



Appeal Decision

Site visit made on 10 January 2023

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/Y3615/W/22/3295775

Land adjacent to Cowshot Crescent, Brookwood, Woking GU24 0PD

- 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 Thamesway Developments Limited against the decision of Guildford Borough Council.
 - The application Ref 21/P/00992, dated 19 April 2021, was refused by notice dated 20 December 2021.
 - The development proposed is erection of a terrace of 5 dwellings.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the Thames Basin Heaths Special Protection Area (TBHSPA)

Reasons

3. Together Policy P5 of the Guildford Borough Local Plan 2015-2034 (2019) (Local Plan) and Policy NRM6 of the South East Plan (SE Plan) state that permission will only be granted for development proposals where it can be demonstrated that doing so would not give rise to adverse effects on the ecological integrity of the TBHSPA, whether alone or in combination with other development. If there would be a likely significant effect, measures to avoid and mitigate these effects must be put in place.
4. Both policies set an 'exclusion zone' 400m from the TBHSPA. Policy P5 of the Local Plan states that permission will not be granted for development that results in a net increase in residential units in this area. Policy NRM6 of the SE Plan adds that in exceptional circumstances, this may vary with the provision of evidence that demonstrates the extent of the area within which it is considered that mitigation measures will be capable of protecting the integrity of the SPA.
5. The TBHSPA supports important breeding populations of a number of birds, particularly nightjar, woodlark and Dartford warbler, ground nesting birds that are particularly vulnerable to predation and disturbance. The Appellant's Habitat Regulations Assessment states that the proposed development would result in disturbance to birds at the TBHSPA due to reasons including recreational pressure and disturbance and urbanisation. Although the effect from 5 dwellings would be small, when combined with other plans and projects there would be likely to be a significant effect on the protected site.

6. The Conservation of Habitats and Species Regulations 2017 therefore require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. I am therefore required to undertake an AA. This follows the approach of the Inspector in respect of the appeal at Rose Cottage¹.
7. Natural England objected to the proposal because of its location in the exclusion zone where mitigation measures are unlikely to protect the integrity of the SPA, so residential development should not be permitted.
8. The proposed development is for a net increase of 5 residential units. The houses would be a 150m linear distance from the TBHSPA, within the exclusion zone. This would result in an increased number of people living within the exclusion zone. Their immediate proximity to the TBHSPA, which is the closest area of semi-natural greenspace, means that occupiers of the proposed development are highly likely to use the TBHSPA for recreation. This would pose a significant risk of harm to the habitat, added to which there would be an increased risk of fires and fly tipping from any growth in population so nearby.
9. The nearest TBHSPA location is across Billesden Road and there can be no certainty that cats would not cross this road to reach Cowshot Common/Sheet's Heath. Restrictions on pet ownership, whether by means of planning conditions or through a lease, and would need to be in place in perpetuity, would be unreasonable and unenforceable. Furthermore, contributions towards the provision of SANG and SAMM² in accordance with the TBHSPA Avoidance Strategy SPD³, are unlikely to stop the proposed occupants who would live on the doorstep visiting the TBHSPA. They would therefore fail to be effective in preventing harm to the protected area.
10. Whilst the appellant is a housing partner who intends to deliver homes for intermediate rent, no mechanism to secure such an arrangement was provided with the appeal. The accessibility of the location is not a justification for building housing in an area that has been designated unsuitable because of its proximity to the TBHSPA when alternative sites outside the exclusion zone are likely to be available. Nor does it amount to an imperative reason for overriding public interest sufficient to overcome the harm to the site.
11. As such, and for the reasons explained above there would be adverse effects on the integrity of the features of a habitats site. This would conflict with Policy P5 of the Local Plan and Policy NRM6 of the SE Plan and the requirements of the Habitats Regulations.

Planning Balance

12. The proposal would provide 5 new homes in a reasonably accessible residential area. In the absence of a mechanism to secure them as affordable this would amount to a social benefit of only moderate weight. However, this benefit would not outweigh the significant harm to the integrity of the TBHSPA, which is protected for the international importance of its flora and fauna.

¹ APP/Y3615/W/18/3219330

² Suitable Alternative Natural Greenspace and Strategic Access Management and Monitoring

³ Thames Basin Heaths Special Protection Area Avoidance Strategy 2017 Supplementary Planning Document (2017)

Conclusion

13. The proposal would not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, this appeal should be dismissed.

H Miles

INSPECTOR