



Appeal Decision

Site visit made on 22 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2022

Appeal Ref: APP/D3640/W/21/3279954

Land r/o 20 & 22 Junction Road, Lightwater GU18 5TQ

- 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 Longmynd Developments Ltd against the decision of Surrey Heath Borough Council.
 - The application Ref 20/0863/FFU, dated 23 September 2020, was refused by notice dated 26 February 2021.
 - The development proposed is Erection of detached dwelling and provision of associated parking and private amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The window to a room labelled as bedroom 3/study within the new dwelling is not shown as obscure glazed on the plans. However, obscure glazing is offered by the appellant, and it forms a reason for refusal on the Council's decision notice. Therefore, I have considered the implications of this as a main issue. The Council and appellant would not be prejudiced by this approach.
3. The Council's fourth reason for refusal refers to the absence of a contribution to mitigate the effects of the proposed development upon the Thames Basin Heaths Special Protection Area (SPA) in relation to recreational disturbance. The Council's Habitats Regulation Assessment and Appropriate Assessment also refers to effects upon the SPA and the Thursley, Ash, Pirbright and Chobham Special Area of Conservation (the SAC) through increased in traffic movements and therefore air pollution, on roads within 200m of the SPA and SAC. I have sought the views of the Council and appellant on this matter. The Council has clarified it has no concern about impacts from traffic movements, so I have considered the appeal on this basis.
4. The fourth reason for refusal cites the Thames Basin Heaths SPA Avoidance Strategy SPD (2019). Notwithstanding requests, I have been provided with the 2012 version of the document (the TSPD). I have assessed the proposal based on this version.

Main Issues

5. The main issues are:

- the effect of the proposed development upon the SPA;
- the effect of the proposed development upon the living conditions of the occupiers of No 18 Junction Road with particular reference to privacy;
- whether the proposed development would provide satisfactory living conditions for the future occupiers of the proposed dwelling with particular reference to outlook; and,
- the effect of the proposed development upon the character and appearance of the area.

Reasons

SPA and SAC

6. The appeal site lies within the 400m – 5km Zone of Influence (ZoI) of the SPA. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a project is likely to result in likely significant effects (LSE) on a European site (the SPA), a competent authority is required to make an Appropriate Assessment (AA) of its implications on the integrity of that site, in view of its conservation objectives. Any LSE from a development needs to be considered alone and in combination with other development in the area, adopting the precautionary principle.
7. The SPA is a network of heathland sites designated for their ability to provide habitat for internationally protected populations of rare Nightjar, Woodlark and Dartford Warbler (the qualifying features). The conservation objectives are to maintain and restore the extent and distribution of the habitats of the qualifying features, the structure and function and supporting processes of the habitats of the qualifying features, and the population and distribution of the qualifying features within the site.
8. The three bird species nest on the ground and at low level, and are disturbed and harmed by human activity, including recreational activities such as walking and dog walking. The TSPD states that developments taking place within 5km of the SPA alone and in combination, are likely to result in LSE on the SPA through occupiers accessing the SPA for recreational purposes, resulting in disturbance. If constructed the development would result in an increase in the number of people living within a short journey of the SPA. The TSPD states a net gain of 1 or more dwellings will be required to contribute towards avoidance measures, comprising a contribution towards a Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) endorsed by Natural England (NE).
9. The SAMM is a joint project that manages and monitors the impact of new development and visitors on the SPA including through measures such as increased wardening, equipment and materials. Contributions from developments are an important component of avoidance measures to off-set the LSE of each new development. The Council is understood to collect SANG contributions through its Community Infrastructure Levy, but the reason for refusal suggests SAMM contributions should be via a Legal Agreement.
10. I consulted Natural England (NE) in accordance with discharging obligations in undertaking an AA under Regulation 63(3) of the Regulations. No response was received. I am advised the SAMM contribution of £711 (for a 3-bedroom

dwelling) has been paid to the Council, and the Council considers the appellant has discharged its obligations in respect of the contribution, although the full details are not before me. I have sought further clarification upon this matter from the Council and the appellant.

11. The Council has confirmed that the contribution was made as a direct payment. Despite my request neither the Council or the appellant has provided certainty as to how the payment is legally secured against the landowner and successors in title, or that it runs with the land. Moreover, it is not clear if the payment is index linked to ensure the contribution covers the cost of mitigation at the time it is used. Therefore, I do not have sufficient certainty the mitigation is secured, or the payment would adequately mitigate the LSE on the SPA.
12. Applying the precautionary principle, based upon the evidence before me I cannot be certain the appeal scheme would not have LSE on the integrity of the SPA due to recreational disturbance. The appeal scheme makes no other provision to mitigate the impacts and thus maintain a favourable condition and the integrity of the SPA. For these reasons, the appeal scheme would fail to adhere to the conservation objectives. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SPA.
13. For the reasons set out above, I cannot be certain the proposed development does not conflict Policy CP14B of the Surrey Heath Core Strategy and Development Management Policies Document (2012) (the CS) and Policy NRM6 of the South East Plan (2009). Amongst other things these state that development will only be permitted where it can be satisfied the development will not give rise to likely significant adverse effects upon the integrity of the SPA. The development would also fail to comply with the Regulations, as well as paragraph 180 of the National Planning Policy Framework (2021) (the Framework) which states that where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

Privacy

14. The proposed detached dwelling plot would adjoin some perpendicular plots of dwellings fronting Junction Road, with the rear of the plot adjoining part of the side of the rear garden of No 18. The first-floor rear window of bedroom 3/the study would face directly towards the rear garden of No 18 at a distance of approximately 9.8m.
15. Principle 8.1 of the Residential Design Guide Supplementary Planning Document (2017) (the SPD) advises developments that have a significant adverse effect upon the privacy of neighbouring properties will be resisted. Paragraph 8.3 advises in considering privacy in rear spaces, the areas of particular sensitivity are the first 3m of private space behind a rear elevation. I viewed the rear garden of No 18. The 3m of space closest to the dwelling is private but constrained around the side/rear of a rear projection and a building, only providing sufficient space for limited functions. This means there is a greater value to the first 3m section of full width space past the outbuilding.
16. If the window to bedroom No 3/the study were to be clear glazed and/or fully opening, it would permit clear direct proximity views to and in the vicinity of an important section of the rear garden of No 18 beyond the garden building. The combination of the height, line of sight and distance would mean it would not

feel particularly private and feel overlooked. This distance is less than the 10.9m the Council previously found acceptable. The oblique angle and the longer distance to the more sensitive section of garden limits the effect from bedroom 2. Views from bedroom 3 would have a negative effect upon the living conditions to the occupiers of No 18.

17. Existing vegetation within No 18 provides some screening to the end of the garden, but not the area of garden immediately beyond the outbuilding, and it is not within the control of the appellant. Planting would be possible within the appeal site which when eventually sufficiently mature might provide sufficient screening. However, at a height and location sufficient to mitigate the effects, this might feel harmfully overbearing.
18. For the reasons set out above the proposed development would result in harm to the living conditions to the occupiers of No 18 with reference to privacy. It would conflict with Policy DM9 of the CS, which requires development respects the amenities of neighbouring occupiers. It would also conflict with paragraph 130f) of the Framework which requires that development provides a high standard of amenity for existing and future users.

Outlook

19. Principle 8.2 of the SPD which advises all habitable rooms in new residential development should maintain at least one window with adequate outlook. While the plans suggest bedroom No 3 could be a study, I am not provided with evidence such a condition would be enforceable. The suggestion to obscure glaze the window up to approximately 1.7m in height would be necessary to prevent harmful effects upon the privacy of the occupiers of No 18. However, with a sufficient degree of obscure glazing and opening only above 1.7m, this would provide a poor quality of outlook resulting in the bedroom space feeling an enclosed and oppressive space for the future occupiers of bedroom 3. Therefore, it would result in harmful and not provide satisfactory living conditions, for the future occupiers.
20. The Inspector for appeal Ref APP/J1860/W/16/3159700 acknowledged a large proportion of time in bedrooms would be spent sleeping, in permitting rooms with reduced outlook. However, the decision does not state space may be not used for other activities or functions for prolonged periods. Moreover, the findings in respect of outlook were in the context of the height and distance to retaining walls being of such a distance that outlook was sufficient not to be oppressive. This glazing would not provide any outlook to 1.7m in height.
21. For the reasons set out above obscure glazing and fixing the window to bedroom 3 to be non-opening to 1.7m would not provide satisfactory living conditions for the future occupiers of bedroom No 3 with reference to outlook. This would conflict with Policy DM9 of the CS which requires that development is of a high quality design. It would also conflict with paragraph 130f) of the Framework, the relevant provisions of which I have referred to above.

Character and appearance

22. The appeal site comprises an open verdant parcel of land making a positive contribution to the character and appearance of Windermere Road. The dwellings fronting Windermere Road comprise a variety of heights, side space, ages, materials, appearance, architectural styles, which are either detached,

semi-detached or in a short terrace, resulting in a rather mixed character and appearance. In this regard and the detailed design and appearance of the dwelling the Council does not raise an objection and based upon the evidence before me I see no reason to disagree.

23. The plot size is not unduly small to the degree it would be harmful. However, plot size and shape influence development layout. Principles 7.1 and 7.4 of the SPD advise setbacks should complement the street scene, those that erode character will be resisted, with new dwellings reflecting existing spacings.
24. Notwithstanding their differing appearance, the dwellings, particularly on the southern side of Windermere Road have a similar building line and front gap to the street. Particularly on the southern side the dwellings are predominantly split elevation, providing relief and maintaining a relatively open street scene. The flank elevation of No 22 Junction Road to the east is significantly closer to the highway boundary. Its perpendicular position fronting Junction Road, and the distance between the proposed dwelling, means it is not read in the same context as dwellings fronting Windermere Road.
25. The submitted plans differ to the extract in the Design & Access and Appeal Statement. The plans show that particularly the front hipped gable would be a significantly shorter distance from the street than those to the west and most others in the street scene. The part of the plot that is at a similar depth as those to the west, would be a full two storeys in height. From what I saw this differs from many on the southern side of the road, which are often split level, and the buildings immediately opposite which are single storey. The dwelling would also clearly breach the building line between No 22 Junction Road and Pen-y-Warc, so does not provide a particularly sensitive transition.
26. Given the building position, front plot depth, full two storey height, width, bulk, and massing, the dwelling would appear dominant, somewhat cramped to the frontage. It would appear detrimentally out of keeping with and not complementary to the predominant character and appearance of Windermere Road, particularly those dwellings in which it is most closely viewed in the context of. This is not overcome or outweighed by it being a limited amount shorter than the ridge of Pen-y-Warc, or by any new hedge planting.
27. For the reasons set out above the proposed development would be harmful to the character and appearance of the area. It would conflict with Policies CP2 and DM9 of the CS, which amongst other things require development is of a high quality design that respects and enhances local character. It would also conflict with the advice in Principle B1 of the Lightwater Village Design Statement SPD (2007) and paragraph 130 of the Framework, which have similar objectives.

Planning Balance

28. I am informed the Council cannot demonstrate a 5-year housing land supply (HLS), although the precise magnitude of the current shortfall is not clear. However, as I cannot be certain the development would not result in harm to the integrity of the SPA, in accordance with paragraph 11d)i) of the Framework, the tilted balance does not apply.
29. The proposal would result in a small economic benefit during construction and once complete a small on-going spend in the local economy. Even if the HLS

position was acute, the benefits and contribution to supply from a single dwelling in an accessible location would be limited. As a small site it could be built out relatively quickly and it could make a more effective use of the appeal site. The evidence suggests that any overall ecological and landscape enhancements secured by planning conditions would be small. Overall, the benefits of the development are attributed limited weight in favour of the scheme.

30. Compliance with policies such as those in respect of internal and external space standards, plot size, footprint, density, spacing between flank elevations, layout, and the detailed design aspects are neutral matters in the balance. If I were to agree the development is compliant with policies in respect of matters such as access, parking provision and highway safety, and the living conditions of neighbouring and future occupiers (not relating to the main issues), and resource and energy efficiency, these would be neutral matters in the balance.
31. The development would be harmful to the character and appearance of the area, harmful to the living conditions of the occupiers of No 18 with reference to privacy and would not provide satisfactory living conditions to the future occupiers with reference to outlook from bedroom 3. These attract significant weight against the scheme. I also cannot be certain the proposed development would not harm the integrity of the SPA, which is a matter that attracts significant weight against the scheme. Therefore, the policy compliance and benefits of the development are significantly outweighed by the harm.

Conclusion

32. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR