
Appeal Decision

Site visit made on 23 October 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2019

Appeal Ref: APP/N1730/W/19/3234574
164 Fleet Road, Fleet GU51 4BE

- 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 Camberley Estates Limited SSAS against the decision of Hart District Council.
 - The application Ref 18/01836/FUL, dated 13 August 2018, was refused by notice dated 5 February 2019.
 - The development proposed is part conversion and rebuild of rear of existing 3 storey building and erection of loft level on Fleet Road to replace existing 3 bedroom flat with 3 x 2-bedroom flats, and erection of 3 storey building at rear to create 3 x 1 bedroom flats & 1 x 2 bedroom flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's first reason for refusal refers to the National Planning Policy Framework 2018. In February 2019, the latest version of the National Planning Policy Framework (the Framework) was introduced. The appeal was submitted after this date, so both parties have been able to refer to the updated Framework in their submissions. I have therefore used the latest version in my assessment without prejudice to any party.
3. Three revised plans were submitted with the appeal: 16-2342-PP-01 rev E; 16-2342-PP-05 rev E; and 16-2342-PP-06 rev D. These drawings show minor changes to the proposed internal layout of three of the flats. The Council has had the opportunity to consider these plans in its appeal statement. As the plans do not fundamentally alter the proposals, or affect the external appearance of the development, I can consider these plans without prejudice to any other party.

Main Issues

4. The main issues are:
 - a) The impact of the development on the Thames Basin Heaths Special Protection Area (the SPA); and,
 - b) Whether the development would provide acceptable living conditions for future occupants.

Reasons

Impact on the SPA

5. The site is within 5 km of the SPA, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). In determining this appeal, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. The Court of Justice of the European Union has ruled¹ that, when considering the effect that a development proposal may have on a European Designated Site, the decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.
6. The Habitats Regulations require that permission for the development may only be granted after it has been ascertained that it will not affect the integrity of the SPA. The SPA is designated as such, because it is an area of lowland heathland that provides habitat for three internationally rare bird species, namely nightjar, woodlark and Dartford warbler. The SPA is susceptible to harm through the impacts of recreation and urbanisation. In the light of the evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the proposal would have significant effects on the features of interest of the SPAs, due to the resultant increase in recreational use by the occupants of the proposed development.
7. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. There is an agreed strategic solution to mitigate the effects of increased recreational use, in the form of the Thames Basin Heaths SPA Delivery Framework, which was published in March 2009 by the South East England Regional Assembly. This strategy sets out that all new residential development should provide, or contribute to, measures to avoid harm to the SPA. These measures comprise the provision of Suitable Alternative Natural Green Space (SANG), to attract new residents away from the SPA, and access management on the SPA and SANGs. Provision of these measures should be funded by developer contributions, unless SANG can be provided by developers for individual developments.
8. The appellants do not contest the need to provide mitigation for the impact of the development on the SPA. They have been in negotiation with the owner of land that is the subject of a planning application for change of use to SANG, and a draft Unilateral Undertaking (UU) under Section 106 of the Act has been prepared. The UU would require the appellant to make a financial contribution to the owner of the SANG land, towards its maintenance, improvement and management. A contribution would also be required towards the strategic access management and monitoring (SAMM) of the SPA. The SANG landowner would not, however, be bound by the UU to deliver the mitigation before occupation of the development. Furthermore, planning permission for the SANG has not yet been granted. In the current circumstances, therefore, even if the UU was completed, it would not provide any certainty that the necessary mitigation would be delivered.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

9. In view of the uncertainty over the outcome and timescale for determining the planning application for the SANG land, and completion of the UU, the appellant has suggested that mitigation could be dealt with by way of a planning condition. The condition would require SANG and SAMM contributions to be secured through a UU, after planning permission has been granted. However, there is no guarantee that the planning application for the SANG will be approved, or that the landowner will implement any permission that is granted. I have no evidence that there is any alternative land that the appellant could turn to in either of these eventualities. The condition would not, therefore, give certainty, at the decision-making stage, that appropriate and timely mitigation for the recreational impacts would be securely delivered.
10. Furthermore, the suggested condition would expressly require the appellant to complete a UU. The Planning Practice Guidance (PPG) advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. Such a condition should only be used in exceptional circumstances, in the case of complex and strategically important development, where there is clear evidence that delivery would otherwise be at serious risk. I therefore find that the suggested condition does not accord with the advice set out in the PPG.
11. As the competent authority, I am therefore unable to conclude through my AA that the proposal will not affect the integrity of the SPA. Consequently, I must conclude that, following AA, the proposal would cause harm to the SPA without clear and certain mitigation. Therefore, the scheme would conflict with saved Policies CON1 and CON2 of the Hart District Local Plan (Replacement) 1996 – 2006 (the saved Local Plan). These policies seek to avoid adverse impacts on sites of European and national nature conservation value. The proposal would also conflict with Policy NRM6 of the South East Plan, which aims to ensure that adequate measures are put in place to mitigate any impacts of new residential development on the SPA.

Living conditions for future occupants

12. The appeal site is a long narrow piece of land running between Fleet Road and Birchayes carpark. The high brick walls of the adjacent buildings form the side boundaries. There is an existing three-storey building on the Fleet Road frontage, which has a commercial use at ground floor and a flat on the two upper floors. The proposals would involve extensions to the rear of, and above, this building. The resultant four-storey building would accommodate three flats above the retained ground floor commercial use. A separate three-storey building would be constructed on the Birchayes car-park frontage to accommodate four flats. The resultant courtyard space between the two frontage buildings would provide a shared amenity area.
13. The Council's adopted development plan policies do not specify any minimum space standards for residential accommodation, and do not require compliance with the Nationally Described Space Standard (NDSS)². Nevertheless, it is not contested by the Council that five of the flats would comply with the NDSS. Flats 1 and 3, however, would have a floor area of less than 50 square metres, which means they are not suitable for more than single occupancy under the NDSS. Although a single bed is shown on the drawings for these flats, in both

² <https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>

cases, the bedroom exceeds the minimum 11.5 square metre area for a double bedroom specified by the NDSS. The Council therefore argues that these flats should be considered as 2-person flats, so are below the required space standard.

14. However, in both cases, the bedrooms are narrower than 2.75 metres and therefore do not comply with the NDSS specification for a double bedroom. Furthermore, the revised floor plans submitted with the appeal show that, with very minor adjustments, the flats could be made to comply with the NDSS in every respect. If I had been minded to allow the appeal, I could have imposed a condition requiring the flats to be provided in accordance with the amended layouts. The flats would, therefore, provide an acceptable standard of internal space for future occupants.
15. The high boundary walls to either side of the site, would restrict outlook from the windows in the inward facing elevations of the proposed flats to some extent. The enclosed nature of the courtyard would also restrict the amount of light reaching the inward facing windows, particularly at ground and first floor level. However, those at second and third floor level would have a largely open outlook, and most of the flats would have windows in the outward facing elevations as well. There would only be two flats that would rely entirely on the courtyard elevations for light and outlook. One of these, Flat 4, would be on the second floor. It would therefore have an open outlook over the boundary walls, and largely unrestricted light to its windows.
16. Flat 1 would occupy the ground floor of the proposed building on the car-park frontage. The only natural light and outlook for occupants would be gained through windows in the courtyard elevation. Although the side boundary walls would be quite imposing for occupants, the rear face of the proposed building on the Fleet Road frontage would be about 22 metres away. This would allow light to reach the windows at quite a shallow angle, and for occupants to enjoy a reasonably open outlook. It is likely that the rear parts of the flat would require artificial lighting at most times, but these areas would contain the bathroom and kitchen. The main living accommodation would be close to the windows, which face southwest, and would therefore receive acceptable levels of light, and offer a satisfactory standard of outlook.
17. Apart from Flat 1, which would have its own private terrace, the occupants of the flats would rely on the central courtyard for outdoor amenity space. Whilst this space would be enclosed by high walls on all sides, it would be open to the sky, so would receive reasonable levels of daylight. There would be some activity associated with the rear servicing of the ground floor commercial use, but this is unlikely to be frequent, and would be little different to the comings and goings from the flats. Access would also have to be maintained to the proposed cycle storage facilities. However, if the area were to be imaginatively laid out, landscaped and appropriately managed, it could provide a secure and private outdoor space that could be enjoyed by residents. Bearing in mind its town centre location, the development would provide an acceptable standard of outdoor amenity space for residents.
18. I therefore find that the development would provide acceptable living conditions for future occupants. In this respect, the proposals would therefore accord with Policies GEN1, GEN4 and URB 12 of the saved Local Plan, which set out the general requirements for the design of residential developments. The

development would also meet with the aims set out in section 12 of the Framework to achieve well-designed places, including paragraph 127, which seeks to ensure a high standard of amenity for existing and future users.

Other Matters

19. Concerns have been raised about the refuse collection arrangements for the flats, which could result in bins being left in Fleet Road before and after collection. The appellant suggested the imposition of a condition to overcome this issue. However, the condition would require completion of a legal agreement, so would be contrary to the advice in the PPG. Had I been minded to allow the appeal, I would have had to consider whether an alternatively worded condition could have overcome this concern.

Planning Balance

20. Paragraph 177 of the Framework makes it clear that the presumption in favour of sustainable development does not apply where a proposal is likely to have a significant effect on a SPA, unless an AA has concluded that the proposal will not adversely affect its integrity.
21. The flats would, nevertheless, contribute to boosting the supply of housing in a location where services are easily accessible by sustainable transport modes. I have also found that the development would provide acceptable living conditions for future occupants. Paragraph 68 of the Framework advises that great weight should be given to the benefits of using suitable sites within existing settlements for homes. However, these benefits do not outweigh the harm that I have identified to the SPA, which has international importance.

Conclusion

22. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR