
Appeal Decision

Site visit made on 19 October 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/N1730/W/21/3275624

Land to the north of Moorhen Close, Blackwater, Camberley GU17 0SA

- 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 Assets Management Group Ltd against the decision of Hart District Council.
 - The application Ref 20/03038/FUL, dated 9 December 2020, was refused by notice dated 22 March 2021.
 - The development proposed is the change of use to residential and the erection of a 4 bedroom detached house with habitable loft space, integral garages and associated access off Moorhen Close.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hart District Council against Assets Management Group Ltd. This application is the subject of a separate Decision.

Procedural Matters

3. The National Planning Policy Framework was revised in July 2021 (the Framework). Both parties have had the opportunity as part of the appeal process to refer to it.

Main Issues

4. The main issues are:
 - Whether the site provides a suitable location for housing having regard to local and national planning policies.
 - Whether the site provides a suitable location for the proposal having regard to flood risk.
 - The effect of the proposal on protected trees.
 - The effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA).
 - The effect of the proposal on other biodiversity.
 - Whether a suitable access would be provided.

Reasons

Location

5. Policy SS1 of the Hart Local Plan (Strategy and Sites) 2032, April 2020 (LP) sets out the spatial strategy and distribution of growth for development in the district. This indicates that new homes will be provided by existing commitments, permitting development within defined settlement policy boundaries, allocations in the plan or through neighbourhood plans. New homes outside of settlement policy boundaries are permitted where development would accord with specific policies in the LP covering rural exception sites and essential housing in the countryside.
6. Policy NBE1 specifies the types of development permitted in the countryside. The explanation for the policy outlines that a more restrictive approach is taken in recognition of the countryside's intrinsic character and beauty. As such, only developments expressly listed as exceptions in the policy are supported.
7. The Council confirm that, despite being adjacent to modern residential development, the appeal site lies outside of any settlement policy boundary in the LP, and I have not seen evidence to show otherwise. Neither is it part of the appellants' case that the proposal would meet any of the exceptions listed in policy NBE1.
8. My attention is drawn to a speech made by the Prime Minister on 30 June 2020 described as the "Build Build Build" speech which the appellants' contend should outweigh the local policy. Whilst the specific text relied upon is not supplied, the speech was strategic in nature setting out the general direction of government policy across a broad spectrum of subjects. Amongst other things it set out how it is intended that the country will recover economically from the consequences of the Covid 19 pandemic. Its generic nature would therefore not lend itself to being directly applicable to individual development proposals.
9. Moreover, since the speech was made, the Government has issued the revised Framework. Paragraph 1 confirms that it is this document that sets out the Government's planning policies for England and how they should be applied. Paragraph 2 reiterates the statutory requirement that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Other statements of government policy may be material but given that the Framework is more recent and specific than the speech referred to, it carries greater weight in my determination. On this basis, and with regards to the circumstances of the appeal proposal, the general direction outlined by the Prime Minister carries little weight and would not outweigh the development plan policies, nor national policy in the Framework.
10. It is stated that the proposal would provide a self-build dwelling for a family living locally who have young children. Hence, it would be beneficial to the intended occupants, and self-build dwellings are generally encouraged by the Framework. Nevertheless, these factors are not listed as reasons to depart from the controlled approach to residential development in the countryside in the spatial strategy of the LP, and it is not shown that they have paramouncy over the adopted spatial strategy.
11. Reference is made to the site being overgrown and subject to litter and trespassing. However, my observations of the site were that its prevailing

natural appearance was not objectionable. It seems likely that incidents of problematic littering and trespass could be reasonably addressed through other means than development of the site. These factors therefore attract little weight in my determination.

12. Accordingly, I find that the appeal site would not provide a suitable location for housing having regard to local and national planning policies. Hence, it would conflict with the spatial strategy for the district and limited circumstances whereby residential development is supported in the countryside set out in policies SS1 and NBE1 of the LP respectively.

