



Appeal Decision

Site visit made on 25 September 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/K3605/W/19/3229624

Laverton, St Georges Avenue, Weybridge, Surrey KT13 0DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant an application for permission in principle.
 - The appeal is made by Mr Adam Marlow against the decision of Elmbridge Borough Council.
 - The application Ref 2018/3591, dated 4 December 2018, was refused by notice dated 9 April 2019.
 - The development proposed is a two-storey dwelling with habitable accommodation within the roof space to allow for 6 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal application is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) Order 2017. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail. Planning permission does not exist unless both the permission in principle and the technical details are approved. This appeal relates to the first of these two stages.
3. The PPG advises that the scope of permission in principle applications is limited to location, land use and amount of development. The amount of residential development must be expressed as a range, indicating the minimum and maximum number of new dwellings.
4. The Council does not take issue with the location, land use or amount of development. The reason for refusal relates solely to the likely significant effect on the Thames Basin Heaths Special Protection Area (SPA). The legislation governing Permission in Principle sets exclusions from the process and it is therefore essential that I establish whether there is latitude to consider this proposal as a Permission in Principle.

Main Issue

5. The main issue is whether the development is eligible for consideration under Permission in Principle and if so the implications for the Thames Basin Heaths Special Protection Area (a qualifying European site) (SPA).

Reasons

6. Legislation states that a permission in principle may not be granted for 'habitats development' (provisions in Part 2A paragraph 5B (1) (b) of the Town and Country Planning (Permission in Principle) (Amendment) Order 2017) (The Order).
7. Habitats development means '..development which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site'.
8. The site lies within the 5 km buffer zone of the SPA referred to, where development either individually or in combination with other developments would be likely to have a significant effect.
9. I note that Natural England has no objection to the development subject to mitigation in the form of securing contributions to Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) as this would offset the effect of the development on the SPA. There are however no measures before me and no mechanism to secure such measures as would be required to mitigate the implications of the effects on the SPA within the permission in principle process stage. Alteration to the advice on this matter was made to the PPG in July 2019 which takes into account a case referred to by the Council¹ and which says *'Up to December 2018 legislation did not permit a competent authority to approve a neighbourhood plan, permission in principle, and certain development orders, where screening identifies a 'likely significant effect.'* *The People over Wind judgment means that it is no longer possible to apply mitigation measures at the screening stage. Therefore, some plans and orders where there could be a likely significant effect on a habitats site were unable to progress, irrespective of what mitigation is proposed, which was not the policy intention. In order to address this issue the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 amend legislation to allow that where a likely significant effect on the environment is identified, a competent authority may undertake an appropriate assessment to consider impacts and any mitigation measures, and then make a decision whether or not to approve the plan or order'.* This applies to a range of application types including permission in principle.
10. Nonetheless the Council having undertaken an appropriate assessment concluded that the proposal was habitats development. In the absence of a mechanism to mitigate its impact the development falls within the definition of habitats development under Paragraph 5B (1)(b) of the Order for which permission in principle may not be granted.
11. Consequently, this exclusion has the effect that the appeal must fail.

Other matters

12. I note that the appellant was invited to submit a unilateral undertaking (UU) to secure a contribution in mitigation of the effect on the SPA but declined to do so. In any event the Planning Practice Guidance (PPG) makes it clear that

¹ Court of Justice of the European Union: People over wind, Peter Sweetman V Coillte Teoranta. 12 April 2018.

a planning obligation cannot be secured at the permission in principle stage and this is not therefore a relevant consideration.

13. The appellant has argued that the Council have granted Permission in Principle applications elsewhere within the SPA designation area. Clear explanation has been provided by the Council that the consent referred to was determined in November 2018 whereas the PPG definition of habitats development states from December 2018. It is therefore understandable that the Council took a different interpretation between the two decisions and there is a valid reason to explain the inconsistency referred to.
14. The Council does not dispute it cannot demonstrate a 5-year supply of housing land. However, this fact does not alter that permission in principle cannot be granted for habitats development and as such the lack of a 5-year supply does not alter my findings.

Conclusion

15. For the above reasons and having had regard to all matters raised the appeal is dismissed.

Janet Wilson

INSPECTOR