The Planning Inspectorate

Appeal Decision

Site visit made on 21 November 2016

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

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

Decision date: 23rd December 2016

Appeal Ref: APP/N1730/W/16/3154667
102-104 Fleet Road, Fleet, Hampshire GU51 4PA

- 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 Aventier Ltd against the decision of Hart District Council.
- The application Ref 16/00293/FUL, dated 8 February 2016, was refused by notice dated 31 May 2016.
- The development proposed is the demolition of part of an existing building, use of part ground and part first floor for Use Class A1 or A2, and roof extension accommodating 2 x 2 bedroom residential units, and formation of new parking spaces.

Decision

1. The appeal is dismissed.

Main Issue

2. The effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA) and Site of Special Scientific Interest (SSSI).

Background

3. The Council has no objection to the proposal in principle, but has refused the application solely because of the failure to mitigate the alleged effect of the proposal on the SPA.

Reasons

4. The site lies within 5km of the boundary of the SPA, designated as a habitat for three endangered European species, the Dartford warbler, the nightjar and the woodcock. The Council has adopted the Thames Basin Heath Interim Avoidance Strategy which provides means of mitigating the effect of new residential development within the 5km zone.

5. 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.

6. The explanatory text to Policy NRM6 of the otherwise revoked South East Plan says that Natural England has identified that net additional housing development (residential institutions and dwellings) up to 5km from the designated sites is likely to have a significant effect (alone or in combination with other plans or projects) on the integrity of the SPA. There is no evidence before me to show that the proposal would not, in combination with other plans and projects, have a significant adverse effect on the integrity of the SPA, and on the face of it, the provision of a new dwelling without on-site amenity space is likely to result in the occupiers being reliant on off-site recreational use, which may include the SPA.

7. Although the proposal would provide two dwellings, the impact on the SPA of one of those dwellings has already been mitigated through a previous obligation. Thus, whilst the proposal is just for one additional net dwelling, it is the effect of this one dwelling in combination with other plans and projects which needs to be taken into account, and applying the precautionary principle, I am not satisfied that a significant adverse impact can be ruled out. Thus, I consider that such mitigation is necessary to comply with the Conservation of Habitats and Species Regulations 2010, South East Plan Policy NRM6, which deals with the SPA, and saved Hart Local Plan Policies CON1 and CON2, which deal with SPAs and SSSIs.

8. The Council maintains that there is no scope for entering into a legal obligation to mitigate the effect of the proposal on the SPA by seeking contributions to provide Suitable Areas of Natural Greenspace (SANGs), because the capacity on Council owned sites has either been used or is committed, or that the proposal fails to meet the criteria which the Council has introduced to deal with the allocation of SANGs. Furthermore, the Council has indicted that it has received more than 5 planning obligations for each of the SANGs available, and therefore it would be unlawful to take into account a further obligation relating to the same infrastructure, arising from the "pooling" restriction imposed by Regulation 123 of the Community Infrastructure Levy Regulations 2010.

9. There is no legal obligation before me to deal with this matter, but the appellants suggest that a Grampian condition could be used. I accept that irrespective of the Council's current position with regard to the provision and allocation of SANGs, this would not, on its own, rule out the imposition of a Grampian condition. Such conditions should only be precluded if there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. In this case, there may be the possibility that a SANG could be found within the 3 year life of a permission.

10. However, the Planning Practice Guidance indicates that only in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.

11. The Guidance sets out a clear, unambiguous indication that a Grampian condition is not an appropriate means of dealing with this issue. The proposal is not a complex and strategically important development, and therefore the exceptional circumstances which would justify the imposition of a Grampian condition do not exist. The proposal therefore conflicts with this guidance.

12. Accordingly, in the absence of an appropriate mechanism being proposed to secure adequate mitigation of the effect of the additional dwelling on the SPA, I conclude that the proposal would harm the SPA and conflict with the policies to which I have referred above.

Other matters

13. The Fleet Town Council raised concerns about the appearance of the development. Whilst I acknowledge that the existing building adds variety to the street scene, and its design provides a reminder of the town's historical development, the proposal is of good quality design, and makes a better use of a site in an area where new development is aimed to be located. Similarly I agree with the Council that the town centre is an appropriate location to relax its parking standards, and thus neither of these issues adds to my reason for dismissing the appeal.

14. I also noted the relationship of the proposed parking spaces to the access to the underground parking of the adjacent development at the rear. Whilst the closeness of the spaces to the entrance would be tight, it would not compromise the access to an extent that would preclude its use, and thus this is not a reason to dismiss the appeal.

Conclusion

15. I conclude that the conflict with the policies to which I have referred above is sufficiently serious to amount to a conflict with the development plan as a whole, and thus, for the reasons given above, the appeal should be dismissed.

JP Roberts

INSPECTOR