

## Appeal Decision

Site visit made on 16 August 2016

**by M C J Nunn BA BPL LLB LLM BCL MRTPI**

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

**Decision date: 02 November 2016**

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**Appeal Ref: APP/N1730/W/16/3154573**

**Land to rear of 208 Fleet Road, Fleet, Hampshire, GU51 4BY**

- 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 Lesley Brooks against the decision of Hart District Council.
  - The application Ref 16/01101/FUL, dated 25 April 2016, was refused by notice dated 22 June 2016.
  - The development proposed is described as 'erection of a three storey building to provide 3 No one bedroom flats to the rear courtyard parking and garage area'.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. I consider the main issues are:
  - i. the effect of the proposal on the character and appearance of the area;
  - ii. whether the scheme would provide adequate living conditions for future occupiers, having regard to noise and disturbance;
  - iii. whether the scheme would have adequate highway/pedestrian access and servicing arrangements;
  - iv. the effect on a protected tree; and,
  - v. the effect on the Thames Basin Heaths Special Protection Area (SPA).

### Reasons

#### *Character and Appearance*

3. The appeal site comprises part of a car park located to the rear of the premises at Nos 208-218 Fleet Road. This flat-roofed three storey building comprises retail units fronting on to Fleet Road with residential accommodation on the upper floors. There is a block of garages along the north-western boundary of the car park. Access to the appeal site is from Victoria Road. Beyond to the north-west is a public car park. The surrounding area comprises a mix of developments, with various land uses, reflecting the town centre location, with buildings of different designs and eras.
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4. The scheme proposes the construction of a three storey building, with a hipped pitched roof. It would be slightly higher than the frontage building. The new building would not follow any established or existing building line. Rather, it would be arbitrarily positioned within the existing car park, adjacent to the north-western boundary, with no space retained around it for meaningful landscaping to soften its appearance, or to provide any setting or context. As such, the building would appear stark and incongruous, and out of place within this somewhat harsh car park setting.
5. Furthermore, the proposed building itself is of a bland and utilitarian design, and dominated by an external staircase. This obtrusive feature, together with the uninteresting elevations, would result in a building of little architectural merit. Because of its proximity to the boundary, the new building would entail the removal of existing vegetation along the north-western edge. This would increase the prominence and visibility of the building, when viewed from the public car park. Although there may be other examples of 'backland' development behind frontage development in the locality, this does not alter my view that this scheme would not integrate well with its surroundings.
6. I conclude that the proposal would harm the character and appearance of the area. It would conflict with Policies GEN 1 and URB 12 of the Hart District Local Plan ('the Local Plan'). Together, these policies, amongst other things, require that development is in keeping with local character, by virtue of its scale, design, massing, height, layout and siting.

*Living Conditions – noise & disturbance*

7. The Council has raised concerns that the occupants of the new building might be subject to unacceptable noise and disturbance, because of the town centre location within a car park, where deliveries are made to nearby retail units. The Council requested that a noise survey be submitted, so that appropriate mitigation could be tailored for the scheme, although no survey has been undertaken by the appellant.
8. There are other residential properties nearby, and I have no reason to suppose that living conditions within them are unacceptable. Also, as the appellant notes, some degree of noise is an inevitable consequence of living in a town centre location. It seems to me that any potential problems within the flats could be satisfactorily ameliorated through mitigation measures, such as appropriate insulation and glazing. Details of these could be secured through a suitably worded condition, were I minded to allow the appeal. Hence, I do not find this a valid basis for the appeal to fail.
9. I conclude that, subject to appropriate mitigation measures, the development would provide adequate living conditions for future occupiers, having regard to noise and disturbance. I find no conflict with Policy GEN 7 of the Local Plan which requires that development should only be permitted where adequate measures are taken for noise amelioration. It would also accord with the National Planning Policy Framework ('the Framework') which requires proposals to always seek a good standard of amenity for all existing and future occupants of land and buildings.

### *Access & Servicing Arrangements*

10. The site is served by a narrow vehicular access from Victoria Road. The Council has highlighted the single width of the access road, which it says is inadequate to allow vehicles and pedestrians to safely pass simultaneously. The appellant acknowledges that the existing access is 'not ideal', although attention is drawn to a pedestrian access alongside the frontage properties. However, the utility of this alternative pedestrian access is disputed by the Council on the basis it is currently restricted by gates and doors, and is of limited width, posing possible difficulties for wheelchair users and those with pushchairs.
11. From my own observations, it is clear that the existing width of the vehicular access from Victoria Road is very restrictive. The new residential development would increase pedestrian movements along it, and the occurrence of vehicle and pedestrian conflict cannot therefore be ruled out. I am mindful that the Framework requires developments to create safe and secure layouts that minimise conflicts between traffic and pedestrians. I am not convinced this scheme would achieve that objective.
12. Although the Council has raised concerns about the bin storage arrangements, I am satisfied that precise details could be secured by condition, were I minded to allow the appeal. However, scant information has been provided on how larger service vehicles, including refuse or emergency vehicles, would access the site, particularly as the overall area within the existing car park available for manoeuvring would be reduced by the scheme. Policy GEN 1 of the Local Plan requires that developments have adequate arrangements on site for access and servicing. The scheme as submitted does not demonstrate the arrangements are adequate.
13. As I have found the scheme unacceptable for other reasons, the appeal does not turn on these matters alone. Nonetheless, I find that the limited width of the access, and the inadequate details provided in respect of servicing, reinforce my view that the scheme should not proceed.