Flood Risk

13. The appellants consider¹ that the site lies within Flood Zone 1 and is therefore suitable for residential development. However, the site is approximately 35m to the east of Cobbetts Stream and the Environment Agency flood map² shows that most of the site lies within Flood Zone 3, the highest category of flood risk. This is acknowledged in the submitted Flood Risk Assessment (FRA)³ but it goes on to refer to modelling undertaken by a third party and reported in a FRA submitted to support development of the adjacent Clarks Farm site in 2011. It relies upon that information to suppose that the appeal site should also be considered as Flood Zone 1.
14. Nevertheless, I have concerns regarding the soundness of that conclusion. Firstly, the modelling relied upon relates to a separate site, which is likely to have different topography to the appeal site and so the results of the modelling undertaken are not necessarily directly transferable. My observations were that in comparison to nearby dwellings, the appeal site was generally lower. Moreover, given the age of modelling undertaken in 2011, it was not undertaken with reference to more recent guidance pertaining to the appropriate allowances that should be made for climate change flood events. Therefore, I am not persuaded that the appeal site should be treated as equivalent to Flood Zone 1. My finding is reinforced by the comments of the Environment Agency⁴ who conclude that the FRA does not use appropriate data to assess the level of flood risk. Given their expertise, this carries considerable weight.
15. Paragraph 159 of the Framework stipulates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It further outlines⁵ the need for development to pass the sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding. If there are reasonably available such sites, then the development should not be permitted.
16. There is little before me to show that no reasonably available sequentially preferable sites capable of accommodating an additional dwelling exist. Consequently, on the evidence presented, the proposal would not pass the sequential test and would conflict with the Framework. In these circumstances, it is not necessary to go on to consider the exception test in paragraph 163 of the Framework.

¹ Paragraph 5.2.3, Appellants' Statement of Case

² Appendix 5, Council's Statement of Case

³ Prepared by Unda dated January 2021, pages 12-13

⁴ Environment Agency Written Statement dated 10.8.21

⁵ Paragraph 162

17. Residential development is classed as more vulnerable in flood risk terms and should be directed away from the appeal site to reduce the risk of harm from flooding. Accordingly, the proposal would conflict with policy NBE5 of the LP which sets out the approach to managing flood risk. It states, amongst other things, that development at risk from any source of flooding now and in the future, should comply with national policy including the sequential and exceptions tests where necessary.

Trees

18. The site is covered by an area Tree Protection Order. In addition to two groups of trees on the site, the tree information provided⁶ lists 5 mature and semi-mature trees. These include 3 tall hybrid black poplars and an oak tree of moderate quality and landscape value. My observations of the site were that collectively the trees at the appeal site made a notable positive contribution to the natural character of the land and were clearly visible from Moorhen Close. The taller trees were also visible from some distance away.
19. Paragraph 131 of the Framework states that planning decisions should ensure that existing trees are retained wherever possible. Similar provisions to conserve and enhance natural features, including trees are found in policies NBE2 and NBE9 of the LP. Policy NBE2 states that there should be no adverse impact to important local, natural and historic features such as trees.
20. Given the proximity of the proposed dwelling to the established trees on the site, I am not persuaded that there would be no adverse impact in this case for the following reasons. Firstly, drawing TPP 01 Tree Protection Plan shows the wide extent of the root protection areas of the three hybrid black poplar trees across the site. Consequently, the footprint of the dwelling would encroach into these areas, significantly so for tree 3 on the plan.
21. Whilst an arboricultural method statement has been submitted, this reveals how complex an operation it would be to construct the dwelling in these circumstances. Moreover, whilst the piled foundation method described⁷ would attempt to avoid severing more significant roots, it does not rule out severing other roots. It is reasonable to suppose that such actions would have at least some adverse impacts to the root system of the trees concerned. Moreover, it is not clearly shown what account has been taken to allow for the future growth of the trees, nor the varying ground levels that I observed across the site.
22. Furthermore, the proximity of the proposed dwelling to the trees would be likely to conflict with the canopy of at least some of the trees. It is proposed to crown lift two of the tall hybrid black poplars to allow for construction of the dwelling. Tree 3 would markedly overhang the dwelling which would be likely to increase the concerns of future occupiers in relation to safety, property damage and general seasonal debris. Such tensions would also necessitate more regular pruning which is likely to affect the landscape value of the tree.

⁶ Arboricultural Method Statement & Tree Schedule prepared by David Archer Associates, January 2021

⁷ Section 6

23. Additionally, it is proposed to fell a goat willow, crack willow and elder⁸, but it is not shown that suitable replacements could be accommodated elsewhere at the site. This would result in a reduction in overall tree cover.
24. Finally, the number, proximity and orientation of the trees relative to windows serving principal rooms, the north facing decked area and gardens means that some main rooms and large areas of the garden would, at times, be cast in shade. I have seen little evidence to support the appellants' contention that this would be confined to the late afternoon. In these circumstances, notwithstanding that specific consent would be required, it is foreseeable that there would be pressure from future residents to reduce the crown and branches, or even fell specimens in order to improve the functionality and levels of sunlight to the garden, decked sitting out area and the amount of light to principal rooms.
25. Taking these factors together, the development would be likely to have harmful consequences for the overall shape, long term future and visual qualities that the trees contribute towards the appearance of the wider area.
26. It is put to me that any pressure for tree works would already have occurred from the occupants of 6, 8 and 10 Moorhen Close and there is no history of this. However, I cannot agree as by comparison to the proposal, nos.6, 8 and 10 are further away and located to the south such that their rear gardens and principal rooms would be less affected.
27. Accordingly, I find that the proposal would have an unacceptable adverse impact on important trees contrary to policies NBE2 and NBE9 of the LP.

SPA

28. The appeal site is located within 5km of the SPA, a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for rare and vulnerable species of birds. In this case, the woodlark, Dartford warbler and nightjar. Recent caselaw⁹ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage.
29. In the absence of mitigation measures and using a precautionary approach, given the proximity to the SPA it is reasonable to suppose that future residents of the dwelling would potentially visit the Site for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. Notwithstanding that the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the SPA. This is reinforced by the findings of the screening exercise on the Habitats Regulations Assessment (HRA) provided¹⁰.

⁸ Table 1 – Tree removals and pruning, Arboricultural Method Statement & Tree Schedule prepared by David Archer Associates, January 2021

⁹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

¹⁰ Paragraph 3.4.2, Habitats Regulations Assessment prepared by David Archer Associates, dated November 2020

30. Paragraph 237 of the LP refers to the Thames Basin Heaths Special Protection Area Delivery Framework agreed by all the affected local authorities and Natural England which sets out the principles of avoidance and mitigation to avoid harm to the SPA arising from new housing development. These measures include the provision of mitigation through Suitable Alternative Natural Greenspace (SANG) and contributions towards Strategic Access Management and Monitoring (SAMM) measures.
31. The Council indicate that the proposal would fail the criteria¹¹ to access Council owned or controlled SANG, and I have little reason to find otherwise. As an alternative the appellants suggest that there is capacity in privately owned SANG. They state that there is provisional agreement to provide SANG with both Guildford and Crookham Park SANGs. However, I am not provided with the locations of either of those SANGs, and therefore it is not shown that they would realistically divert future occupants of the appeal proposal away from the SPA. Even if that were the case, no certain mechanism is in place by which the necessary mitigation would be secured in time to address the likely significant effect arising from the proposal.
32. In addition, paragraph 251 of the LP confirms that SAMM is funded through developer contributions. This is consistent with the tariff referred to in the HRA¹². There is no planning obligation or other method before me to show how this mitigation would be secured.
33. The favourable conclusions of the HRA highlighted by the appellants are expressly predicated¹³ upon securing contributions towards privately owned SANG within the district and payment of a SAMM tariff to the Council. In the absence of these mitigation measures it follows that there would be an adverse impact to the integrity of the SPA.
34. Accordingly, I find that the proposal would have a likely significant effect on the SPA. Therefore, it would conflict with policies NBE3 and NBE4 of the LP, and saved policy NRM6 of the South East Plan which seek to protect against such harm.

Biodiversity

35. The site forms part of the Darby Green Lakes Site of Importance for Nature Conservation (SINC). The citation for the SINC is for aquatic and marginal plant species and plant species of open grassland areas.
36. Aside from measures relating to the SPA, the Preliminary Ecological Appraisal¹⁴ that was submitted with the appeal recommended that due to the presence of nearby ponds, further surveys should be undertaken in relation to Great Crested Newts (GCN), a protected species. It further recommended additional surveys in order to establish the presence or absence of reptiles, some of which may be protected species.
37. A Natural England Mitigation Licence would be required if impacts to GCN breeding ponds or places of shelter and access to such places are considered likely. Additionally, if reptiles were found to be using the site, it is likely that

¹¹ Dated 1 October 2020, Appendix 4, Council's Statement of Case

¹² Paragraph 4.1.8

¹³ Paragraph 5.1.2

¹⁴ Preliminary Ecological Appraisal prepared by David Archer Associates, May 2021

further avoidance and mitigation measures would be necessary. However, the evidence before me does not include this further survey work. Therefore, there is no specific evidence to rule out harm to GCN or reptiles.

38. It further follows that there is no certainty as to whether appropriate safeguards are proposed, or are indeed possible, to adequately mitigate for the likely harm. As such, this would conflict with paragraph 179 of the Framework which generally seeks to protect and enhance biodiversity.
39. This is not a matter that can be appropriately made the subject of a condition, as the principle of the development would have already been permitted. To do otherwise would conflict with advice in Circular 06/2005 Biodiversity and Geological Conservation whereby the presence of protected species and the extent that they may be affected should be established before any planning permission is granted.
40. I therefore find that it has not been demonstrated that the proposed development would have no materially harmful effects on a protected species. On that basis the proposal would be contrary to policy NBE4 of the LP, which seeks to conserve and enhance biodiversity.

Access

41. It is reasonably clear from the drawings¹⁵ submitted that pedestrian and vehicular access are intended to be taken from Moorhen Close, an existing estate road serving other dwellings nearby. The Council does not raise substantive concerns in relation to the merits of the proposed access but does have a procedural concern relating to the ownership of the road, rights of access and the extent of the red line plan submitted. On that basis, they are concerned that the site could be landlocked with no practical means of access which would be contrary to the requirements of policies NBE9 and INF3 of the LP that development provides safe, suitable and convenient access for all users. Similar provisions are made in paragraph 110(b) of the Framework.
42. The appellants' have provided correspondence and a plan indicating that they have been communicating with the owner of Moorhen Close to acquire an easement. The evidence¹⁶ before me suggests that the owners would accede to grant the right of way and a deed has been prepared to that effect but would only be completed in the event of planning permission being granted. This provides reasonable assurance that the access points intended would function to serve the development, and I have not otherwise seen technical evidence to indicate that they would be unsafe or unsuitable.
43. The Council contend that the normal procedural requirement to give owners notice of planning applications made concerning their land has not been served in this case. I have had regard to Planning Practice Guidance¹⁷ which gives advice on the level of information necessary to make a valid application for planning permission. This does refer to the red line on the location plan including the land required for access to the site from a public highway. However, I note that concerns with the extent of the red line showing the route to a public highway was not one of the matters listed as necessary to make the

¹⁵ Proposed site plan drawing number A-005 Revision 01

¹⁶ Letter from Spencer, Skuse and Potter dated 7.4.21 and drawing no 001

¹⁷ Paragraph 024, Reference ID: 14-024 20140306

application valid when the Council wrote¹⁸ to the appellants upon receipt of the application. Furthermore, the Council subsequently validated the application and went on to make their determination.

44. One of the reasons for the guidance is to ensure that those who have an interest in land forming part of a planning application are made aware of the proposal and given an opportunity to comment. In this instance, given the apparent communication between the appellants and the owners of the road I am assured that the owners know of the existence of the planning application. No evidence has otherwise been provided to show that anyone with an interest in the land would be seriously prejudiced by my proceeding to determine the appeal.
45. Accordingly, I am satisfied that the proposal would provide a safe, suitable and convenient access and it follows I find no conflict with policies NBE9 or INF3 of the LP on that basis.

Other Matters

46. In making my determination I have had regard to the representations received, some of which supported the proposal. Most of these were generic in nature and do not lead me to find otherwise in relation to the main issues.
47. The appellants raise concerns that during the planning application some of the consultation responses were received beyond the statutory consultation period and gave little opportunity for them to respond. They further consider that the Council failed to enter into a constructive dialogue. Nevertheless, these procedural matters lie beyond the scope of this decision which I have made on the planning merits of the proposal.
48. In support of the proposal the appellants state that detailed construction management plans would be produced so to minimise inconvenience to nearby residents. Be that as it may, this would not address nor outweigh the harm I have identified above.

Conclusion

49. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁹. No compelling reasons have been shown to justify my determining the development other than in accordance with the adopted development plan.
50. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁸ Letter dated 6.1.21

¹⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.