



Appeal Decision

Site visit made on 13 April 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/Y3615/W/20/3262475

Land rear of Catherine, Frimley Road, Ash Vale GU12 5NS

- 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 and Mrs Waygood against the decision of Guildford Borough Council.
- The application 20/P/00513, dated 19 March 2020, was refused by notice dated 1 June 2020.
- The development proposed is the erection of a detached dwelling house with detached double garage.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling house with detached double garage on land rear of Catherine, Frimley Road, Ash Vale GU12 5NS in accordance with the terms of the application 20/P/00513, dated 19 March 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the description of development from the application form. The Council has used different wording on the decision notice, but I can see no evidence that the change to the description was agreed by the appellant.
3. The appellant has submitted a unilateral undertaking under section 106 of the Town and Country Planning Act 1990 which would prevent occupants of the proposed dwelling from owning cats or dogs; prevent completion of a development for a dwelling on land adjacent to Vale Furnishers, Wharf Road, Ash Vale; and agreeing a financial contribution to the strategy to mitigate harm to the Thames Basin Heaths Special Protection Area. I consider this undertaking in my reasoning below.

Main Issue

4. The main issue is whether the development would have a significant adverse effect on the Thames Basin Heaths Special Protection Area.

Reasons

5. The Thames Basin Heaths Special Protection Area has been designated to protect rare ground nesting bird species which are vulnerable to predation by cats, rats and crows, and to disturbance from informal recreational use, especially walking and dog walking. The Council has adopted an avoidance strategy¹ which sets out its approach to preventing new development, either

¹ Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Guidance, July 2017

individually or cumulatively, having a significant adverse effect on the integrity of the Special Protection Area.

6. A core principle of the strategy is that within 400m of the Special Protection Area there is a presumption against net new residential development. This is due primarily to the potential for pet cats to reach the Special Protection Area, and the inability to prevent increased recreational pressure, within 400m being the optimum walking distance for people to visit it.
7. An application for a dwelling on the site was refused planning permission² and dismissed on appeal³ on the grounds that the site was within 400m of the Special Protection Area and that it had not been adequately demonstrated that the proposal would not harm its ecological integrity. It was felt that predation by cats could not be discounted, even given the presence of a railway line and canal between the site and the Special Protection Area. This decision was reached in the knowledge that Natural England had withdrawn an objection to the scheme, and that in practical terms the site was some 700m from the Special Protection Area by the nearest walking route.
8. The current proposal is the same as the earlier scheme but proposes a legal agreement to prevent future occupants from owning cats and dogs, preventing the completion of a dwelling for which planning permission has been granted and which is also within 400m of the Special Protection Area, and securing a financial contribution towards mitigation of potential harm to the Special Protection Area.
9. For a planning obligation to carry weight it must be reasonable and enforceable⁴. In the case of the obligation preventing future occupants from owning cats and dogs, I consider that such a restriction would not be reasonable because it could not, in any practical way, be enforced by the Council. Cats are not required to be licensed and periodic inspection of the site, which itself would be an unduly onerous responsibility on the Council, would not necessarily detect such a pet. I therefore give this obligation little weight.
10. The planning obligation preventing the completion of the dwelling permitted on land adjacent to Vale Furnishers⁵ would result in no net additional dwellings being located within 400m of the Special Protection Area. I accept this site is some distance from the appeal site and is unrelated to it other than through the submitted planning obligation. However, the fact that the two sites are some distance from one another does not prevent the benefit of offsetting one residential dwelling for another resulting in there being no net new dwellings within 400m of the Special Protection Area. This would satisfy the relevant core principle of the avoidance strategy.
11. The obligation would not prevent a new application from being submitted for residential development on the Vale Furnishers site in the future. However, such a development would require planning permission, and the Council would therefore retain control over how that site might be developed. The unilateral undertaking would be a charge on the land and would be a material consideration were any such proposal to come forward. I note the site of the permitted dwelling at Vale Furnishers could potentially have an alternative role

² 18/P/01112

³ APP/Y3615/W/18/3212690

⁴ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, as amended.

⁵ 18/P/01221

as additional car parking. This would require planning permission but indicates that in principle the land need not necessarily remain vacant and could have a beneficial use.

12. The consequence of the obligation would be that the proposed development would have a neutral impact on the integrity of the Special Protection Area. I therefore give this obligation weight in my decision.
13. The third obligation in the legal agreement secures financial contributions towards mitigation of recreational pressure on the Special Protection Area. The contributions would help fund the provision of suitable alternative natural green space and implementation of a strategic access management and monitoring plan. The site is within 700m walking distance of the Special Protection Area by the most direct route. Future occupants may choose to visit the Special Protection Area on occasion and the contributions would go towards mitigating any such recreational pressure as well as providing or improving alternative green space. I therefore give this obligation weight in my decision.

Appropriate assessment

14. For development that has the potential to have a significant adverse effect on the integrity of the Thames Basin Heaths Special Protection Area, the Conservation of Habitats and Species Regulations 2010 requires me to carry out an appropriate assessment.
15. The development could potentially have an adverse effect on the Thames Basin Heaths Special Protection Area because of its proximity to that area, its ecological interest including rare ground nesting birds, the potential for their predation by pet cats and disturbance through informal recreation. Because of the intervening railway line and canal, Natural England considers the potential for predation to be so small that a significant adverse effect is unlikely to occur in this instance. While acknowledging this view, I accept the view of the previous Inspector and the Council that even given these intervening barriers, predation could not be ruled out. Taking a precautionary approach, and when taken in combination with other residential development within proximity to the Special Protection Area, this adverse effect could be significant.
16. However, because of the planning obligation preventing the completion of another dwelling within 400m of the Special Protection Area, the development would result in no net new residential accommodation within the inner zone of influence. This is an important difference to the earlier scheme which was dismissed on appeal. Although I consider that owning pet cats cannot be controlled by an obligation for the reasons given above, the permitted dwelling at Vale Furnishers also had no such controls, and so the potential for pet ownership balances out. Lastly, the obligation securing contributions towards recreational management of the Special Protection Area and the provision of alternative natural green space would help mitigate any recreational pressure resulting from the new dwelling.
17. I consider the obligations that secure no net new residential accommodation within 400m of the Special Protection Area, and mitigation of recreational pressure from residential development within a wider zone of influence, when taken together would prevent any significant adverse harm being caused to the ecological integrity of the Special Protection Area. The circumstances of the development, in particular the offsetting of the development against one that

already has extant planning permission but has not been implemented, would prevent this case setting a precedent for general residential development within 400m of the Special Protection Area.

18. I conclude that, subject to the unilateral obligations noted above, the development would not have a significant adverse effect on the Thames Basin Heaths Special Protection Area. It would therefore accord with Policy P5 of the Guildford Local Plan: Strategy and Sites 2015-2034, Policy NE4 of the Guildford Borough Local Plan 2003, and Policy NRM6 of the South East Plan 2009, which all seek to protect the integrity of the Special Protection Area.

Other Matters

19. Several concerns have been raised in representations from neighbouring occupants including surface water drainage, loss of daylight, access to the site and wildlife.
20. In so far as these matters are material to the proposed development, I note that the Council does not consider them to amount to reasons for refusal. Having inspected the site I share that view. While a new dwelling on the site will inevitably be seen from and have some effect on light and aspect to the neighbouring dwellings, that effect would not be so significant as to justify withholding planning permission. Surface water drainage from the new buildings is a matter controlled under the Building Regulations. I have no evidence to suggest that rare or protected species are present on the site, which on my site visit was largely clear of vegetation.
21. Access would be gained along an unmade track running along the rear of properties fronting Frimley Road, and from which other properties to the rear gain access, including The Willows. I note that vehicles would have to stop partly on the access road to enable gates or garage doors to be opened, and turning is likely to take place in the turning head adjacent to the site. However, these types of vehicle movement are not unusual for a residential access such as this and would not result in the access being obstructed other than momentarily while a vehicle was manoeuvred. I consider the access arrangements to be acceptable.
22. The Council has confirmed the land registry title on the appeal site but has declined to do so for the land at Vale Furnishers. I consider the failure of the Council to undertake this duty⁶ should not prejudice the appellant, who has submitted a valid undertaking. I shall therefore take the ownership of that site at face value.

Conditions

23. I have considered the conditions suggested by the Council and imposed them where they meet the tests set out in paragraph 55 of the National Planning Policy Framework, subject to rewording in the interests of clarity and consistency.
24. In addition to the standard time limit a condition specifying the approved plans is necessary in the interests of certainty. A condition controlling external materials is necessary in the interests of the appearance of the building. I have modified the wording suggested by the Council to require approval of details

⁶ Procedural Guide: Planning Appeals - England, Annex N, March 2021.

rather than matching with the existing dwelling as the proposed buildings are of different design and the approved plans indicate a different finish may be appropriate.

25. I have imposed conditions requiring improved energy, water efficiency and the installation of an electric vehicle charging point in the interests of the sustainable development objectives in the Local Plan.
26. I have imposed a condition requiring the provision of the parking and turning area on the site to minimise the need for off-site parking and turning. I have included a condition requiring provision of space for waste and recycling bins to encourage recycling of domestic refuse.
27. I have not imposed a condition requiring a construction management plan as paragraph 55 of the Framework advises that pre-commencement conditions should be avoided unless there is a clear justification. As the development is modest in size, I see no clear justification to do so in this case.

Conclusion

28. For the reasons given above I conclude that the appeal accords with the provisions of the development plan, and there are no material considerations that indicate an alternative decision should be made. I therefore conclude that the appeal should be allowed.

Guy Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18/19/013/1 Rev B, 18/19/013/2 Rev B, 18/19/013/3 Rev B.
- 3) No development above slab level shall take place until details of materials to be used in the construction of the external surfaces of the dwelling and garage hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) No development above slab level shall take place until an energy statement has been submitted to and approved in writing by the Local Planning Authority. The energy statement shall include details of how energy efficiency will be addressed identifying the target carbon emissions rate for the development and how a minimum of 20% reduction in carbon emissions against the target carbon emissions rate will be achieved. The approved details shall be implemented prior to occupation of the dwelling hereby permitted.
- 5) The dwelling hereby permitted shall comply with Regulation 36 2(b) of Part G of the Building Regulations 2010 (as amended) to achieve a water

efficiency of 110 litres per person per day. Prior to occupation of the dwelling hereby permitted a copy of the wholesome water consumption calculation notice pursuant to Regulation 37(1) of Part G of the Building Regulations 2010 (as amended) shall be provided to the Local Planning Authority to demonstrate that Regulation 36 2(b) has been met.

- 6) The dwelling hereby permitted shall not be occupied until space has been laid out within the site in accordance with plan 18/19/013/1 Rev B for vehicles to be parked. The parking and turning area shall thereafter be retained and maintained for its designated purpose.
- 7) The dwelling hereby permitted shall not be occupied until a fast charge socket (minimum requirement 7kw Mode 3 with type 2 connector – 230v AC 32 amp single phase dedicated supply) has been installed on the site.
- 8) The dwelling hereby permitted shall not be occupied until details of the storage of waste and recycling bins have been submitted to and approved in writing by the Local Planning Authority. The details shall be implemented prior to occupation of the dwelling hereby permitted and thereafter retained.

***** End of Conditions *****