
Appeal Decision

Site visit made on 28 September 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal Ref: APP/P1750/W/20/3253675

14 Hilder Gardens, Farnborough GU14 7BQ

- 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 Nigel Hilder against the decision of Rushmoor Borough Council.
 - The application Ref 19/00482/FULPP, dated 12 July 2019, was refused by notice dated 5 December 2019.
 - The development proposed is for two new dwellinghouses.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council has confirmed that upon review of the appellant's case its drainage concerns could be addressed with an appropriately worded condition. As a result, Reason for Refusal 4 is no longer an issue of dispute between main parties. As I have no compelling evidence to disagree with this comment, I will consider that this issue has been satisfied.

Main Issues

3. Accordingly, the main issues are:
 - The effect of the proposed development on the character and appearance of the area,
 - the effect of the proposal on the living conditions of neighbouring occupiers especially in regard to outlook, privacy and general disturbance,
 - whether the proposal would affect the integrity of the Thames Basin Heaths Special Protection Area (TBHSPA), and
 - the effect of the proposal on protected wildlife species.

Reasons

Character and appearance

4. Hilder Gardens is within a residential area consisting of largely detached dwellings within an open plan estate. The style of dwellings consists of bungalows, chalet bungalows and two-storey buildings. The local pattern of development comprises of short cul-de-sac roads. Many local dwellings address the street with a staggered front building line. This nevertheless creates a clear

delineation between the public and private realm. Accordingly, local dwellings address the highway with rear gardens mostly set behind properties and adjoining neighbouring rear gardens. This creates a clearly defined perimeter block formation of development. The appeal site consists of the rear garden of No 14 and a parcel formed from around half of the rear garden of 15 Hilder Gardens. The gardens are open landscaped grounds and form a strong sense of spaciousness. The gardens therefore make a strong contribution to the open character to the rear of the group of dwellings. This complements the key features of the local area and makes a positive contribution to its established character and appearance.

5. The proposed dwellings would be located behind the existing row of perimeter block development. The proposed development would look towards the rear boundaries and dwellings of No's 14 and 15. As a result, this would not accord with the pattern of local development. It would also undermine the current sense of spaciousness to the rear of the existing dwellings. The proposal would be set back some distance from Hilder gardens and be located on slightly lower land. However, the proposal would be visible from several views from the adjacent highways and the access drive. Although other dwellings are visible through gaps in built form from Hilder Gardens, these are subtle and discreet. Whereas, the proposal would be more overt and present itself as an intrusive addition to the streetscene. Consequently, the visual impact of the new dwellings, within a rear-garden location, would be out of keeping with the established character of the local area.
6. The neighbouring infill development of The Sycamores includes a coherent arrangement of dwellings that accord with the character of the wider area. Whereas the proposal would be a disjointed addition that would not follow the established pattern of development in the area. Accordingly, the proposal would not represent a natural evolution of built form in the area. For these reasons the proposal would result in a form of development that would be uncharacteristic of the wider area.
7. The proposed design of the dwellings would accord with the style and form of existing development. However, the proposal would not integrate well with the surrounding context. Furthermore, the proposed landscaping would make only a limited contribution to the public realm due to the largely back-land nature of the site. Also, the minor landscape improvements to the frontages could be provided without the harmful impact conveyed by the proposal. Therefore, taking the above points together, the proposal would have a demonstrably harmful impact on the character and appearance of the area.
8. Accordingly, the proposal would fail to satisfy the parts of policies DE1 and DE11 of the Rushmoor Local Plan 2014-2032 (LP) (2019) that relate to character. These seek, amongst other things, for development to respect established building lines and be compatible with the established pattern of development.

Living conditions

9. The neighbouring dwelling of 8 The Sycamores (No 8) would look towards the side and rear garden of plot 14A. The proposed dwelling would be at a slightly lower level due to the gradient of the site. No 8 has a shallow rear garden and orientated towards its rear boundary at an angle. The proposed dwelling would include dormer windows and a low-profile roof. This would lessen the effect of

the proposal on the outlook of No 8 to some extent. However, due to its bulk and proximity to the side boundary the proposal would nevertheless have a demonstrable impact on the outlook from the neighbouring dwelling and the field of vision of primary rear windows. Consequently, the mass of the proposal would be overt and intrusive. Furthermore, it would also be intrusive as perceived from the majority of the rear garden of No 8. This relationship would be of greater harm than local existing relationships identified by the appellant. The retained boundary hedgerow and proposed planting would have a limited screening benefit to soften this impact. The effect on the outlook to 7 and 9 The Sycamores would be much lessened, due to their orientation and distance from the proposal, thereby having a correspondingly negligible effect.

10. The proposed dwellings would look towards the rear gardens and windows of 14-16 Hilder Gardens. The greatest effect of overlooking would be from plot 14B towards 15 Hilder Gardens (No 15), due to its close proximity. No 15 is a chalet bungalow, its relocated rear boundary would significantly shorten its rear garden. This would also result in the removal of the existing rear boundary screening. This new relationship would provide prominent and exposed views between the proposed dwelling and the garden and rear windows of No 15. Although views into rear windows would be of limited impact due to the separation distance, views into the rear garden would be of significant harm. Moreover, the proposed landscaping would not readily ameliorate this harm. This relationship would therefore create substantial harm to the living conditions of occupiers of No 15 through a loss of privacy. Whereas, the extent of overlooking towards the gardens and windows of 14 and 16 Hilder Gardens would be more oblique and over a greater distance having a negligible impact.
11. The proposed access would create vehicle movements and associated activity into the appeal site. This would be close to neighbouring rear gardens and would be likely to cause some general disturbance. The use would result in some noise disturbance and would include new illumination in an otherwise dark area. However, such activity would be limited and unlikely to result in sustained disturbance. Furthermore, with mitigating landscaping and by serving only two dwellings, this would not amount to a substantive impact. This effect would therefore not warrant a finding of harm in regard to noise and disturbance. Nevertheless, the proposal would be of significant harm to the living conditions of neighbouring occupiers in regard to outlook and privacy.
12. As such, the proposal would be contrary to the parts of policies DE1 and DE11 of the LP where they require development to not cause harm to existing neighbours including by reason of loss of privacy and outlook.

Special Protection Area (SPA)

13. The site is located within the zone of influence of the TBHSPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policies NE1 and NE4 of the LP seeks to secure mitigation for development that would result in significant adverse effects and to only allow development that would have no adverse effects. The Rushmoor TBHSPA Interim Avoidance and Mitigation Strategy enables mitigation to be secured to provide access to a Suitable Alternative Natural Greenspace (SANG) to avoid adverse impacts. The appellants have not provided a financial contribution or other legal mechanism towards mitigating the effects of the proposal on the SPAs. Furthermore, the

Council has identified that it would normally allocated space within its identified SANG for new development. However, as the proposal has been deemed by the Council to not be policy compliant it has not enabled access to the SANG.

14. The Court of Justice of the European Union recently 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). This responsibility now falls to me within this appeal.
15. 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 an 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 European Site. 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.

Impact on protected wildlife species

16. Policy NE4 of the LP seeks new development to avoid significant harm to biodiversity and if not possible to ensure that adequate mitigation is proposed that clearly demonstrates that there would be no adverse effect on the conservation status of priority species. Paragraph 175 of the National Planning Policy Framework explains that if significant harm to biodiversity cannot be avoided, mitigated or compensated for then permission should be refused.
17. Natural England's standing advice in regard to the potential presence of bats explains that a survey would be required if there are trees on site with features that bats tend to use. The Council's ecologist has identified that the trees proposed to be removed have the potential to contain bat habitats. There is therefore a reasonable likelihood that a protected species is present within the site. The appellant has not provided a desk study or walkover study to offer a contrary view. Consequently, a survey of the tree cover is necessary to determine the habitat status of the site. A planning condition would not be an appropriate approach to determine the required mitigation and is advised against by Circular 06/2005. As such, this matter would require resolution prior to the issuing of any planning permission. Consequently, the proposal has the capability to cause significant harm to a protected wildlife species.
18. Accordingly, the proposal would fail to satisfy policy NE4 of the LP.

Conclusion

19. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR