
Appeal Decision

Site visit made on 22 October 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/Y3615/W/19/3233949

Sherwood, Ockham Road South, East Horsley KT24 6QJ

- 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 Neil Jarvis of Javlin Homes Ltd against the decision of Guildford Borough Council.
 - The application Ref 19/P/00566, dated 27 March 2019, was refused by notice dated 17 July 2019.
 - The development proposed is demolition of detached bungalow and erection of a pair of semi-detached houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development on:
 - the Thames Basin Heaths Special Protection Area; and
 - the character and appearance of the area.

Reasons

The Thames Basin Heaths Special Protection Area (SPA) and the Site of Special Scientific Interest.

3. The site falls within 400m to 5 km of the SPA. The SPA comprises a network of lowland heath sites. The SPA provides habitat for three internationally important bird species: Dartford Warblers, Woodlarks and Nightjars. These birds are particularly vulnerable to predation and disturbance. This can be caused by cats, rats and crows and disturbance from informal recreational use, especially walking and dog walking. The appeal site is also within a Site of Special Scientific Interest.
4. The proposal would lead to an additional dwelling. There is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupants of the development. Although small in itself, this may lead to the harmful disturbance of the habitat of birds and is likely to have a significant adverse effect on the integrity of the SPA, when considered in combination with other residential development in the surrounding area.

5. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment (AA) is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site.
6. An AA was undertaken during the application by the Council and Natural England (NE) was consulted at this stage. NE have stated that they had no comment to make providing the relevant avoidance and mitigation measures specified in the AA are secured and that the applicant is complying with the requirements of the Guildford Borough Council Thames Basin Heath Special Protection Area Avoidance Strategy 2017 Supplementary Planning Document (SPD).
7. I have sought further evidence on this matter from the Council, the appellant, and NE was consulted in the course of the appeal. I have undertaken this assessment on a proportionate basis and adopting a precautionary approach.
8. The information before me, including the SPD, indicates that NE considers that where new development is proposed in locations such as the appeal site, avoidance measures must be provided in the form of Suitable Alternative Natural Green Space (SANGS) and Strategic Access Management and Monitoring (SAMM).
9. The appellant has provided a unilateral undertaking (UU) that would provide financial contributions towards upgrading and maintaining SANGS within in accordance with the SPD. The UU would also provide a contribution to fund access management at the SPA. These contributions are calculated with reference to the SPD.
10. The Council has not disputed the form, wording or level of contribution given in the UU and has confirmed that the reason for refusal relating to this issue has fallen away. Nevertheless, I need to be convinced that the payment would be used for its intended purpose and directly mitigate the impacts of the appeal scheme. The UU does not stipulate which SANG within the borough that the contribution would be allocated for and how it would be spent. Furthermore, I have no clear and up to date details regarding the condition or capacity of the SANGS within the borough.
11. As such, I cannot be certain that the contribution would ensure that there was alternative green space of appropriate quality and as conveniently located to the appeal site as the SPA. Moreover, there is no indication of how the SAMM contribution would specifically address the impacts from the proposed development.
12. There is insufficient information to demonstrate that conditions are an appropriate mechanism of securing a scheme for mitigation, and that they would meet the requisite tests in Planning Practice Guidance.
13. Accordingly, I am not satisfied that appropriate mitigation has been secured. The evidence before me indicates that there is potential for recreational disturbance to the SPA through additional activity associated with the proposed development, which has the potential to affect the integrity of the SPA.

14. Where suitable mitigation cannot be secured the Habitats Regulations state that planning permission should only be granted if there are no alternative solutions, that there are reasons of overriding public interest and suitable compensatory measures are secured. There is no compelling evidence to indicate that the appeal proposal is the only solution for such a scheme. Based on the individual merits of the case, the provision of 1 additional dwelling is not sufficient to amount to imperative reasons of overriding public interest. Finally, no compensatory measures have been put forward.
15. Consequently, having regard to the Habitat Regulations, permission should not be granted. The proposed development could result in harm to the integrity of the SPA and as such is in conflict with the Habitats Regulations, Saved Policy NE4 of the Guildford Borough Local Plan Adopted January 2003, Policy P5 of the Guildford Borough Local Plan: Strategy and Sites, Adopted April 2019 (LP) and Policy NRM6 of the South East Plan Regional Spatial Strategy for the South East 2009, along with the SPD and the provisions of the National Planning Policy Framework (the Framework).

Character and Appearance

16. The proposed development would introduce a building of considerably greater bulk and mass than existing bungalow on the site. However, there are 2 storey properties in the row and variation in terms of the height, width and scale of the built form on this side of the road.
17. The height of the proposed properties would be greater than Woodcote and they would have second floor accommodation. However, when viewed from the front the properties would appear 2 storey and of a similar height to other nearby buildings. In addition, while not semi-detached dwellings, there are large buildings in the same row, including at Old Pilgrim Court and The Old Rectory. The overall depth and footprint of the proposed built form would be greater than some nearby properties. However, the 2-storey element of the proposed dwellings would be similar to the buildings either side.
18. Therefore, the scale of the proposal would not be out of keeping with the existing built form in the streetscene.
19. The new properties would be located close to the side boundaries of the site with porches to the side. Nonetheless, the existing bungalow is already located close to the boundary with Woodcote and the open nature of the porches would reduce their visual impact. Moreover, the spacing between properties on this side of the road varies. While not of the same separation distances, there is a similar spacing between the main gable elevations of Woodcote and 2 Wilkie Cottage. Furthermore, Old Pilgrim Court is set in from the boundary and the existing sense of space between it and the site would remain.
20. Therefore, the proposal would not result in a cramped appearance and the spacing to adjacent properties would not appear incongruous with the existing streetscene.
21. Having the main entrances to the properties on the side elevation would not be typical of the properties nearby. Nevertheless, side entrances are not uncommon. The front elevations would take cues from other properties in the row with a protruding gable, bay windows and hipped roofs. The building would have a horizontal emphasis. Notwithstanding this, this and the overall

proportions of the development would not be dissimilar to the existing built form on this side of the road.

22. The existing rear garden would be divided between the 2 proposed properties. However, the size and layout of the space would be comparable to other properties nearby such as at Wilkie Cottages. The proposed building would be set back behind front gardens and parking areas in a similar position to existing properties. In any case, there is no uniform building line in the immediate locality.
23. Therefore, the proposal would not be harmful to the character and appearance of the area. It would comply with Policy D1 of the LP, Policies EH-H7(a) and EH-H8 of the East Horsley Neighbourhood Plan. these, in part, seek to ensure proposals respond to distinctive local character and that the design, size and mass of development are in keeping with the established style of the surrounding area. It would also accord with the Framework where it states that development should be sympathetic to local character and the surrounding built environment.

Other Matters

24. I note comments from the third parties to both the planning application and this appeal. However, the Council have not included refusal reasons relating to highway safety, parking, internal space standards, flooding or the effect on the living conditions of the occupants of nearby properties. As I am dismissing the appeal, there is no need for me to consider these matters further. In any event, the absence of harm would be a neutral factor.
25. The Framework in paragraph 68 acknowledges that small-scale developments can make an important contribution to meeting the housing requirement. However, given the scale of the proposal the contribution to the mix and supply of housing in the area, as well as economic benefits resulting from the construction period and spending of future occupiers, would be limited.

Conclusion

26. While I found that the scheme would not result in harm to the character and appearance of the area, the harm to the SPA is determinative.
27. For the reason given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR