
Appeal Decision

Site visit made on 6 July 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Appeal Ref: APP/Y3615/W/20/3245881

Health Centre, Allen Physiotherapy Rehabilitation, 60 Woodbridge Road, Guildford GU1 4RF

- 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 John Allen against the decision of Guildford Borough Council.
 - The application Ref 18/P/01571, dated 8 August 2018, was refused by notice dated 30 July 2019.
 - The development proposed is the conversion and extension of clinic (D1 Use) to a residential development of three single bedroom apartments and two two-bedroom apartments.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The description of development has been altered by the Council in its decision notice. However, the appellant has stated at section E of the appeal form that the description of development has not changed. I have therefore retained the original description that adequately describes the proposal.
3. A S106 Legal Agreement¹ has been submitted in support of the appeal. This provides funding for access to a Suitable Accessible Natural Green Space and an Access Monitoring contribution. These are intended to meet the Council's requirements in regard to the Thames Basin Heath Special Protection Area (TBHSPA). As decision maker it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the TBHSPA and whether any mitigation would be suitable. It is therefore necessary for me to consider this as a main issue.
4. The appellant has submitted amended plans in support of the appeal relating to the internal layout. The amended plans also provide further strengthening of sound attenuation mitigation to the party wall. I have dealt with the appeal on the basis of the amended plans, which do not materially change the substance of the proposal and would not prejudice any party.

¹ S106 Legal Agreement, dated 27 May 2020

Main Issues

5. Accordingly, the main issues are:

- the effect of the proposed use on the living conditions of future occupiers with particular respect to noise from the existing adjacent business,
- the effect of the proposal on future living conditions with respect to the size of the proposed accommodation, and
- Whether the proposal would affect the integrity of the TBHSPA.

Reasons

Living conditions - noise effects

6. The appeal site consists of a semi-detached property. It is currently in use as a clinic. The adjacent semi-detached property is a music shop which I understand is open in the daytime throughout the week and weekend. During my site visit I attended the music shop to understand its internal configuration. I observed that the ground floor contained six practice rooms of varying sizes, three of which were adjacent to the party wall. In the basement there is a further large practice room which is also adjacent to the party wall. I understand that the booths are used to test instruments prior to purchase. These instruments include guitars with amplification and drums.
7. The National Planning Policy Framework (The Framework) requires new development to integrate effectively with existing businesses. It identifies that where existing businesses could have a significant adverse effect on new development suitable mitigation should be provided. Paragraph 182 identifies that applicants, as agents of change, must provide mitigation. This would be to prevent an existing business having unreasonable restrictions placed on it through the introduction of new development. Also, the Planning Policy Guidance (PPG) identifies that any effect should consider both the current activities and also those that a business can carry out, even if they are not occurring at the time of the application being made.
8. The appellant's noise assessment was undertaken from within the appeal premises and concluded that noise break-in would be unlikely to be audible within the proposed flats. However, the appellant's Acoustic Investigation and Insulation Assessment identified that guitar noise was clearly audible within the appeal property when played in the Bass or Guitar Boutiques. It comments that flanking paths pose a potential noise path. Therefore, in association with sound attenuation it also advises that all gaps and joining partition junctions be sealed to reduce the effect of the separating partition.
9. The Hann Tucker Noise Assessment, undertaken on behalf of the Council, took noise level readings from each practice room. This provided an accurate measure of noise at source. Simultaneous readings were also taken within the appeal property to understand the acoustic properties of intervening walls. This identified that noise levels in receiving rooms would be up to 24dB above background noise levels. It assessment advised that mitigation would need to include the relocation of the music booths or structurally isolate them from the

proposal. This concluded that a significant noise impact would occur that would jeopardise the future operation of the neighbouring business.

10. Although the music shop is currently not open in the evenings, its opening hours, and the frequency of use and maximum noise levels from the booths could change beyond the control of the appellant. Furthermore, future occupiers would expect a reasonable degree of quiet in the daytime, which I do not find the proposal with mitigation would convincingly deliver. The Council's concerns, in regard to structure borne transmission, have also not been adequately addressed by the appellant. It therefore appears likely that significant noise levels would be observed within the appeal property, especially within the living room of flat two and the bedroom of flat one.
11. Therefore, although the majority of noise would occur in the daytime on weekdays, the intermittent nature of the activity from multiple sources within the music shop, would be likely to cause sustained irritation and harm to future occupiers. Although, I would expect daytime noise disturbance to be tolerated more so than night-time noise this would not negate a normal expectation that an occupier would have in terms of reasonable quiet. I also do not consider that the music shop would clearly be readily apparent as a source of noise nuisance to future occupiers prior to occupation.
12. The Appellant welcomes a pre-occupation noise mitigation condition that places the onus on them to satisfy. However, the evidence indicates to me that such a solution would be likely to require work on land beyond the appellant's ownership and the collaboration of the neighbouring business. There is no clear indication that the owners of the music shop are complicit in the resolution of any noise mitigation strategy. This approach is therefore advised against in the PPG where a 'grampian' style condition should not be used where there is no prospect of it being satisfied. Accordingly, such a condition would not satisfy the tests of the Framework as being reasonable. This would not therefore adequately address the identified noise impact.
13. The applicant, as an agent of change, has therefore not convincingly illustrated that the proposal would function in harmony with adjacent existing uses. Consequently, there is a reasonable likelihood that even with the further attenuation a significant adverse effect would occur. This would impact on the living conditions of future occupiers of the proposal resulting in noise complaints that would affect the operation of the neighbouring business.
14. Accordingly, the proposal would be contrary to saved policy G1 of the Guildford Borough Local Plan 2003 (SLP) which seeks development to protect the amenities enjoyed by occupants from unneighbourly development in regard to various effects including noise. Furthermore, the proposed use would be contrary to the Framework which requires suitable mitigation to be provided where the operation of an existing business could have a significant adverse effect on new development.

Living conditions – size of accommodation

15. The submitted amended layout plans have made minor changes to the layout to increase the size of flat 4 and change double bedrooms to single bedrooms of flats 3 and 5. I see no compelling reason not to accept these revised layout plans as they make minor alterations to the internal arrangement to the

betterment of the proposal. The amended layout would also satisfy the nationally described space standards which have been adopted by the Council.

16. Accordingly, the scheme would satisfy policy D1 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (2019) (LP) which seeks development to conform to the nationally described space standards. This policy is in general accordance with the Framework which seeks development to create a high standard of amenity for existing and future users.
17. Saved policy G5 of the SLP establishes a design code for development. This does not refer to internal space standards or the quality of internal space and is therefore not relevant to this case.

Special Protection Area (SPA)

18. The site is within the zone of influence of the TBHSPA. The significance of which derives from its habitat value for three heathland species of birds; the Dartmouth warbler, nightjar and woodlark. Saved policy NRM6 of the South East Plan (2009) requires that development, likely to have a significant effect on the integrity of the TBHSPA, must demonstrate that adequate measures are provided to mitigate any potential adverse effect. Also, policy P5 of the LP reinforces this provision. It requires development to include adequate measures to avoid and mitigate any potential adverse effects.
19. Due to its proximity to the appeal site there is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupiers of the development. Although this may be minimal by itself, a significant effect on the integrity of the TBHSPA would occur, when considered in combination with other residential development in the surrounding area. In 2018 the Court of Justice of the European Union ruled 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 the screening stage². This responsibility now falls to me within this appeal.
20. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the SPA. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective and could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other matters

21. The proposal would satisfy issues in regard to the design of the proposed rear extension, the loss of the community facility, the effect on the character of the area, on neighbouring living conditions and on highway safety. However, an absence of harm in these respects can only be considered as neutral factors in the planning balance.

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

Planning balance and conclusion

22. The appellant purports that the district is not on target to deliver its housing requirement and cannot demonstrate a 5-year housing land supply. However, the presumption in favour of sustainable development is not engaged as the site is within the influence of the TBHSPA. I have therefore applied limited weight to this matter.
23. Nevertheless, the Framework seeks to significantly boost the supply of housing. The proposal would deliver new dwellings in a sustainable location, close to Guildford Town Centre and public transport. However, the advice in the Framework with respect to noise considerations is of significant weight in the consideration and understanding of the main issues in this case. The impact of the proposal has been found to harm the living conditions of future occupiers and in turn the functionality and ongoing operation of the adjacent music business. This impact would be substantial and would not satisfy the requirements of the Framework when it is taken as a whole.
24. Moreover, I conclude that the appeal proposal would conflict with the development plan when taken as a whole and does therefore not represent the sustainable development for which the Framework advocates a presumption in favour.
25. For these reasons the appeal is dismissed

Ben Plenty

INSPECTOR