### *Protected Tree*

14. There is a mature Ash tree that is subject of a preservation order, and which contributes to the locality's character. The Council has concerns that the development could compromise the future health of this tree. Again, scant technical arboricultural information has been provided by the appellant about the proposal's likely impact on this tree. For example, there is no substantive evidence to demonstrate that the root protection zone would not be affected. Also, given the proximity of the tree to the development, there may be future pressures to prune or reduce the tree's canopy. Nor are details provided about how the tree would be protected if development were to proceed.
15. In the absence of such technical arboricultural information, I cannot safely conclude that no harm would result to this protected tree. As such, I find the proposal would conflict with Policy CON 8 of the Local Plan which states that development that would affect trees of significant landscape or amenity value will only be granted if such features are shown to be capable of being retained in the longer term.

### *Effect on the SPA*

16. The site is located within 5km of the SPA which comprises a network of heathland sites, providing habitats for internationally important bird species of the Woodlark, Nightjar and Dartford Warbler. Natural England has indicated that within 5km of the SPA, residential development can give rise to additional recreational pressure causing disturbance to such species, which will require mitigation. The Interim Avoidance Strategy sets out the Council's policy for mitigating impacts on the SPA, in the form of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM).
17. In the past, the Council has used negatively worded 'Grampian' style conditions to secure mitigation. Such conditions take the form that no development should occur until a suitable scheme to mitigate the effects on the SPA has been agreed. In this case, the appellant has not put forward any mitigation measures in the form of an obligation or legal agreement, but has indicated agreement to the use of a 'Grampian' condition to ensure suitable mitigation arrangements are put in place.
18. The Council, in the light of a number of recent appeal decisions, considers this approach is no longer appropriate. I share that view, as the Planning Practice Guidance (PPG) is clear that a negatively worded condition limiting development until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases.<sup>1</sup> The PPG advises that only in exceptional circumstances will this approach be appropriate, such as in the case of more complex and strategically important development where there is clear evidence that the delivery of development would otherwise be at serious risk.
19. Given the nature of the proposal, I am not persuaded that such exceptional circumstances apply here, or that a 'Grampian' condition is an appropriate way of securing mitigation for the SPA. As such, the scheme as currently submitted does not provide any suitable mechanism to mitigate the impact on the SPA. The relevant European legislation requires a precautionary approach when considering the impact on an SPA. In the absence of a scheme of mitigation, I cannot conclude that the proposal would not adversely affect the integrity of the SPA. Therefore, it would be contrary to Policies CON 1 and CON 2 of the Local Plan, and Policy NRM6 of the South East Plan<sup>2</sup>.

### **Other Matters and Conclusion**

20. The appellant states that the Council does not have an up-to-date Local Plan, or an up-to-date housing target. On this basis, it is argued that the presumption in favour of sustainable development applies and permission should be granted. However, the Council has adduced detailed evidence that it can demonstrate a five year supply of housing<sup>3</sup>. This evidence has not been challenged by the appellant. Furthermore, the three units proposed here would only make a very minor contribution to the overall supply of housing. In any event, I find that the adverse impacts of granting permission would

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<sup>1</sup> Paragraph 010 Reference ID: 21a-010-20140306

<sup>2</sup> The South East Plan has been revoked, but certain policies were retained, including Policy NRM6

<sup>3</sup> Hart Five Year Housing Land Supply (April 2016), published 2 August 2016

significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies of the Framework taken as a whole.

21. I have carefully weighed the appellant's arguments in favour of the scheme, including that it would provide additional housing stock, thereby addressing housing needs in the district; that the site is located in a sustainable town centre location, close to public transport links; and that the scheme would add to the vitality of the town centre. However, none of these considerations outweigh my concerns about the scheme. I have considered the proposal in the context of the presumption in favour of sustainable development set out in the Framework. However, the Framework is clear that it is proper to promote or reinforce local distinctiveness. I find this proposal would fail to achieve that objective. It is also unacceptable for the various other reasons given above. Therefore, I conclude that the appeal should be dismissed.

*Matthew C J Nunn*

INSPECTOR