
Appeal Decision

Site visit made on 5 September 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 3rd October 2016

Appeal Ref: APP/Y3615/W/16/3149864

Farmside End, 50 Ash Hill Road, Ash, Aldershot, Hampshire GU12 6AB

- 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 Mrs Antonia Belcher against the decision of Guildford Borough Council.
 - The application Ref 15/P/00790, dated 17 April 2014, was refused by notice dated 13 November 2015.
 - The development proposed is described as forming a new building plot for a new house at the front of the garden to 50 Ash Hill Road, whilst maintaining side pathway to serve the Edwardian house. The new house is to be half submerged into the slope of the garden, on 2 levels with an internal courtyard to provide fenestration for rooms. Externally the new windows will be formed on two elevations only: South and West. The East wall will be close to the boundary with No 48, with no windows. A green roof will integrate the new house into the landscape, viewed from the existing house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) the effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA), and
 - ii) the effect of the proposal on the character and appearance of the surrounding area.

Reasons

3. The site near to the boundary of the SPA, so designated because it includes a habitat (lowland heathland) for three species of breeding birds, the nightjar, Dartford warbler and woodlark which are amongst species of birds listed in Annex 1 of the European Birds Directive¹ and which require special conservation measures to ensure their survival and reproduction.
4. The appellant argues in forceful terms that the boundary of the SPA is inappropriately drawn as the nearest part of the SPA is woodland which does not provide a suitable habitat for the protected species. However, the evidence submitted by the appellant says that breeding habitats for the nightjar include woodland edges and clearings, young forestry plantations and, particularly in

¹ Council Directive 2009/147/EC on the Conservation of Wild Birds

south-east England, coppiced woodland and that forestry plantations are used up to 15–20 years after planting. This does not appear to me to exclude the possibility that the area of forest land within 400m of the appeal site might still be part of the habitat for the nightjar, and no evidence has been provided about the habitat for the other protected species, the Dartford warbler and the woodlark. Without substantive expert evidence on this matter, I can afford the argument about the inappropriateness of the boundary very limited weight. Nor can I be satisfied, without expert evidence, that the use of some of the SPA as a military firing range has any effect on the use of the designated SPA as a habitat for the protected species.

5. Saved Policies NE1 and NE4 of the Local Plan are also relevant to this matter. Policy NE1 says that permission will not be granted for proposals which are likely to destroy or have an adverse effect directly or indirectly on the nature conservation value of potential SPAs and candidate Special Areas of Conservation as shown on the Proposals Map. Policy NE4 goes on to say that permission will not be granted for any development that would be liable to cause any demonstrable harm to a species of animal or plant or its habitat, protected under British law, unless conditions are attached requiring the developer to take steps to secure their protection. I give significant weight to the policies as they accord with the National Planning Policy Framework.
6. The process for considering development proposals affecting areas such as SPAs is set out in Figure 1 of Circular 06/2005 *Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System*. Addressing the sequential tests set out in the flow chart in Figure 1, as the proposal is not directly connected with or necessary for site management for nature conservation there is a need to look at its effect on the SPA. Thus it is necessary to consider whether the proposal is likely to have a significant effect on internationally important interest features of the site, alone or in combination other plans and projects.
7. A 400 metre exclusion zone for housing, where mitigation is considered unlikely to be capable of protecting the integrity of the SPA, is included in the Policy NRM6 of the South East Plan, which remains in force. The Council adopted its Thames Basin Heaths Special Protection Area Avoidance Strategy 2009-2016 which also includes similar protection measures, saying, in paragraph 3.3, that within 400 metres of the SPA boundary (the Exclusion Zone), measured in a straight line to the point of access on the curtilage of the new dwelling, there will be a presumption against additional net new dwellings.
8. The strategy goes on to say that the impact of net new residential development so close to the SPA is likely to be such that it is not possible to conclude no likely significant effect and that an appropriate assessment will be required to demonstrate that any development will not have an adverse effect on the SPA and/or the acceptability of any avoidance measures provided. It states that the Council and Natural England ("NE") will need to be satisfied that any such development will not lead to further recreational use of the SPA or have any other significant effect on its integrity.
9. The site's location brings it within about 140m of the SPA boundary, well within the buffer zone. The walking distance from the appeal site via Ash Hill Road to the SPA is also less than 400m. There can be no guarantee that the occupiers of the dwelling, not just in the short term, but over the decades to come, would

not keep domestic animals and even were that the case there would remain the possibility of other more general disturbance from recreational use by the occupiers. Nor, in my view, could a prohibition on the keeping of domestic cats be controlled by an enforceable planning condition.

