



Appeal Decision

Site visit made on 12 April 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal Ref: APP/Y3615/W/18/3205765

2 Winchester Road, Ash, GU12 6SX

- 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 J Bath against the decision of Guildford Borough Council.
 - The application Ref 18/P/00567 dated 19 March 2018, was refused by notice dated 11 May 2018.
 - The development proposed is one new single storey 3 bed dwelling to rear garden and associated side access drive and parking. Extended dropped curb for existing retained dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Guildford Borough Local Plan: strategy and sites (2015-2034) was adopted on 25 April 2019 ("adopted Local Plan"). Policy G1(5), G5(1) and G5(6) of the Guildford Borough Local Plan 2003 ("Local Plan") have been replaced by policy D1 of the adopted Local Plan. Policy G1(9) and G1(10) have been replaced by policy D2 of the adopted Local Plan. Policies G1(3), G5(3), G5(4), G5(5) and H4 have not been superseded by the adopted Local Plan. The Council also advise that Policy P5 of the adopted Local Plan, is relevant to the appeal. Following the adoption of this plan the Council advise it can demonstrate a 5-year housing land supply with an appropriate buffer. The Appellant has had the opportunity to comment on the adopted Local Plan, in the course of the appeal.

Main Issues

3. The main issues are the effect of the development on:
 - i) The character and appearance of the area;
 - ii) The living conditions of the occupants of surrounding residential properties, with particular regard to noise and disturbance; and
 - iii) The Thames Basin Heath Special Protection Area.

Reasons

Character and Appearance

4. The site comprises part of a long, irregularly shaped piece of garden land to the rear of 2 Winchester Road ("No.2"). It is bordered by residential gardens, including others on Winchester Road, those on Grange Farm Road and Chichester Road. It appears to have been recently used as a yard in connection

- with No.2, and there is an existing access drive leading to it, bordering the gardens to the rear of the properties on Grange Farm Road.
5. The proposal would comprise backland development. It would depart from the existing pattern of frontage development evident in the surrounding area, whereby residential buildings generally face on to roads. However, the new building would be one storey in height with a shallow roof. Because of its limited scale, and its position well away from the road within an unusually large garden plot, it would be well hidden in views from the street, including Chichester Road. As a consequence of its limited height, it would not appear as an unduly imposing or prominent feature in views from the surrounding residential properties and their gardens.
 6. The proposed site plan shows that there would be a reasonably sized gap of around 1.5 metres between the edge of the new building and the relevant site boundaries. Furthermore, both No.2 and the new building would have generous gardens in terms of their depth. In consequence, there would be sufficient visual space around both the existing and proposed buildings. The proposal would not appear cramped in relation to its surroundings.
 7. The additional hardstanding proposed would cover a small amount of the total existing garden space. Most of the site would continue to appear as garden, and in this respect, the verdant character of the surrounding area would be preserved.
 8. Vehicular movements to and from the rear of the garden of No.2 already occur, on the long driveway to the yard that forms the application site. The number of movements associated with one dwelling would be very occasional, and unlikely to significantly exceed that which already occur in connection with the existing yard which would be redeveloped under these proposals. Such vehicular access and associated movements would not detract from the character or appearance of the area.
 9. In consequence, this would comprise an appropriate form of well-designed infill development. There would be no harm to the character and appearance of the area. The proposal complies with policies G5(3), G5(4), G5(5) and H4 of the Local Plan, together with policy D1 of the adopted Local Plan which require that, amongst other things, developments achieve high quality design with no unacceptable effect on the existing context and character of adjacent buildings and the immediate surroundings.

Living Conditions

10. Given the existence of the existing yard and associated driveway, the principle of vehicle movements near neighbouring gardens to the rear of No.2 is already established. As noted above, the number of additional vehicular movements proposed here would not represent a significant increase over the existing situation. The additional driveway and parking area would be located deep in to the existing garden of the property and away from the closest habitable living accommodation. Vehicular movements around the curtilage of the single new residential building would be occasional and would not result in significant additional noise and disturbance.
11. No chimneys are shown on the proposed building, and the probability that the garden will be used for bonfires is no greater than at present, given the

existing use of the site. Furthermore, vehicular access to the site and associated exhaust fumes already occur. In consequence, there would be no material increase in air pollution arising from this development.

12. Accordingly, there would be no harm to the living conditions of the occupants of surrounding residential properties, including through any noise and disturbance. There is no conflict with policy G1(3) or H4 of the Local Plan which seek to protect the amenities enjoyed by existing occupants of buildings.

Thames Basin Heath Special Protection Area

13. The Council's third reason for refusal refers to impacts on the Thames Basin Heath Special Protection Area ("SPA"). This provides a habitat for three internationally important bird species: woodlark, nightjar and Dartford Warbler. These nest on or near the ground and, as a result, are very susceptible to disturbance from informal recreational use, especially walking and dog walking. The proposal would fall within a zone of influence between 400 metres and 5 kilometres from the SPA boundary. This is set out in a document entitled Guildford Borough Council: Thames Basin Heaths Special Protection Area Avoidance Strategy 2017 Supplementary Planning Document July 2017 ("Avoidance Strategy SPD").
14. The close proximity to the SPA means that there is a reasonable likelihood that occupants of the new dwelling would access it for recreational purposes. This leads to the potential for disturbance to the habitats of birds within the SPA. Although this may be minimal in itself, a significant effect would occur, particularly when considered in combination with other new residential development in the surrounding area. In these circumstances, the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations") require that an Appropriate Assessment is carried out. Permission may only be granted after having ascertained that the proposal will not affect the integrity of this European site.
15. Consideration may be given to any conditions or other restrictions which could secure mitigation. Natural England advise this could be achieved through a financial contribution towards Suitable Alternative Natural Greenspace and Strategic Access Management and Monitoring in accordance with the Avoidance Strategy SPD. Whilst the appellant has not objected to the need for such a contribution, no legal agreement or unilateral undertaking has been provided in the course of this appeal. Planning Practice Guidance¹ is clear that planning conditions should only be used to secure such mitigation in exceptional circumstances. No such circumstances apply here. As no legal agreement has been provided, it is not possible to come to a finding on whether the mitigation would be secure.
16. In consequence there is an unacceptable risk that the proposal would lead to additional recreational disturbance within the SPA, harming the habitat of protected birds. The conservation objectives of this European site seek to, amongst other things, protect and conserve the habitat of these birds. There would be no mitigation to address the harm that arises through such disturbance. Consequently, there would be an adverse effect on the integrity of this European site.

¹ Paragraph: 010 Reference ID: 21a-010-20140306

17. There are no alternative solutions proposed in respect of this matter. The additional residential unit would be likely to fulfil a housing demand and is well designed and located, close to services and public transport links, and in all other respects would accord with the National Planning Policy Framework ("the Framework"). These considerations, and the other arguments advanced by the appellants in support of the development weigh significantly in its favour, but do not constitute an imperative reason of overriding public interest.
18. Consequently, having regard to the Habitats Regulations, permission must not be granted for the development proposed. The proposal conflicts with policy P5 of the Adopted Local Plan, together with policy NE4 of the Local Plan and policy NRM6 of the South East Plan (2009) which require that, amongst other things, permission will only be granted for development proposals where it can be demonstrated that doing so would not give rise to adverse effects on the ecological integrity of the Thames Basin Heaths SPA. The proposal also conflicts with the Avoidance Strategy SPD and the Guildford Borough Council: Planning Contributions Supplementary Planning Document 2017, which share similar objectives to the development plan policies cited above.

Other Matters

19. The conclusion of the Appropriate Assessment set out above is that there would be harm to habitats sites. This provides a clear reason for refusing the application, and the presumption in favour of sustainable development set out in the Framework does not apply.
20. It is suggested that alternative development could be carried out on the site under permitted development rules. However, the harm that arises in relation to the SPA results from the creation of a new, independently occupied residential unit. Such development could not, on the evidence before me, be carried out under permitted development rights.
21. There are objections to the development from interested parties, citing other issues to those set out in my reasoning above. However, as the appeal is failing, there is no need to address these.

Conclusion

22. Whilst the proposed development would not lead to harm to the character and appearance of the area or the living conditions of existing residents, it would lead to harm to the Thames Basin Heath SPA. The proposal therefore conflicts with the development plan and there are no other considerations that outweigh this conflict. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR