



Appeal Decision

Site visit made on 17 August 2020 by Mariam Noorgat BSc (Hons)

Decision by Andrew Owen BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Appeal Ref: APP/R3650/W/19/3243575

9 Brambleton Avenue, Farnham GU9 8QU

- The appeal is made under section 78 of the Town Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Brindley against the decision of Waverley Borough Council.
 - The application Ref WA/2019/0333 dated 13 February 2019 was refused by notice dated 12 December 2019.
 - The development was originally described as erection of two dwellings together with associated works.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr & Mrs Brindley against the decision of Waverley Borough Council. This application is the subject of a separate decision.

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

4. Although the application originally proposed two houses, this was changed to one during the Council's determination. As such the description of the development used in the decision above reflects that used in the Council's decision notice and the appeal forms.

Main Issue

5. In addition to the reason for refusal identified by the Council within their decision notice, it is common ground that the appeal site is located within 5km of the Thames Basin Heaths Special Protection Area (TBHSPA) and also within 5km of the Wealden Heaths Phase I Special Protection Area (WHSPA) and Ramsar site. Therefore the impact of the development on these European designated sites needs to be considered. As such, the main issues are:
 - the effect of the proposed development on the European designated sites;

- the effect of the proposed development on the living conditions of the occupiers of 12 Hillary Road, with regard to privacy.

Reasons for the Recommendation

European sites

6. The TBHSPA consists of a number of fragments of lowland heath scattered across Surrey, Hampshire and Berkshire. It is predominantly dry and wet heath but also includes areas of deciduous woodland, gorse scrub, acid grassland and mire as well as conifer plantations. It is a European designation for rare wild birds, in particular the Dartford warbler, Nightjar and Woodlark, and the protection of these species and their habitats is a particular conservation objective.
7. The parties agree that the development would be likely to have significant effects on the TBHSPA as a result of the potential for recreational use of it by future occupants of the development. As such, under Regulation 63 of the Habitats Regulations, it is necessary for me, as competent authority, to undertake an Appropriate Assessment to consider whether the proposal would adversely affect the integrity of the SPA.
8. It is considered that regular recreational use of the habitat site by future occupiers of the development could damage the habitats outlined above and could be disturbing for the bird species identified, particularly as they nest close to the ground and hence are prone to disturbance from walkers and dog walkers. Therefore the proposal would adversely affect the integrity of the site and its conservation objective.
9. However the Council and Natural England are of the view that this adverse impact can be mitigated by a financial contribution to Suitable Alternative Natural Greenspace (SANG) and a programme of Strategic Access Management and Monitoring (SAMM) of the TBHSPA. The Thames Basin Heaths Special Protection Area Avoidance Strategy Review identifies Farnham Park as the boroughs only SANG resource and the Council have confirmed that this continues to have capacity to act as an avoidance resource diverting recreational use of the TBHSPA. It also identifies future projects, including replacement footbridges, repairs to vehicle bridges and improvements to the car park, which financial contributions would help fund. With respect to SAMM, the Review identifies that contributions would assist in limiting damage caused to the TBHSPA including funding the monitoring of visitors or physical measures such as limiting car parking.
10. A planning obligation has been provided which seeks to ensure that funds for these purposes, of a scale required by the Council, would be provided to the Council prior to the commencement of the development. The Council do not raise concerns with the obligation and I consider that it would meet the tests in paragraph 56 of the Framework. As such it would facilitate the delivery of mitigation sufficient to address the adverse harm caused to the TBHSPA resulting from the development.
11. Turning to the WHSPA, this comprises a complex of heath and valley mire and is also designated for its populations of Dartford warbler, Nightjar and Woodlark. The Council consider that the WHSPA is under much lower pressure from residential development and that, due to its concentrated form, its bird

populations are much less vulnerable to effects from development than the populations in the TBHSPA. Furthermore, they advise that, due to the limited scale of the proposal and as alternative recreational opportunities in the area are available, the proposal would not be likely to have significant effects on the integrity of the WHSPA. Natural England have been consulted on this assessment and raise no objection. As such the Council have not sought financial contributions from the appellant and so the completed planning obligation provides none.

12. However, although the site and the quantum of development is small, no evidence has been provided to show what these alternative recreational opportunities are. Indeed, little information regarding this SPA has been provided at all. Moreover, though the evidence shows that the designated bird populations of the WHSPA may be less vulnerable than those of the TBHSPA, this is merely a comparison and does not demonstrate that, when considered on its own, the designated species of the WHSPA would not be likely to be significantly affected. Indeed bearing in mind the site's comparable proximity to both SPAs, I see no reason why future occupiers of the development would be likely to utilise the TBHSPA such that contributions for SAMM and SANG are necessary, but not likely to use the WHSPA such that contributions to SAMM and SANG are not necessary. Adopting a precautionary approach, I do not consider the lack of objection from Natural England satisfactorily demonstrates the proposal would not be likely to have a significant effect, likewise the assertions in the Council's correspondence with Councillor Hyman.
13. As such, in conducting an Appropriate Assessment, given the increased pressure on the WHSPA resulting from the proposal, I cannot be confident that it would not adversely affect the integrity of the WHSPA, and so must assume that it would. No mitigatory measures are provided in the completed planning obligation. I have no reason to consider there are any alternative solutions with a lesser effect, or that would avoid an adverse effect, on the WHSPA, nor that there are imperative reasons of overriding public interest which would override the harm to the SPA.
14. Consequently, I can only conclude that the proposal would adversely affect the integrity of the WHSPA. The proposal would therefore fail to accord with policy NE1 of the Waverley Borough Local Plan Part 1 Strategic Policies and Sites, February 2018 (the 'Local Plan') which seeks to conserve and enhance biodiversity and ensure that unavoidable adverse impacts are appropriately mitigated.

Living conditions

15. The proposed development would be set within the rear garden of 9 Brambleton Avenue and would front Hillary Road. The proposed parking area would be at the front of the proposed dwelling and would allow for a large setback from Hillary Road. The property opposite at 12 Hillary Road accommodates a spacious front garden and therefore there would be a considerable distance between the two houses. Due to the downward slope of the land from the south to the north, No 12 sits lower than the appeal site.
16. The proposed dwelling would be a chalet style bungalow with habitable space within the roof. The front elevation of the dwelling would include windows that would face the habitable rooms at 12 Hillary Road. Although there would be some overlooking, I find there to be sufficient distance between the proposed

development and the front elevation of No.12 such that any overlooking, even accounting for the difference in levels, would not be detrimental to the occupiers of that property.

17. Based on the reasoning above, the proposed development would not result in an unacceptable degree of overlooking and would not impact the privacy of the occupiers of 12 Hillary Road. It would therefore not result in unsatisfactory living conditions for these occupiers. As such, I find no conflict with Policy TD1 of the Local Plan, which seeks to ensure high quality design. It would also not conflict with Saved Policies D1 and D4 of the Waverley Borough Local Plan 2002, adopted 23rd April 2002, which seek to ensure developments do not result in overlooking or a loss of privacy enjoyed by neighbours.

Other Matters

18. There is dispute between the parties as to the Council's ability to demonstrate a five years housing land supply. In this case it is not necessary for me to come to a definitive view on this matter as, even if I were to conclude there is a shortfall in the five year housing land supply, paragraph 11 d) i. of the National Planning Policy Framework would be engaged. This says that planning permission should be granted unless the application of policies in the Framework that protect assets or areas of particular importance provide a clear reason for refusing the proposal. Such areas include SPAs. The Framework is clear that if harm to biodiversity cannot be mitigated, planning permission should be refused.

Recommendation and Conclusion

19. Although I have found that the proposed dwelling would not result in an unacceptable loss of privacy for the occupiers of 12 Hillary Road, this is outweighed by the fact that I can only conclude that the development would adversely effect the integrity of the WHSPA. Therefore, for the reasons set out above and having had regard to all other matters raised, I recommend the appeal is dismissed.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

20. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Andrew Owen

INSPECTOR