



Appeal Decision

Site visit made on 21 June 2019

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2019

Appeal Ref: APP/Y3615/W/19/3221971

The Weir, Frimley Road, Ash Vale GU12 5NL

- 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 Parmar against the decision of Guildford Borough Council.
 - The application Ref 18/P/01457, dated 13 July 2018, was refused by notice dated 25 September 2018.
 - The development proposed is demolition of existing bungalow to be replaced with 2, 2 bedroom semi-detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since determination of the planning application a revised version of the National Planning Policy Framework (NPPF) has been published in February 2019. References to the NPPF in this Decision consequently reflect the 2019 NPPF.
3. Following determination of the planning application the Guildford Borough Local Plan (Strategy and Sites) (Local Plan) has been adopted, superseding the policies contained in the Local Plan 2003, with the exception of those that have been retained. The policies in the new plan carry full weight in my consideration of the case.

Main Issue

4. The main issue is the effect on the Thames Basin Heaths Special Protection Area (TBHSPA).

Reasons

5. The Ash to Brookwood Heaths form part of the TBHSPA, a European designated site that provides a habitat for rare birds that nest on the ground or at low level. The net development of one or more dwellings is considered to have a significant effect on the TBHSPA where the development falls within a designated 400m TBHSPA buffer zone. This is because the internationally important low and ground level nesting bird species are susceptible to predation by amongst other things cats and informal recreation such as walking and dog walking.

6. Policy P5 of the Local Plan only permits development where it would not likely have significant effects on the integrity of the TBHSPA and new development is not permitted within 400m of the TBHSPA, in line with saved South East Plan Policy NRM6 which identifies a 400m exclusion zone where mitigation measures are unlikely to be capable of protecting the integrity of the TBHSPA.
7. The TBHSPA Avoidance Strategy states that in exceptional circumstances it may be appropriate to modify the extent of the zone to take account of physical obstructions such as railway lines, waterways and major roads, allowing the exclusion zone to be adjusted marginally. Small locally determined zones will be set out in Local Plans and Special Protection Area Avoidance Strategies and agreed with Natural England. However, none have been presented to me.
8. I accept that in practical terms the route that would be taken by humans would take the site out of the 400m zone, which is not disputed by the Council. However, at 261m the site is located within the 400m zone of the TBHSPA when taking a more direct route through the gardens of properties and across the railway line and canal, a route that could be taken by cats.
9. I note the consultation response of Natural England but am mindful that in determining the planning application the Council were the competent authority who have carried out an appropriate assessment in accordance with Article (63)3 of the Habitats Directive. This integrates a precautionary principle into the Habitat Regulations Assessment. The Council's TBHSPA Avoidance Strategy requires all proposals for net new dwellings within the exclusion zone to undertake an Appropriate Assessment to demonstrate that there would be no adverse effect on the TBHSPA and/ or the acceptability of any avoidance and mitigation measures provided.
10. I am not satisfied that it has been adequately demonstrated that the proposal would not harm the TBHSPA. As such, exceptional circumstances to justify adjustment of the exclusion zone have not been demonstrated. Even if it were demonstrated that the site should not be considered as falling within the exclusion zone, mitigation measures would be required. The Council state that this would be secured through a S106 planning agreement. There is no S106 agreement before me and so no means of securing the mitigation. I cannot therefore be satisfied that there would be no harm to the TBHSPA.
11. The development would consequently conflict with saved Policy NRM6 of the South East Plan 2009, saved Policy NE4 of the Guildford Borough Local Plan 2003 and Policy P5 of the Guildford Borough Local Plan 2019. Amongst other things, these policies do not support development where it has not been demonstrated that it would not have an adverse effect on the ecological integrity of the TBHSPA.

Other Matters

12. The site has planning permission to extend the existing dwelling and the appellant has identified that the occupancy of the extended dwelling would be comparable to the 2 dwellings on the site that would be generated as a consequence of the development. Whilst the number of occupants may be comparable, the net additional dwelling would generate a separate household who could own a cat. The schemes are materially different in this way.

13. The appellant has referred to a planning application which was granted planning permission in support of their case¹. I have limited information in which to draw comparison with the case before me. However, the Council has identified that it was determined prior to the adoption of the Thames Basin Heaths Special Protection Area Avoidance Strategy 2017 and prior to the adoption of the current Local Plan. There has therefore been a change in circumstances. In any event, each case is determined on its own merits and my assessment has been based on the information before me.
14. The proposal is located in an urban area where the principle of development is acceptable. The appellant identifies that the site is accessible to services and facilities, makes provision for on site parking and cycle storage and identifies that the Council did not find any adverse impact to the living conditions of neighbouring properties. Be that as it may, it does not overcome the harm I have found.

Conclusion

15. For the reasons identified, I conclude that the appeal should be dismissed.

K Ford

INSPECTOR

¹ Council Planning application reference 15/P/02132