
Appeal Decision

Site visit made on 19 September 2016

by Christa Masters MA (hons) MRTPI

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

Decision date: 1 December 2016

Appeal Ref: APP/Y3615/W/16/3151022

**Phoenix House, Forest Road, Effingham Junction, Leatherhead, Surrey
KT24 5HE**

- 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 M Mortiboys against the decision of Guildford Borough Council.
 - The application Ref 16/P/00137, dated 7 January 2016, was refused by notice dated 14 March 2016.
 - The development proposed is extension, alterations and conversion of first and second floors to provide 3 additional flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A completed legal agreement dated 16 September 2016 has been submitted to address the third reason for refusal which related to the Thames Basin Heaths Special Protection Area (TBHSPA). As a result, the Council have confirmed that the third reason for refusal which concerned whether the proposal adequately addresses the TBHSPA has now been withdrawn. I will return to this matter below.
3. My attention has been drawn to a recent appeal decision reference APP/Y3615/W/15/3005638 in relation to the approach to the mitigation measures relating to the TBHSPA. I have had regard to this decision in reaching my conclusions below.

Main Issues

4. This appeal has three main issues:
 - The effect of the proposal on the TBHSPA;
 - The effect of the proposal on the provision of community facilities within Effingham Junction;
 - Finally, the effect of the second floor roof terrace on the living conditions of the existing and future occupiers of Woodpeckers and Millstone.
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The Appeal Site

5. Phoenix House is a detached property which currently operates as a dental practice with a chiropractic clinic located on the first floor. It is bounded either side by detached residential dwellings known as Millstone and Woodpeckers respectively. The remaining properties along Forest Road are primarily residential. There is parking to both the front and rear of the property and there is a train depot located beyond the rear site boundary.

Reasons

The effect of the proposal on the TBHSPA

6. The site is located within the TBHSPA and accordingly a financial contribution is sought to address any impact of the proposal on this area. Policies NE1 and NE4 of the Guildford Borough Local Plan (LP) 2003 set out the approach to development within the TBHSPA as well as the Avoidance Strategy which provides detailed justification for the contributions sought. There is no dispute between the parties that the net additional dwellings would give rise to a requirement for a financial contribution to mitigate the effects of the development.
7. The executed Section 106 Agreement makes provision for contributions comprising an Access Management and Monitoring (SAMM) contribution of £2026.62. This contribution would be put towards access management of the SPA as part of an overarching strategy for access management. In addition, a further contribution of £11,732.82 is identified as a contribution towards Suitable Accessible Natural Green Space (SANGS).
8. I have reviewed the terms of this legal agreement and the requirements for the legal agreement to be completed. I am satisfied on the basis of the evidence before me that the contribution comprising £2026.62 towards the SAMM is necessary to make the development acceptable in planning terms, directly related to the development and is fairly and reasonably related in scale and kind to the development. This aspect of the obligation meets the tests set out in Regulation 122 of the Community Infrastructure Levy and paragraph 204 of the National Planning Policy Framework.
9. However, in relation to the SANGS, Regulation 123 (3) prevents the pooling of more than five planning obligations made since 6 April 2010 towards a specific infrastructure project or particular type of infrastructure. Paragraph 1.1 of the Third Schedule attached to the Section 106 Agreement specifies that the SANGS contribution would be used towards the Council's costs of maintaining and managing the SANGS. The Council have explained that in this instance, SANGS payment would be put towards improving existing SANGS. In their view, SANGS is existing infrastructure which is to be improved to ensure that they have suitable capacity to mitigate the impact of the residential development. The Council have submitted Counsel's advice in support of this approach.
10. I am mindful of the definition provided in relation to funding as set out in Regulation 123(4) which states that funding in relation to the funding of infrastructure, means the provision of that infrastructure by way of funding. In my view, as the SANGS contribution would be used towards improving existing infrastructure, it would still fall within the definition of funding of an

infrastructure project. As a result, the provisions of Regulation 123(3) are applicable. This approach is consistent with another appeal decision cited by the Council. Information on the number of SANGS contributions collected has been requested but not provided by the Council. I am accordingly unable to conclude that there have not been more than 5 payments towards the relevant SANGS project nor thus whether placing weight on the offered S106 Obligation in that respect would be lawful. The Council have however advised that if the approach advocated by the Council is not accepted, it would not be possible to be satisfied that the development proposal would not have likely significant adverse effects on the TBHSPA.

11. In the circumstances of this appeal, I therefore conclude that the SANG contribution cannot lawfully be taken into account and that in the absence of suitable mitigation, I am unable to conclude that the proposal would not have a significant adverse effect on the TBHSPA. There would therefore be a clear policy conflict with policies NE1 and NE4 of the LP outlined above.

Effect of the proposal on the provision of community facilities within Effingham Junction

12. The appeal statement advises that only the ground floor is used as a dental practice. This would concur with what I saw on the site visit. The appellant has submitted a detailed personal statement with the appeal explaining how he and his family lived on the upper floors of the property until May 2016. The appeal statement goes on to state at paragraph 3.1 that the lawful use of the first and second floors of the building is residential. Nevertheless, on the day of my site visit, there were activities taking place within this upper floor accommodation and the existing floor plan submitted indicates therapy rooms on the first floor. The appellant advises that a Chiropractor has used areas of the first floor for the past 3 years, although no planning permission is in place. Accordingly, the appellant contends that the lawful planning use of the upper floors is residential.
13. Notwithstanding the lawful use of the first floor, I have assessed the proposal in the context of policy CF2 of the LP. This is because the Chiropractor is in use at present. This policy advises that the Council will resist the loss of community buildings unless it can be demonstrated that (2) adequate alternative provision exists within the locality or is made available in an agreed location. In the context of this appeal, the appeal statement explains how the Chiropractor would be accommodated on the ground floor. Based on the evidence and plans presented, I have no reason to doubt that this would not take place. Accordingly, there would be no loss of community use as suggested by the Council.
14. Taking all of these matters into account, I therefore conclude the proposal would not have an adverse effect on the provision of community facilities in Effingham Junction. I find the proposal would accord with Policy CF2 of the LP in so far as there would be no loss of a community facility.

Effect of the second floor roof terrace on the living conditions of the existing and future occupiers of Woodpeckers and Millstone

15. The Council contend that the creation of the second floor roof terrace would result in oblique and perceived overlooking from this height. The Council state the proposal would result in an unneighbourly relationship as a result.

16. As matters currently stand, there are large windows to both the flank elevations of the property on the upper floor. As I saw from these windows during my site visit, it is possible to have very clear and direct views over both gardens of the neighbouring properties as well as oblique views into the rear elevation windows. The development proposal would see these windows replaced with smaller windows fitted with obscure glazing. In my view, these changes would represent a vast improvement to the living conditions of the existing and future occupiers of both Woodpeckers and Millstone.
17. As a result of the size and scale of Phoenix House, the property is located significantly deeper into the site than the neighbouring properties. As such, any overlooking which could be afforded from the terrace would be likely to be only as an oblique view towards the rear of the neighbouring gardens where there is existing dense vegetation in place. The roof terrace would also be relatively small in size, and would be located in a central position. It would be bounded by 1.5m high boundary treatment, the details of which could be secured by an appropriately worded condition. Taking all of these factors into account, I am unable to agree that oblique and perceived overlooking would result in material harm in this regard.
18. In addition to the matters raised by the Council, the occupiers of Woodpeckers have also raised concerns regarding the effect of the proposal on daylight and sunlight reaching this property. However, taking into account the separation distances involved, as well as the orientation of the dwellings and the scope and scale of the works proposed, I am not convinced that the proposal would result in material harm in this regard.
19. I therefore conclude on the proposal would not result in any material harm to the living conditions of the existing and future occupiers of either Woodpeckers or Millstone. The proposal would therefore accord with policy G1(3) of the LP which states that the amenities enjoyed by occupants of buildings are protected from unneighbourly development in terms of, amongst other things, privacy.

Other Matters

20. Concerns have been raised that the proposal may cause additional parking pressures and the effect of the proposed alterations on the character and appearance of the area. However, I am of the view that the new dormer windows as proposed to the front elevation of the property are proportionate in scale and form to the existing roof and would therefore not result in harm to the character and appearance of the area. Similarly, the works to the rear of the property are also proportionate in scale and form to the host dwelling. In terms of parking provision, I note that there would be no additional parking created for the 4 units. However, I am not convinced that this would result in additional parking pressures given the previous use of the upper floors as well as operating hours of the uses on the ground floor.

Conclusion

21. I have concluded that the proposal would not have an adverse effect on the provision of community facilities in Effingham Junction. I have also concluded that the proposal would not result in any material harm to the living conditions of the existing and future occupiers of either Woodpeckers or Millstone. However, for the reasons set out above, I am unable to conclude that the

proposal would not have a significant adverse effect on the TBHSPA. This harm would represent a conflict with the abovementioned adopted policies. For the reasons set out above, I conclude the appeal should be dismissed.

Christa Masters

INSPECTOR