



Appeal Decision

Site visit made on 21 May 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/Y3615/W/20/3245665

29 Birchcroft, Stonecrest, Alexandra Road, Ash GU12 6PH

- 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 Forays (Southern) Ltd against the decision of Guildford Borough Council.
 - The application Ref 19/P/01749, dated 8 October 2019, was refused by notice dated 3 December 2019.
 - The development proposed is the demolition of the existing building and the erection of three dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. This proposal follows the dismissal of a scheme at appeal¹ for four dwellings. I henceforth refer to this as 'the previous appeal scheme' and I have taken it into account in my determination.

Main Issues

3. The main issues are the effect of the proposal on:
 - the integrity of the Thames Basin Heaths Special Protection Area (TBHSPA);
 - the character and appearance of the area; and
 - the living conditions of the occupants of surrounding properties, with particular regard to privacy.

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 stage². This is a responsibility that now falls to me as the competent authority.
5. The appeal site is within 5km of the TBHSPA, which is a protected European site. This is an important recreational and economic resource and I consider

¹ Ref. APP/Y3615/W/19/3236508

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

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 a scheme would 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 a Suitable Alternative Natural Green Space (SANG) as well as towards Strategic Access Management and Monitoring to mitigate the proposal's impact upon the TBHSPA.
7. However, I have not been provided with details of the exact contributions required or the methodology for calculating them. In any event, although it would appear that the Council and the appellant are progressing a suitable legal agreement, this has not been submitted during the course of this appeal. I am therefore 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 TBHSPA without clear and certain mitigation. As such, it would conflict with Policy P5 of the Guildford Borough Local Plan: Strategy and Sites (2019 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 mitigate any harmful impacts to them.

Character and Appearance

9. The appeal site is a backland site and accommodates buildings and hardstanding associated with a stonemason's business. It is located in an area predominately characterised by a mix of residential properties, most of which have relatively large rear gardens. Such gardens bound the site on all sides and give the immediate area a sense of openness.
10. This proposal seeks permission to demolish the existing buildings and construct a single pair of semi-detached properties and a detached dwelling. The number of proposed dwellings has been decreased by one compared to the previous appeal scheme. In comparison, there would therefore be less built residential form at the site. Consequently, the current scheme would introduce fewer urbanising features, such as residential paraphernalia and areas of hardstanding, and would allow for a greater amount of soft landscaping throughout the development. On this basis, the proposed ratio of built development to soft landscaping would be appropriate and would assimilate successfully with the open feel of the area.
11. In addition, the reduced quantum of development would ensure that dwellings would have suitably sized gardens. Overall, they would have sufficient space about them to ensure that they did not appear cramped within the site or in the wider context. Taking all of the above into account, and as there are

examples of two storey backland developments nearby, I find that the scheme would integrate effectively with the character and appearance of the area. It would also appear 'softer' and more spacious compared to the previous appeal scheme, thereby overcoming the concerns of the previous Inspector in this regard.

12. For the reasons given, the proposal would not harm the character and appearance of the area. It would therefore accord with saved policies G5 and H4 of the Guildford Borough Local Plan (2003 LP) and Policy D1 of the 2019 LP. Amongst other things, these seek to ensure that proposals are appropriate in design and do not have an unacceptable effect on the existing context and character of adjacent buildings and immediate surroundings. The proposal would also accord with the National Planning Policy Framework (the Framework) insofar as it seeks to ensure that developments are sympathetic to their surroundings.

Living Conditions

13. The proposed dwellings would be a sufficient distance away from 9 Star Lane and they would not afford views of its garden. I note that each new dwelling would have a small rear dormer. However, their positioning would only allow for oblique views towards the rear elevations of 25 and 27 Star Lane. In addition, the side facing window within the eastern elevation of the pair of semi-detached units could be obscure glazed through the imposition of an appropriately worded condition if I were minded to allow the appeal. I am therefore satisfied that the privacy at nearby dwellings at Star Lane would be preserved.
14. The proposed dwellings would afford only oblique views towards properties at Windsor Gardens (including 'Tavira') and Shawfield Road to the west of the site. The degree of overlooking towards these properties would be akin to levels of overlooking that already exist in this residential area, such that the development would not unacceptably overlook these properties. The new units would also be positioned a significant distance away from 31 Alexandra Road. They would therefore only afford relatively close distance views towards the end of its long rear garden. Accordingly, the scheme would not significantly diminish the privacy at rooms within No 31 or its primary garden space.
15. I note that the previous Inspector raised concern with regard to the overlooking of some of the properties identified above. However, I do not know what evidence was before this Inspector. I have assessed this revised scheme on its own merits, based on the evidence before me.
16. For the above reasons, the proposal would not significantly affect the living conditions of the occupants at surrounding properties in terms of privacy. It would therefore accord with Policy G1(3) of the 2003 LP insofar as it seeks to protect the living conditions of the occupants of buildings in terms of privacy. It would also accord with the Framework insofar as it seeks to achieve a high standard of amenity for existing users.

Planning Balance

17. The Council can demonstrate a five year supply of deliverable housing land. Nevertheless, the Government is seeking to significantly boost the supply of housing. The proposal would utilise previously developed land to deliver three

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.

18. I have found that the proposal would not harm the character and appearance of the area or the living conditions of the occupants of surrounding properties. However, these are requirements of the development plan and are neutral factors in the planning balance.
19. On the other hand, I am not satisfied that the scheme would not harm the integrity of the TBHSPA. 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 TBHSPA designation and my responsibilities as competent authority in this regard, this carries significant weight against the scheme.
20. Taking the above factors into consideration, the adverse effects would outweigh the benefits associated with the provision of three 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

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

M Heron

INSPECTOR