10. Returning to Figure 1 of the Circular, the site's location makes it likely that the proposal, in combination with the effects of other residential development already permitted, would have a significant effect on the SPA. So the next test requires that I must be certain that there would be no adverse effect on the SPA. Given what I have said above, it is clear that this test would not be met. I have already indicated that the imposition of conditions would not be practicable or enforceable to ensure that there would be no adverse effect on the integrity of the SPA, and there are no imperative reasons of overriding public interest sufficient to override the negative implications. It follows that permission should be refused.
11. The appellant has referred to the Government's commitment to leave the European Union following the referendum held on 23 June 2016, and argues that this lessens the force of the EU Directive. However, there is no indication at this time that the Government intends to abandon or reduce the level of protection offered to rare birds in the UK, and therefore I can afford this argument very little weight.
12. I have also noted the appellant's frustration that she feels that she has been unable to secure meaningful dialogue with NE. However, this cannot affect my consideration of the appeal, which has to be dealt with having regard to the very high level of protection afforded to protected birds, and applying the precautionary principle, which means that I have to be certain that there would be no adverse effect on the integrity of the SPA. I cannot be certain that this would be the case, and thus I conclude on this issue that the proposal would be likely to have an adverse effect on the SPA, and would conflict with the policies to which I have referred above.

Character and appearance

13. The appeal site lies in an irregular line of detached and semi-detached dwellings on the northern side of Ash Hill Road. Other than having pitched roofs, there is little uniformity in the design or siting of these dwellings. The house at 50 Ash Hill Road is a two-storey semi-detached house, set well back into the site, so that it and its attached neighbour are well-screened from the road due to the steeply sloping site and trees which lie between the road. A chalet bungalow exists at 54 Ash hill Road, located close to the road, and in full view of it. A detached bungalow lies at 48 Ash Hill Road, located mid-way in the plot, and further to the east are three pairs of semi-detached houses, two comprising chalet bungalows located away from the road, and a pair of two-storey houses lie closer to the road at the eastern end. A modern housing estate, partly screened by trees backs onto the southern side of Ash Hill Road.
14. It is proposed to construct a split level, two-storey dwelling with a flat, grassed roof, some of which would be cut into the sloping ground which comprises the front lawned garden of the host dwelling. It would be served by the existing access and drive, and would fill much of the width of the plot.
15. In such a mixed context, I consider that there is scope to introduce a different form of architecture, and I see no objection in principle to a well-designed flat

roofed dwelling. However, the plot narrows towards the road frontage, and the proposed dwelling would fill the much of the width of this narrow part of the site. I am concerned that the combination of the dwelling's height when seen from the road, its width, closeness to the road frontage and the uncharacteristically resultant smaller plot size would create a dwelling that would be markedly out of keeping with the more spacious plots with less prominent dwellings that typify this part of Ash Hill Road.

16. The front elevation of the new dwelling would be clearly seen from the road, albeit that views would be filtered by the large tulip tree, when in leaf. It would also be seen in winter from the houses in the estate to the south of Ash Hill Road. In my view, the visual impact of the new dwelling would be discordant and would fail to respect the context of the site.
17. I therefore conclude on this issue that the proposal would result in significant harm to the character and appearance of the surrounding residential area and would conflict with saved Policies G5 and H5 of the Guildford Borough Local Plan, which respectively deal with design and housing in urban areas.

Other matters

18. Whilst the proposal chimes with the Government's aim to increase house building generally and to promote self-build sites, the limited contribution that the proposal would make towards achieving those aims is clearly outweighed by the harm that I have identified.
19. I accept that the consequences of my decision would result in an interference with the rights of the appellant and her family under Article 1 of the First protocol of the European Convention on Human Rights. However, those rights are qualified ones and I consider that my finding is a proportionate response after taking into account the conflicting matters of public and private interests. Consequently there would be no unjustified violation of the rights of the appellant or her family.
20. I have had regard to the concerns of a neighbour about the effect on light, but with a gap of about 6m between the new house and the neighbouring bungalow at No 48, and with a limited increase in height over and above the boundary holly hedge, I am satisfied that the proposal would not result in harm to the neighbour's living conditions. Overlooking of the neighbour's property from the side of the front balcony could be addressed by requiring a screen, which could, if the appeal were to have been allowed, be the subject of a condition. I have had regard to other concerns raised about flooding and highway safety but there is insufficient substance to justify adding these concerns to my reasons for dismissing the appeal.

Conclusions

21. Having regard to the component dimensions of sustainable development there would be a social benefit in providing a single dwelling which would contribute to the housing needs of the Borough where there is a significant shortfall and by addressing the appellant's family needs. Economic advantages would also arise from the construction and occupation of the house. The location of the site in relation to public transport, service and facilities is a neutral factor.
22. Set against these considerations is the harm to the character and appearance of the area together with the potential harm to the SPA. As a result the

environmental role of sustainable development would not be fulfilled. These adverse impacts would significantly and demonstrably outweigh the benefits identified. When looked at in the round the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including those of the Framework.

23. For the reasons given the proposal is unacceptable and the appeal should fail.

JP Roberts

INSPECTOR