

Appeal Decision

Site visit made on 13 March 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 22 March 2017

Appeal Ref: APP/T0355/W/16/3161768

Four Seasons, Bagshot Road, Ascot SL5 9JL

- 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 Dudley Mills of Kebbell against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/02310, dated 11 July 2016, was refused by notice dated 22 September 2016.
 - The development proposed is a new apartment building consisting of 5 no apartments with associated parking and amenity further to planning consent ref: T0355/A/14/2226719.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) The effect of the additional garage on the character and appearance of the area;
 - b) The effects of the development on the wildlife and conservation considerations in relation to the Thames Basin Heaths Special Protection Area (SPA) and Site of Special Scientific Interest (SSSI).

Reasons

Character and appearance

3. The appeal site is in an area which the Neighbourhood Plan¹ refers to as a character area of 'Villas in a Woodland Setting' in accordance with the Council's Townscape Assessment. The principle of a building comprising five apartments with a single entrance was established following an appeal in 2015². Subsequently, a revised proposal for a slightly larger building was found to be acceptable by an Inspector³ in terms of its effect on the character and appearance of the area, but was dismissed due to the lack of a mechanism to secure the necessary mitigation of impacts on the SPA. The main building in the current scheme is identical to that in this most recent appeal. However, permission is now sought for an additional garage on the south-western side of the site.

¹ Ascot, Sunninghill and Sunningdale Neighbourhood Plan, March 2014

² APP/T0355/A/14/2226719

³ APP/T0355/W/15/3139436

4. The original house has been demolished and the site has largely been cleared. It is screened on all sides by mature trees and shrubs. Some of the trees along the roadside boundary are protected by a preservation order. The previous Inspector considered the effects of the changes to the size and design of the proposed building and was satisfied that it would not be harmful. I see no reason to disagree with her conclusions.
5. However, the proposed additional garage would enlarge the footprint of the overall development. Its height, width and bulk would significantly increase the scale of development on the site, eroding the spacious setting of the main building and effectively filling the entire width of the plot with built form. It would introduce a separate structure immediately next to the shared boundary with the adjacent property, The Garden House and its outbuildings, which are also close to the boundary with the appeal site. The proposed garage would therefore reduce the gap between buildings and add cumulatively to development which is nearer the roadside boundary than the main dwellings.
6. The roof of the garage would project above the hedge which would be planted between it and the street and would therefore be seen through the gap in the vegetation at the access to the site. A permanent building cannot be compared with a parking area which would be effectively screened by the proposed landscaping. The garage would therefore be more visible from the street than the triple garage permitted within the extant scheme, which would be largely hidden by the mature trees and vegetation along the roadside boundary.
7. The properties immediately to the north-east of the appeal site, Nagina and Cheynings, both have garages within their front gardens. However, these houses are sited on deeper plots and are set further back from the street than the proposed main building at Four Seasons. Whilst the proposed garage might appear to approximately align with the existing ones, it would be significantly closer to the roadside boundary. As the garage at Cheynings is already a noticeable feature when viewed from the street, it seems to me that the appeal proposal would be more prominent. It would therefore fail to retain or enhance the sylvan, leafy nature of the area, which is characterised by villas set in spacious plots, surrounded by abundant, mature vegetation and trees.
8. Taking all these factors into account, I conclude that the proposed garage would be harmful to the character and appearance of the area, contrary to saved Policy H11 of the Royal Borough of Windsor and Maidenhead Local Plan and Policies NP/EN3, NP/DG1, NP/DG2 and NP/DG3 of the Neighbourhood Plan, all of which seek to ensure that new development respects the character of the area.

Thames Basin Heaths

9. The appeal proposal as a whole comprises the building containing five apartments and a triple garage in addition to the second garage referred to above. The appeal site lies within the zone of influence of the Thames Basin Heaths Special Protection Area (SPA). The SPA is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Regulation 61(5) imposes a duty on local planning authorities as the competent authority, to consider whether any proposal may have a significant effect on such a protected area either alone, or in combination with other plans and projects.

10. In order to mitigate the likely harm to the protected habitats the Council has worked in partnership with Natural England and other local authorities to provide appropriate mitigation measures in the area that lies between 0.4-5Km of the SPA. The Council's Thames Basin Heaths adopted Supplementary Planning Document (SPD) Part 1 sets out the requirements for financial contributions from residential development towards these mitigation measures. The contributions will provide for a programme of Strategic Access Management and Monitoring (SAMM) and provision of Suitable Alternative Natural Green space (SANG). They would ensure that the development could proceed without causing harm to the protected sites.
11. It is not possible to secure the necessary contribution through a S106 obligation due to the restriction on pooled contributions set out in Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations. When considering the earlier proposal⁴, the Council therefore sought to secure the contribution through a condition requiring an agreement under S111 of the Local Government Act. However, the previous Inspector was not prepared to endorse this as an appropriate mechanism for securing the necessary contribution.
12. The appellant's statement indicates a willingness to make the necessary contribution and a draft Section 111 agreement was submitted with the appeal. The schedule showed a contribution of £1,763 towards the SAMM and £27,869 towards the SANG. However, the agreement was not dated or signed by the local authority and it therefore has no legal force; neither was there any evidence that any payment had been made to, or accepted by, the Council. Consequently, I am unable to take the agreement into account, regardless of whether or not it meets the other tests set out in the CIL Regulations. As no effective mechanism for the delivery of the mitigation measures has been provided, I have no evidence that the proposal as a whole, either alone or in combination with other plans and projects, would not result in significant harm to the SPA.
13. I therefore conclude that the proposal would be harmful to the wildlife and conservation considerations of the Thames Basin Heaths SPA, contrary to saved Policy NRM6 of the South East Plan and the RBWM Thames Basin Heaths Special Protection Area SPD (Part 1). It would also conflict with the advice and guidance of the National Planning Policy Framework in relation to areas designated for their wildlife and conservation interests.

Conclusion

14. The previous appeal decision has established the acceptability of the building which would comprise five apartments. However, I have found that the proposed additional garage would be harmful to the character and appearance of the area. In addition, no effective means of securing the necessary mitigation for the impact of the development as a whole on the Thames Basin Heaths SPA has been provided. For these reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

⁴ RBWM Ref: 15/01517/FULL