



Appeal Decision

Site visit made on 26 November 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2020

Appeal Ref: APP/N1730/W/19/3230971

Imac Systems Ltd, Upper Street, Fleet GU51 3PE

- 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 Roger Atkinson (Forays Homes (Southern) Ltd) against the decision of Hart District Council.
 - The application Ref 18/02285/FUL, dated 4 October 2018, was refused by notice dated 25 March 2019.
 - The development proposed is the demolition of the existing building and replacement with a development of 8 x 2-bed apartments.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Revised plans were submitted with the appeal that show obscure glazing to the rear of the proposed building. These changes would be minor in nature and the Council and third parties have had the opportunity to comment on them through the appeal process. Consequently, I do not consider that any party would be prejudiced by my acceptance of them. I have therefore determined the appeal based on the revised plans.

Main Issues

3. The main issues are the effect of the proposal on;
 - the integrity of the Thames Basin Heaths Special Protection Area (SPA);
 - the character and appearance of the area;
 - the living conditions of the occupants at Hollydene and Nos 9, 14, 15 and 18 Cotswold Court, with particular regard to outlook, access to daylight and privacy;
 - highway safety; and
 - the vitality of Fleet Town Centre.

Reasons

Special Protection Area

4. In 2018 the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European site, must consider mitigation within the Framework of an Appropriate

Assessment (AA) rather than at screening stage¹. This is a responsibility that now falls to me as the competent authority.

5. The appeal site is within 5km of the Bourley and Long Valley Site of Special Scientific Interest (SSSI), which is part of the SPA (a protected European site). This SPA is an important recreational and economic resource and I consider that it is likely that occupants of the proposed development would visit it. In this regard, particularly when combined with other development in the area, this scheme would have a likely significant effect on this habitat designation through increased disturbance as a result of recreational activity.
6. The Habitats Regulations require that permission may only be granted after having ascertained that it will not harm the integrity of a European site. I may consider any restrictions which could secure mitigation and provide certainty that the proposal would not harm the SPA. In this case, it would appear that the Council would require contributions towards the creation of a Suitable Alternative Natural Green Space (SANG) as well as towards Strategic Access Management and Monitoring to mitigate the proposal's impact upon the SPA.
7. However, I do not know where the SANG would be in relation to the appeal site. Consequently, I do not know whether or not it would be effective in reducing recreational trips to the SPA. In addition, I have not been provided with details of the exact contributions required or the methodology for calculating them. In any event, as a suitable legal agreement has not been provided, I am not satisfied that there is a mechanism for securing any required financial contributions. For these reasons, I am unable to conclude that proportionate and relevant mitigation would be delivered as a result of this development.
8. Following an AA, I therefore find that the proposal would cause harm to the integrity of the SPA without clear and certain mitigation. As such, it would conflict with Policies CON1 and CON2 of the Hart District Local Plan (LP), Policy NRM6 of The South East Plan – Regional Spatial Strategy for the South East and the provisions of the Conservation of Habitats and Species Regulations 2017 as amended. Amongst other things, these seek to secure the long term protection of Special Protection Areas and SSSI's and mitigate any harmful impacts to them.

Character and Appearance

9. The appeal site is located towards the centre of the built-up settlement of Fleet. It accommodates a two storey building set immediately adjacent to the back edge of the footway on the north eastern side of Upper Street. This has a utilitarian and functional appearance and is in an office use. To the side of this building are associated parking spaces. The immediate area is characterised by a mix of property types and uses. This includes commercial properties which bound the site to the north west, a detached residential property known as 'Hollydene' which bounds it to the south east and flatted development at 'Cotswold Court' immediately to its rear.
10. I also note that a new, three storey, flatted development at Clarence Road has recently been built out. This adjoins part of the south eastern boundary of the appeal site. In addition, planning permission has been granted² at Hollydene to

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

² Ref. 17/02554/FUL

demolish this property and construct a three storey block of seven flats. All of the pre-commencement conditions associated with this development have been 'discharged'. I also observed hoarding around this property and the Council's evidence shows that development at the site has now commenced. I therefore find that it is likely that Hollydene will be fully redeveloped in due course. Such developments illustrate the evolving character of this part of the settlement.

11. This proposal seeks permission to demolish the existing building at the site and construct a block of eight, two-bedroomed, apartments. I appreciate that the proposal would be three storeys in height and would draw built development further along the footway. However, it would be consistent with the height of flatted development at Clarence Road and the extant development at Hollydene. Furthermore, the scheme would be similar in height and positioning to other modern flatted developments that have been recently constructed in the surrounding area, including at Church Road. I therefore find that the scale, positioning and flatted nature of the scheme would not appear discordant within the changing character of this part of the settlement.
12. The proposal's contemporary design would appropriately relate to surrounding developments. The bin stores would only be accessible from the front of the building. However, this is similar to other nearby flatted schemes and would not significantly compromise the proposal's overall design. Suitable materials and landscaping could be secured conditionally were I minded to permit the appeal. Furthermore, there would be sufficient space between the proposal and buildings to its side and rear, including the extant development at Hollydene, to ensure that it did not appear unduly cramped on its plot in relation to its size.
13. For these reasons, I conclude that the proposal would integrate effectively with the evolving character and appearance of the area. It would therefore accord with saved Policies GEN1, GEN4 and URB12 of the LP. Amongst other things, these seek to ensure that proposals are in keeping with local character and sustain the urban design qualities of settlements. It would also accord with the design objectives of the National Planning Policy Framework (the Framework) insofar as they seek to ensure that proposals function well and are of good design.

Living Conditions

Outlook and Access to Daylight

14. There is a window in the side elevation of Hollydene which would face the proposal. However, this is a secondary light source. In addition, the proposal would not extend significantly beyond the principal and rear elevations of this property. Taking this into account, I am satisfied that it would not appear as a visually oppressive feature from within this neighbouring property or its garden. Furthermore, the positioning and orientation of the proposal would not significantly diminish the access to daylight at Hollydene.
15. The proposal would increase the separation distance between development at the appeal site and Nos 9 and 14 Cotswold Court. In addition, although the proposal would be three storeys in height and would draw built form further along the site, it would be sufficiently separated from Nos 15 and 18 Cotswold Court. Consequently, in my view the proposal would not be visually oppressive when viewed from within the identified dwellings at Cotswolds Court or their associated external amenity space. In addition, the evidence before me shows

that there would only be a minimal breach of a 25 degree sight line when performed from properties at Cotswold Court. Overall, I find that the positioning and scale of the proposal would be unlikely to significantly diminish the access to daylight at these dwellings.

Privacy

16. The proposal's rear windows at first and second floor levels would be obscure glazed. This would not compromise living conditions within the proposed flats and would restrict any direct views from habitable rooms towards Nos 9, 14, 15 and 18 Cotswold Court. There would also be a sufficient distance between the proposal and these properties to ensure that any perceived overlooking would be limited. I note that there would be some views from first and second floor windows within the proposal's south eastern elevation towards a secondary side facing window at Hollydene. However, these would be oblique views to a degree. On balance, I find that the proposal would preserve the privacy at Hollydene. In reaching this view, I am also aware that there is a good chance that this property will be redeveloped.

Overall Findings – Living Conditions

17. For the reasons given, I conclude that the proposal would not harm the living conditions of the occupants at Hollydene and Nos 9, 14, 15 and 18 in terms of outlook, access to daylight and privacy. It would therefore accord with saved Policies GEN1 and URB12 of the LP insofar as they seek to ensure that proposals do not cause harm to the amenity of adjoining residential uses. It would also accord with the Framework insofar as it seeks to secure a high standard of amenity for current users.

Highway Safety

18. The proposal would afford eight off-street parking spaces and the Council do not appear to raise objection to the quantum and layout of these spaces. These would be accessed via a new undercroft access to Upper Street and the existing access would be removed. The width of the new access would not be sufficient to allow for two way simultaneous movements in and out of the site. However, given the scale of the proposal, such occurrences would not be frequent. In addition, when they do occur, the accessing vehicle is only likely to be subject to a short delay on the carriageway, which has a 20mph speed limit.
19. The existing access at the site does not allow for simultaneous movements and there have been no recorded accidents in the vicinity within the past five years. Moreover, the proposal would reduce the number of vehicular trips to and from the site compared to the existing use. I also note the objection from the Highway Authority. However, the 4.5m width for the new access that it has requested is unlikely to allow for two way simultaneous movements given the angle that cars would be entering the site and the kerb radii. Taking everything together, I am satisfied that the width of the proposed access would not result in hazardous driving conditions.
20. From the evidence, suitable visibility would be available from the new access with regard to the speed limit of the carriageway. Even if motorists exiting the site would not have a full view of the adjacent footway until part of the vehicle itself was onto it, the footway is wide and it is likely that exiting vehicles would be travelling slowly. Taking all of the above into account, I am also satisfied

that there would be acceptable visibility from the new access so that it did not prejudice vehicular or pedestrian safety. I am also not persuaded that this safety would be significantly compromised by the brief periods in which refuse would be deposited and collected.

21. For the reasons given, the proposal would not adversely affect highway safety. It would therefore accord with saved Policies GEN1 and T14 of the LP insofar as they seek to ensure developments have suitable access and do not prejudice highway safety. It would also accord with the Framework which has similar objectives.

Vitality of Fleet Town Centre

22. The appeal site is located within Fleet Town Centre. Saved Policy URB7 of the LP states that development which would result in the loss of an existing employment site lawfully used for B1 purposes will only be permitted if the present use harms the character or amenities of its surroundings, the site is not capable of continuing satisfactorily in an employment use or there would be substantial benefits to the locality. This policy is supported by saved Policy URB12 of the LP which seeks to prevent the loss of land in lawful B1 use. Considering the supporting text associated with these policies, this strategy is to ensure that there are sufficient employment opportunities available within communities and that the vitality of defined commercial and retail centres is protected.
23. The appeal site does not appear to be within a strategic or locally important employment site, as defined within the Council's adopted and emerging development plans. I also have no substantive evidence to show that the loss of the B1(a) use would contribute towards a current shortfall of such uses in the District. Consequently, notwithstanding that prior approval appears to have been given to convert the appeal building to residential use, I am not persuaded that the loss of the somewhat dated and bespoke office facilities would significantly diminish employment opportunities in the District. In addition, future occupants of the proposed flats would be likely to utilise local services and facilities which would support their vitality.
24. Taking all of the above into account, even if the scheme were to conflict with the specific requirements of Policy URB7 of the LP, I am not persuaded that it would undermine the overarching strategy of this policy and Policy URB12 of the LP. I therefore conclude that the proposal would not adversely affect the vitality of the Fleet Town Centre.

Planning Balance

25. The Council can demonstrate a five year supply of deliverable housing land and is appropriately delivering housing. Nevertheless, the Government is seeking to significantly boost the supply of housing. The proposal would utilise previously developed land to deliver eight dwellings in an accessible location. This would make a modest contribution to the Council's housing stock. There would also be some economic benefits associated with the scheme's construction and occupation. These social and economic benefits weigh moderately in the scheme's favour.
26. I have found that the proposal would not harm the character and appearance of the area, the living conditions of the occupants of surrounding properties

and the vitality of Fleet Town Centre. Furthermore, it would be acceptable in terms of highway safety. However, these are requirements of the development plan and are neutral factors in the planning balance.

27. On the other hand, the scheme would harm the integrity of the SPA. The proposal would therefore fail to fulfil the environmental objective of the Framework which seeks to protect and enhance our natural environment. Given the international importance of the SPA designation and my responsibilities as competent authority in this regard, this carries significant weight against the scheme. In addition, having regard to paragraph 11(d)(i) of the Framework, there is also a clear reason to dismiss the appeal, even if the most important policies for determining this application were considered out-of-date.
28. Taking the above factors into consideration, the adverse effects would outweigh the benefits associated with the provision of eight dwellings. The proposal conflicts with the development plan and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

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

M Heron

INSPECTOR