demonstrably different either in terms of scale, circumstances or distance from the SPA. Consequently, I consider that none of the examples provided set a precedent for the proposal or alter my overall conclusion.

Other matters

23. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, these do not affect my overall conclusion and have therefore not had a significant bearing on my decision.
24. I accept that the Council consider the proposal to be acceptable in all other regards and I acknowledge the ecological enhancements proposed as part of the scheme. However, these do not outweigh or overcome the harm that has been identified.

Conclusion

25. For the reasons set out above and having regard to all other matters raised, the appeal is dismissed.

Jonathan Manning

INSPECTOR

⁴ Council Ref: 13/02633/MAJOR & 14/01658/MAJOR.

APPEARANCES

FOR THE APPELLANT:

Shazia Latif	Appellant
Ian Graves	Zyda Law (Agent)
Alexandra Jones	Zyda Law (Agent)
Daniel Woods	ACD Ecology
Muhammad Latif	Appellant's Father

FOR THE LOCAL PLANNING AUTHORITY:

Emma Whittaker	Hart District Council
Suzanna Knowles	Hart District Council

DOCUMENTS PROVIDED AT THE HEARING

1. 3 Draft Unilateral Undertakings, submitted by the appellant.
2. Thames Basin Heaths Special Protection Area Delivery Framework (2009), provided by the Council.
3. Consultation response from Natural England in relation to a development at Guillemont Park, Minley Road, Blackwater, Camberly, Surrey. Submitted by the appellant.
4. Supreme Court Judgement: R (on the application of Champion) (Appellant) v North Norfolk District Council and another (Respondents), dated 22 July 2015. Submitted by the Council.