The Planning Inspectorate

Appeal Decision

Site visit made on 17 December 2019

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2020.

Appeal Ref: APP/C1625/W/19/3238135
Land adjacent to 22 Cam Pitch, Cam, Dursley GL11 5JX

- 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 James Luck against the decision of Stroud District Council.
- The application Ref S.19/0197/FUL, dated 22 January 2019, was refused by notice dated 29 March 2019.
- The development proposed is for the erection of single detached dwelling, enlargement to existing parking area and associated works.

Decision

1. The appeal is dismissed.

Procedural Matters and Main Issues

2. The application form refers to the site address as 16 Cam Pitch, however, I have referred to the more accurate location referred to in the Appeal form and decision notice in the banner heading above.

3. The Council's Officer's report indicates that the site is located within the 7.7km catchment area of the River Severn Special Area of Conservation (SAC) and Special Protection Area (SPA). Although not forming part of the Council's reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of the SAC/SPA in accordance with the Habitats Directive[1]. For this reason, it is necessary to consider this matter as a main issue.

4. To inform my assessment of the appeal in relation to this main issue the Council has provided details of the relevant development plan policy[2] and its mitigation strategy[3] (MS) for the avoidance of impacts on the SAC/SPA.

5. The main issues are therefore the effect of the proposal on;

    - the River Severn Special Area of Conservation and Special Protection Area; and

    - the character and appearance of the area.

[1] Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
[2] Policy ES6 of the Stroud District Local Plan, November 2015
[3] Stroud District Council, Strategy for Avoidance of Likely Significant Adverse Effects on the Severn Estuary SAC, SPA and Ramsar Site, December 2017

Reasons

The River Severn Special Area of Conservation and the Special Protection Area

6. The Severn Estuary is designated as an SAC for its estuaries, subtidal sandbanks, reefs, intertidal mudflats and sandflats, saltmarsh and populations of birds such as sea lamprey. The SPA designation is also in place for supporting a number of bird populations of European importance such as Curlew, and Redshank. The Council's MS indicates that these birds are particularly vulnerable to disturbance, especially when feeding and roosting during the winter months. This can be caused by informal recreational use associated with dog walkers, bird watchers and recreational boaters. Whilst the MS identified baseline recreational pressure as low, it is likely to increase as new employment, tourism and housing development comes forward.

7. The proposal would lead to an additional dwelling. There is a reasonable likelihood that the SAC/SPA would be accessed for recreational purposes by future occupiers 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 SAC/SPA, when considered in combination with other residential development in the surrounding area.

8. 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.

9. The information before me, including the Council's officer's report and the MS considers that where new development is proposed such as the appeal site, developers are required to contribute to appropriate mitigation and management measures in the form of a financial contribution that would need to be secured through a unilateral undertaking (UU). This is a legal document made pursuant to Section 106 of the Town and Country Planning Act 1990. Despite reference to its requirement in the Officer's report the appellant has not provided a UU with this appeal.

10. 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 SAC/SPA through additional activity associated with the proposed development, which has the potential to affect the integrity of these designated sites, but I have no way of dealing with this through mitigation in the absence of a UU.

11. Moreover, there is insufficient information with the appeal 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.

12. 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.

13. Consequently, having regard to the Habitat Regulations, permission should not be granted. The proposed development could result in harm to the integrity of the SAC and SPA and as such is in conflict with the Habitats Regulations, Policy ES6 of the Stroud District Local Plan, November 2015, along with the MS and the provisions of the National Planning Policy Framework (the Framework).

Character and appearance

14. The appeal site comprises a roughly rectangular parcel of land that has a frontage onto the A4135, a relatively busy road which connects Cam and Dursley. The site is shallow in depth and rises steeply from its frontage with the roadside pavement to its rear boundary which is marked by an existing fence that encloses the garden of the more elevated dwelling to the west at No 33 St. Bartholomew's Close. To the immediate north east are a line of recently approved modest dwellings with shallow gardens enclosed at their rear by a high retaining wall and fence line above. To the site's south west is a narrow verdant bank, that separates the A4135 from the modern housing development on the elevated land immediately beyond.

15. The proposed dwelling would continue the front building line established by the recently built dwellings at Nos 18, 20 and 22 Cam Pitch, whilst similarly sited very close to the rear boundary of the site. I observed from my site visit that the proposal would likely have a retaining wall of similar height to that at No 22 given the nature of the rising bank and its relationship to the neighbouring land. The proposed side garden area would be comparable to No 22, while bigger than the gardens further down the row of dwellings at No 18 and 20. I therefore found from my site visit that, despite the restricted plot dimensions, the appeal site would share similarities with the small number of dwellings to the north east on the same road frontage.

16. In this context, the proposed dwelling would not appear out of place or too dissimilar with the surroundings in respect of plot shape, depth and the degree of physical enclosure. Moreover, the dwelling would incorporate a similar design, scale and layout to Nos 18, 20 and 22, and would not appear as over-development in the plot in the context of these dwellings. Accordingly, there would be a continuation of the built environment characteristics pertaining to the immediate area, rather than a detraction from them.

17. Notwithstanding the shallow nature of the site and the steep banking that currently exists, I have not been presented with any evidence that the dwelling and retaining wall cannot be constructed within the confines of the site, or any evidence that construction work would result in ground instability. Moreover, I also note that the Council has not raised any concerns regarding the removal of vegetation and the pruning of trees that overhang the site. Besides a planning condition can be imposed requiring the approval of retaining wall details and provisions to protect trees during the construction phase before development begins.

18. I note the third-party concern regarding the loss of an important view into the centre of the village. However, from my site visit I observed that the proposed

dwelling's set back position from the pedestrian footway would not obstruct views from the A4135 towards the village centre.

19. Accordingly, I conclude that the proposal would not be harmful to the character and appearance of the area and would comply with Policy HC1(1) of the Stroud District Local Plan, November 2015. This requires, amongst other considerations, that proposed housing is of a scale, layout and density that is compatible with the character and appearance of the part of the settlement in which it would be located.

Other Matters

20. I note the comments from third parties, however, the Council have not included refusal reasons relating to highway safety, parking, local wildlife, external space standards, construction stage disturbance and the precedent the proposal could set. 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.

Conclusion

21. While I found that the scheme would not result in harm to the character and appearance of the area, the harm to the SAC and SPA is determinative.

22. For the reasons given above, and having regard to the other matters raised, I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR