
Appeal Decision

Site visit made on 17 August 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2020

Appeal Ref: APP/N1730/W/20/3244121

Technology House, Barley Way, Ancells Road, Fleet GU51 2QU

- 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 H Schneck of Mountley Group against the decision of Hart District Council.
 - The application Ref 18/00281/FUL, dated 5 February 2018, was refused by notice dated 6 August 2019.
 - The development proposed is create two additional floors of development creating 35 new flats (net increase of 26) including external alterations.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Hart Local Plan: Strategy and Sites 2016-2032 (HLP) was adopted in April 2020, after the Council issued its decision on the application. This supersedes those policies from the Hart District Local Plan (Replacement) 1996-2006 and the First Alterations to the Hart District Local Plan (Replacement) 1996-2006 which are cited on the decision notice. The Fleet Neighbourhood Plan 2018-2032 (FNP) has also been made. My determination of this appeal takes account of the altered policy context.
3. During the appeal process the Government introduced permitted development rights appertaining to new dwellinghouses on detached buildings in commercial or mixed use¹. The parties have been able to comment on the implications for the appeal and I have taken their representations into account.

Main Issues

4. The main issues are:
 - a) whether the proposed development would provide acceptable living conditions for future occupiers, with particular reference to noise, air pollution and external amenity space; and
 - b) the effect of the proposal on the ecological integrity of the Thames Basin Heaths Special Protection Area.

¹ Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) Order 2015.

Reasons

Background

5. Technology House is a former office building, with its own undercroft and surface parking, located on the Ancells Business Park development. The site lies directly adjacent to the busy M3 motorway.
6. Prior approval has been granted on 2 occasions for change of use of the building from Class B1(a)(offices) to a use falling within Class C3(dwellinghouses). Those were schemes of 49 and 43 apartments respectively. A further application for 34 apartments has also been submitted; the Council describes this as pending but I note the appellant's view that the application has deemed approval as a decision was not made in the 56 day period. Either way, it is clear that the principle of conversion to residential use has been established. The proposal would create a further 35 apartments through the addition of 2 floors to the top of the building.

Future living conditions

7. The submitted Acoustic Report concludes that the existing building façades do not achieve the recommended indoor ambient noise levels set out within BS8233:2014². Mitigation measures are therefore necessary to ensure acceptable internal living conditions for residents of the apartments. The recommendation is for all windows to be acoustically treated sealed units with trickle vents. However, maintenance of the desired noise levels would rely upon the windows being kept closed. The plans indicate that windows would be openable and it is reasonable to expect that residents would wish to open them for fresh air and cooling purposes. Noise levels from the motorway are disturbingly high, to such a degree that opening windows would create an unacceptable residential environment within the apartments. Living conditions would be particularly poor within those apartments with windows facing north, east and west. This accounts for more than two thirds of the proposed units.
8. I have not been directed to any local policy requirements for flatted schemes to provide external amenity space. However, such provision is desirable to provide a high quality environment for residents to relax. A comfortable external space is particularly important in situations such as this, where residents are not provided with balconies or other private amenity space, and where the acoustic environment is such that they cannot open windows without being subjected to excessive noise. Technology House does have a landscaped area near its main entrance, but this has limited amenity value due to its small size, layout and proximity to the service road. The area suffers from traffic noise from the motorway and would not be attractive for sitting out.
9. An Air Quality Assessment was submitted during the course of the appeal to address concerns regarding the lack of information with the application. The Council's Senior Environmental Health Officer has scrutinised the report and considers it to be robust. I have no reason to take a different view. On the evidence before me I am satisfied that residents of the development would not be subject to levels of air pollution exceeding the Government's national air quality objectives set out in the Air Quality Strategy.

² BS8233:2014 Guidance on sound insulation and noise reduction for buildings

10. Paragraph 127 of the National Planning Policy Framework emphasises the need for good design which promotes health and well-being, including a high standard of amenity for existing and future users. The National Design Guide (2019) explains how private and shared amenity spaces can contribute to well-designed developments. Although I acknowledge that the apartments constructed under permitted development rights would suffer from a poor acoustic environment and lack of useable amenity space, this does not justify further substandard provision.
11. Accordingly, I conclude that the proposed development would provide an unacceptably poor living environment for future occupiers. It would conflict with HLP Policies NBE9 and NBE11 insofar as they seek development of high quality design that is not subject to unacceptable levels of pollution.

Thames Basin Heaths Special Protection Area

12. The site lies within the 5 km zone of influence of the Thames Basin Heaths Special Protection Area (SPA), being situated in close proximity to the Castle Bottom to Yateley and Hawley Commons Site of Special Scientific Interest which is a constituent part of the SPA. The designation provides a habitat for internationally important bird species which are vulnerable to disturbance from walkers, dog walkers and cat predation because they nest on or near the ground. The proposal would increase the resident population within the zone of influence and it would place the SPA under additional pressure from recreational activity. I cannot rule out the possibility of likely significant effects in combination with other plans and projects and therefore Appropriate Assessment would be required prior to any grant of permission.
13. The Council has published the Thames Basin Heaths Special Protection Area Avoidance and Mitigation Strategy which relates to residential development affecting the SPA. This requires the provision of Suitable Alternative Natural Greenspace (SANG) to attract new residents away from the SPA and financial contributions towards Strategic Access Management and Monitoring (SAMM). The appellant does not dispute that these measures are necessary to comply with development plan policy and safeguard the integrity of the European site.
14. A signed unilateral undertaking securing a contribution towards SAMM has been provided with the appeal. Furthermore, there is agreement between the parties that the Naishes Wood SANG could provide an appropriate avoidance measure to address the potential adverse impact of the development on the SPA. This is subject to the completion of various outstanding works and the putting in place of appropriate site management procedures. Information suggests that the works are substantially complete and site management procedures in place, but the SANG is awaiting inspection by the Council and Natural England. A negatively worded condition could be used to ensure that the SANG is of an acceptable quality.
15. The appellant advises that a Deed of Covenant has been signed with the owner³ of the SANG to purchase the required 'allocation' for the proposed development. The owner has confirmed to the Council that excess capacity is allocated to the scheme. There is a good prospect that SANG provision is secure and therefore I consider that a condition could be used to require final written confirmation prior to first occupation of the development.

³ Taylor Wimpey Homes

16. Overall, I am satisfied that appropriate mitigation and avoidance measures can be secured and on this basis there would be compliance with Policies NBE3 and NBE4 of the HLP, Policy NRM6 of the South East Plan and Policy 17 of the FNP insofar as they seek to protect the ecological integrity of the SPA.

Other Matters

17. My attention is drawn to new permitted development rights in respect of new dwellinghouses on detached buildings in commercial or mixed use. The appellant contends that these represent a material fallback position. However, the Council challenges whether such rights would be applicable in this case, bearing in mind that Technology House has not been occupied for some 5 years. It is further argued that the proposal would conflict with the limitations and restrictions by reason that it is less than three storeys in height above ground level.
18. It is not my remit in the context of a s78 appeal to reach a finding on the issue of lawfulness. The lawfulness of a proposed use or development is more appropriately dealt with via an application under s192 of the Act. Nevertheless, I consider the Council's position to have some merit, particularly as regards storey heights, given that large sections of the car park are substantively below the prevailing external ground level. In light of this, I cannot be confident that there is a genuine fallback position. Notwithstanding this, it remains open to the appellant to apply for a Certificate of Lawfulness should they wish to go down the permitted development route.
19. During my visit I was given access to Fleet House, another office building which has been converted and extended upwards to provide residential apartments. The background to that development is not before me but it is not comparable to the appeal scheme in any event, due to the fact that it occupies a less noisy environment further from the M3 motorway.

Conclusion

20. The scheme would deliver additional housing but the benefits in this regard would be outweighed by the poor quality living environment and the failure to adhere to the high standards of design expected for new development.
21. For the reasons given above and having regard to all other matters raised, including the concerns raised by Fleet Town Council in respect of design and affordable housing, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR