



Appeal Decision

Site visit not undertaken

by S M Holden BSc MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Appeal Ref: APP/R3650/W/19/3241467

Westbrook Mills, Borough Road, Godalming GU7 2AZ

- 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 J Patterson of Stonegate Land and Estates against the decision of Waverley Borough Council.
 - The application Ref WA/2019/0984, dated 24 May 2019, was refused by notice dated 25 October 2019.
 - The development proposed is described as: 'change of use to provide 128 units following the grant of Planning Permission under Application CR2018/011. Extensions to provide a new roof design and alterations to provide a new façade treatment, new doors, new window, and provision of additional parking, bin and cycle stores'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr J Patterson of Stonegate Land and Estates against Waverley Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision on the basis of information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis. As part of this process, the appellants were also provided with additional time to submit a Unilateral Undertaking to address the Council's second and third reasons for refusal. However, as no agreement was provided, I will return to this matter later.

Preliminary Matters

4. Prior approval for a change of use of the buildings from offices to provide 99 dwellings submitted under Ref: CR/2017/0019, was granted on appeal in 2018¹. Following this an alternative scheme for 128 dwellings was granted prior approval under Ref: CR/2018/0011. However, this required substantial roof alterations without which it could not be implemented. The Council subsequently refused a planning application, Ref: WA/2018/1524, to alter the roof to provide an additional 24 units over and above the 99 previously

¹ APP/R3650/W/17/3186774

approved. This refusal was appealed and although the Inspector found the design to be acceptable, he dismissed the appeal² for other reasons. These were the absence of a mechanism to provide a contribution towards affordable housing and the risk that additional recreational activity by future occupants would be likely to result in adverse effects on the Wealden Heaths Special Protection Area (SPA). The absence of a legal agreement to address these matters accounts for two of the three reasons that the Council refused the current scheme.

5. The description of the appeal proposal on the application form, and set out in the above banner heading, seeks to provide the 128 units of accommodation that were permitted under CR/2018/0011. This is significantly different from the description on the Council's decision notice which reads: 'Erection of fourth floor roof extensions to existing buildings 1 and 2 to provide 29 dwellings (including 9 affordable) together with alterations to elevations of buildings 1, 2 and 3, layout of parking and landscaping works. The proposed drawings show an additional 99 dwellings which do not form part of this application. (Revision of WA/2018/1524)'. However, as the external and roof alterations are inextricably linked to the provision of the 99 dwellings already approved in addition to the extra 29 now sought, I have had regard to the totality of the development in reaching my decision.
6. Westbrook Mills lies within the Green Belt where inappropriate development will not be permitted in the absence of very special circumstances. The Council therefore assessed the scheme having regard to the exceptions set out in Paragraphs 145 and 146 of the National Planning Policy Framework (the Framework). It found that the proposal would represent the reuse of previously developed land which would cause less than substantial harm to the openness of the Green Belt and contribute towards meeting an identified affordable housing need. It also considered that the alterations would not result in a disproportionate extension to the original buildings. On this basis, it concluded that the proposal would not be inappropriate development and I see no reason to reach a different conclusion.

Main Issues

7. Having regard to the above, the main issues are the effects of the proposal on:
 - a) species protected under the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981;
 - b) the supply of affordable housing;
 - c) the integrity of the Wealden Heaths Special Protection Area (SPA).

Reasons

Protected species

8. An Ecological Impact Assessment, prepared by Simlaw Ecology, was submitted with the application. The report is dated March 2018 and was based on surveys undertaken between August and November 2017. The surveys were undertaken to assess the potential effects of the proposed development on protected species, including bats. The surveys showed that one building (B1)

² APP/R3650/W/19/3223641

- supported a day roost used by two soprano pipistrelle bats. In addition, dusk emergence surveys and remote bat monitoring demonstrated that the River Wey corridor is used by common pipistrelles, Daubentons bats and soprano pipistrelles for the purposes of foraging and commuting.
9. All species of bats are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and the Wildlife and Countryside Act 1981. They are therefore subject to a high degree of legal protection. Circular 06/2005³ states that the presence of a protected species is a material consideration when a development is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that *'it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before (my emphasis) planning permission is granted'* (paragraph 99).
 10. The proposal would involve alterations to the roof of B1; it therefore follows that the bats would be disturbed by the works. As this could not be avoided, mitigation measures would be required and these would be subject to securing a licence from Natural England (NE). The Ecological Impact Assessment set out a mitigation strategy which appears to be appropriate as the basis for applying for a mitigation licence, on the basis of the surveys undertaken in 2017. However, the report also made it clear that the assessment of bat activities on the site was only valid until May 2019. As the application was made after that date, the appellant would have been aware that its findings would not necessarily have been able to be fully relied upon by the Council or other statutory and non-statutory consultees.
 11. I appreciate that the consultation undertaken with Surrey Wildlife Trust did not take place until July and its response did not come for some time. Nevertheless, in view of the advice within the report of the appellant's consultant, it was always going to be likely that additional surveys would be required if work on site had not commenced by May 2019. I have not been given any compelling reason why this could not have been undertaken during last summer and available prior to the Council's determination of the application.
 12. While some additional survey work was attempted at the end of September, this was not completed due to inclement weather. In any event, the limited dusk emergence survey observed two bat species emerging from gaps in the building and foraging within the appeal site. It would therefore appear that there have been changes since the 2017 surveys which justify the requirement for further information to clarify the status of the building as a bat roost.
 13. Circular 06/2005 advises that surveys should only be required by condition in exceptional circumstances. Such an approach might be acceptable if recent surveys had been undertaken and all that was proposed would be final checks immediately prior to the commencement of construction. This would ensure that no protected species have recently colonised the site. However, given the time that had passed since the comprehensive surveys were undertaken, I am not satisfied that this would be an appropriate course of action in this case.
 14. I therefore conclude that the proposal would be likely to result in harm to bats, a species protected under the Habitats Regulations and the Wildlife and

³ Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System

Countryside Act. It would also conflict with Policy NE1 of the Waverley Borough Local Plan Part 1 (WBLP1), which seeks to conserve and enhance the borough's biodiversity ensuring that any adverse impacts are avoided or, if unavoidable, are appropriately mitigated.

Affordable housing

15. Policy AHN1 of the Waverley Borough Local Plan Part 1 (WBLP1) sets out a requirement for 30% affordable housing on all developments where there would be a net increase of 11 dwellings or more. The Framework also supports the provision of affordable housing to meet local needs.
16. Although the appeal scheme would provide a total of 128 units, 99 of these will be delivered as a consequence of the prior approval without any of them being affordable. However, as the current scheme represents an increase of 29 over and above what has already been approved a requirement of 9 affordable units would ensure compliance with the policy.
17. The appellant's appeal statement indicated a willingness to provide 9 affordable units and an intention to securing this through a S106 planning obligation. However, no obligation was submitted with the appeal.
18. In the absence of a suitable legal agreement, I am bound to conclude that the proposal would fail to make adequate provision for affordable housing. Consequently, it conflicts with Policy AHN1 of the WBLP1 and the Framework.

Wealden Heaths SPA

19. The appeal site lies within 5km of the Wealden Heaths Phase 1 SPA, which is designated as European protected site in order to protect the populations of nightjar, woodlark and Dartford warbler. The Habitats Regulations requires the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected site, either alone or in combination with other plans or projects. This responsibility falls to me in the context of this appeal.
20. Natural England (NE) were initially consulted on the application on the understanding that it would provide 29 dwellings. It objected to the proposal on the basis that recreational activities undertaken by future residents would be likely to contribute to a deterioration of the quality of the habitat on which the birds depend. This would be likely to increase disturbance to the bird species for which the SPA has been designated. It therefore follows that if considered in combination with other development, including the remaining 99 dwellings proposed within the scheme before me, there would be a likely significant effect on the SPA.
21. From the evidence presented it appears that the Council provided further information about the possibility of using the Suitable Alternative Natural Greenspace (SANG) at Eashing Lane as a means of mitigating the harmful effects on the SPA. However, this would be subject to securing an appropriate contribution towards the mitigation through a legal agreement. NE England were satisfied with this approach and withdrew its objection, subject to ensuring that the SANG site was operational before the dwellings were occupied.

22. However, I have no other information about the Eashing Lane SANG and have insufficient information before me to undertake an Appropriate Assessment to assess its effectiveness in relation to the appeal proposal. Even if I was able to undertake the Appropriate Assessment and be satisfied that the suggested mitigation would be effective, no legal agreement has been submitted which would secure its timely delivery.
23. In these circumstances, I conclude that the proposal would adversely affect the integrity of the Wealden Heath Phase 1 SPA, contrary the requirements of the Habitats Regulations. It would also conflict with Policy NE1 of the WBLP1 which requires particular regard to be given to the important sites and habitats in the Borough, including SPAs.

Conclusion

24. I have found that the proposal would fail to safeguard bats, a protected species, would adversely affect the integrity of the Wealden Heaths SPA and would not make adequate provision for affordable housing.
25. The proposal therefore conflicts with statutory requirements and the development plan. These matters provide a clear justification for finding the scheme to be unacceptable and for this reason the appeal is dismissed.

Sheila Holden

INSPECTOR