
Appeal Decision

Site visit made on 20 June 2017

by L Fleming BSc (Hons) MRTPI

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

Decision date: 4 July 2017

Appeal Ref: APP/N1730/W/17/3168541

Clarendon, 28 Albany Road, Fleet, Hampshire GU51 3LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Roydon Thompson against Hart District Council.
 - The application Ref 16/01518/FUL, is dated 6 June 2016.
 - The development proposed is conversion and extension to form ground floor unit for disabled persons with three bedroom flat at first floor and one bedroom flat at second floor.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The Council resolved that had it been in a position to determine the application, it would have refused planning permission for reasons relating to (1) the effect of the proposal on the character and appearance of the area (2) the effect of the proposal on the amenity of No 26 Albany Road (No 26) with regard to outlook and noise and disturbance (3) the effect of the proposal on protected species (bats) (4) the effect of the proposal on the Thames Basin Heaths Special Protection Area (TBHSPA).

Main Issues

3. The main issues are therefore effect of the proposed development on:
 - protected species, particularly bats;
 - the TBHSPA;
 - the character and appearance of the area;
 - the living conditions of the occupants of No 26 with particular regard to outlook and noise and disturbance.

Reasons

Protected species

4. The proposal would involve substantial works to the roof of a dwelling. The Council has raised concerns that those works would have the potential to disturb bat habitats.

5. Paragraph 99 of Circular 06/2005 'Biodiversity and Geological Conservation-statutory obligations and their impact within the planning system' states that developers should not be required to carry out surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Furthermore, it states any survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.
6. Given the age of the appeal dwelling, and the proposed work, I find that there would be a reasonable likelihood of bats being present and if so they would inevitably be affected by the proposed development.
7. The appellant undertook a bat survey in October 2013 as part of a previous planning application¹. Whilst that survey found no evidence of bats using the appeal building, it did find that bats frequented the area. In my view, given the passage of time, it is feasible that bats could now be using the building and without an up to date survey, I therefore cannot be certain that bats would not be affected by the proposal.
8. Furthermore, Circular 6/2005 indicates that a survey should only be required by condition in exceptional circumstances. There is no evidence before me which demonstrates exceptional circumstances exist in this case. Moreover, the Planning Practice Guidance (PPG) makes clear that conditions which require the submission of details after permission is granted should not be used where such details could impact on the ability to implement the planning permission.
9. In this case, up to date survey findings could indicate the need for further survey work or additional conditions and/or obligations needing to be imposed on any permission to deal with mitigation measures. Thus, I find the imposition of a condition which requires up to date survey work to be undertaken would not be appropriate because I am not satisfied it would sufficiently protect any protected species from harm and compliance with any such condition may mean it is not possible to implement the planning permission.
10. Therefore, with the absence of an up to date survey I am led to the conclusion that the proposed development would be harmful to protected species, particularly bats. It is therefore in conflict with saved Policy CON5 of the Hart District Local Plan (1999) (LP) which amongst other things seeks to conserve nature and ensure new development does not harm protected species.

The Thames Basin Heaths Special Protection Area

11. The appeal site lies within the 400 metre to 5 kilometre buffer zone of the TBHSPA. As the proposal would involve the provision of additional dwellings, an obligation to secure appropriate mitigation is required to make the development acceptable in planning terms in accordance with saved Policies CON1 and CON2 of the LP. Furthermore, saved Policy NRM6 of the South East Plan (2009) (SEP) states that new development affecting the TBHSPA will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects on its ecological integrity.
12. Further to the above, the Council's Interim Avoidance Strategy requires a financial contribution from all new housing development towards the provision

¹ Council Reference 14/00607/HMC

of suitable alternative natural green space (SANG) and its strategic access, management, and monitoring (SAMB).

13. I acknowledge the appellant's willingness to make such a contribution. However, there is no detailed planning obligation before me, nor are there any details as to how the effects on the TBHSPA would be avoided. The PPG makes clear that it is not appropriate to impose planning conditions requiring a financial contribution and that conditions which require an obligation after planning permission is granted should only be used on more complex schemes, which this is not.
14. That said I am therefore led to the conclusion that the proposed development would be harmful to the TBHSPA and would be in conflict with Policies CON1 and CON2 of the LP and saved Policy NRM6 of the SEP. These policies, taken together, seek to avoid harm to the TBHSPA without appropriate mitigation measures.

Character and appearance

15. The appeal property is an end terrace in a residential area mainly comprising dwellings of a variety of sizes and types all set a similar distance back from the road behind front gardens or off street parking. This gives the area a formal yet mixed character and appearance.
16. The Council's concerns relate to the intensification in the use of the appeal site as a result of the proposed conversion to three dwellings. Specifically the council is concerned that the proposed parking area to the front of the appeal property and the associated loss of vegetation would detrimentally alter the street scene.
17. When viewed from Albany Road the proposed side extension would be set back some distance from the front elevation of the appeal dwelling and the use of the building as flats would not be obvious in the street scene. Whilst, the proposed parking spaces in place of vegetation would alter the appearance of the appeal property, parking in front of buildings on Albany Road is a common feature of the street scene. Furthermore, a beech tree would be retained and a landscaping condition could be imposed to further soften the impact of the proposal.
18. For these reasons, I find the proposed development would not harm the mixed character and appearance of the area and therefore in this regard the proposal would accord with Policy GEN1 of the LP which seeks to achieve good design and ensure new development does not harm the character and appearance of an area.

Living conditions

19. No 26 has relatively thick vegetation along its boundary with the appeal site and fencing would also be provided as part of the appeal scheme. Thus the lights of vehicles manoeuvring in and out of the parking spaces would be screened from No 26 and views from No 26 towards the appeal property through an oblique angle would be restricted.
20. Furthermore, parking in front of dwellings is typical in residential areas such that the noise and disturbance associated with car engines and opening and

closing car doors would not be over and above that which would be expected in a residential area.

21. For these reasons, I find that the proposed development would not harm the living conditions of the occupiers of No 26 with particular regard to noise and disturbance or outlook. Thus, in this regard the proposed development would accord with Policies GEN1, GEN4 and URB12 of the LP which seek to ensure good design and that new development does not harm the living conditions of nearby residents.

Conclusion

22. For the reasons set out above, whilst I have found no harm to the character and appearance of the area or the living conditions of nearby residents, I have found the proposal would be harmful to protected species and the TBHSPA. Thus, on balance and having had regard to all other matters raised the proposed development would not accord with the development plan and the appeal should be dismissed and planning permission refused.

L Fleming

INSPECTOR