



Appeal Decision

Site visit made on 17 January 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Appeal Ref: APP/D3640/W/22/3295622

Ming Restaurant, London Road, Windlesham GU20 6PG

- 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 G Li against the decision of Surrey Heath Borough Council.
 - The application Ref 21/0855/FFU, dated 26 July 2021, was refused by notice dated 1 October 2021.
 - The development proposed is erection of 8 dwellings together with car parking and landscaping following demolition of existing restaurant building.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal:
 - On the integrity of the Thames Basin Heaths Special Protection Area; and
 - On the character and appearance of the area.

Reasons

Special Protection Area

3. The appeal site falls within the "Zone of Influence" for the Thames Basin Heaths Special Protection Area (SPA). This designation affects the heathland areas that provide habitats for three rare bird species: Dartford warbler, nightjar and woodlark. The conservation objectives for this SPA are focused on ensuring that the integrity of the area is maintained or restored as appropriate, and that the area contributes to the conservation of the above qualifying features and the aims of the Wild Birds Directive.
4. The SPA forms part of an extensive complex heathland. The area, which was once almost continuous, is now fragmented and is interspersed by urban areas. This makes this habitat particularly vulnerable to the effects of new development and urbanisation. All three bird species nest on the ground or at low level and so are easily disturbed or harmed by human activity. In particular, this includes recreational activity such as dog walking. Predation by domestic cats is also a risk factor, as is the potential for fly tipping and arson on the heathland habitat.
5. Without mitigation, new residential development in this area could therefore have a significant adverse effect on the sensitive features of the SPA, through increased recreational pressure, particularly when considered 'in combination'

with other plans and projects. Consequently, an Appropriate Assessment is required. The purpose of the assessment is to ascertain whether or not the proposal would adversely affect the integrity of the area.

6. Research conducted on behalf of Natural England¹ indicated that the existing level of recreational pressure is having a detrimental impact on the three species for which the SPA was designated. Accordingly, given the level of new housebuilding expected in the Thames Basin Heaths area, Natural England object to all planning applications for a net increase in residential development within 5km of the SPA, as developments for dwellings, where there is a net gain of one or more units, are considered to give rise to likely significant adverse effects to the SPA.
7. Although the previous use at the appeal site was principally commercial, there was living accommodation above the premises. That said, the proposal would result in a total of eight residential units and so a net gain of seven new dwellings at this site. In light of the evidence outlined above, the proposal would have a likely significant adverse effect on the integrity of the SPA, from this development alone, as well as in combination with other projects and plans, by reasons of increased recreational pressures on the designated area.
8. In order to allow housing development while still complying with the Habitats Regulations², a Joint Delivery Framework (JDF) for the long-term protection of the SPA has been agreed between Natural England and relevant local authorities. This recommends a combination of three avoidance measures to protect the integrity of the Thames Basin Heaths from the impacts of new residential development. These include the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) measures, that co-ordinate visitor management across the whole of the publicly accessible SPA.
9. The appeal site is outside the 400m buffer zone where no net new residential development should be permitted. However, the site is within 5 kms of the SPA and the JDF states that developments, where there is a net gain of one or more residential units, are considered to give rise to likely significant adverse effects to the SPA and will be required to contribute towards the avoidance measures outlined above.
10. The Council states that the requirement for mitigation in respect of the SANG would be payable through the Community Infrastructure Levy (CIL). The net gain in residential units in this case would qualify the proposal to take up capacity at the Council provided SANG. The limited capacity of these SANGs is being managed by the imposition of a condition requiring commencement of development within a year. Moreover, the proposal would be liable for CIL payments, and the adopted CIL Schedule in this area covers charges in respect to this matter.
11. In respect of the SAMM, the appellant indicates in the appeal statement that a legal agreement will be submitted during this appeal process. However, in final comments they state that the required payment towards the SAMM has been made directly to the Council, as such, they assert that there is no longer a need for a legal agreement.

¹ Ref: Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document

² Conservation of Habitats and Species Regulations 2017

12. The appellant has also submitted an image with their final comments which shows a payment to the Council. This payment is described as planning application fees and referenced SAMM Payment. The reference also matches part of the application reference, and the value of this payment matches the amount that the Council's evidence suggests is payable in respect to the SAMM mitigation. However, I find no further comments on this matter from the Council. Also, the limited information provided by the appellant does not provide certainty that this payment would be allocated to the SAMM measures required to mitigate the likely adverse effects of the proposal subject to this appeal. Consequently, the mitigation that is necessary to make this proposal acceptable in planning terms, is not in place.
13. The appellant describes this matter as a technical objection. Be this as it may, despite the appellant indicating that they will provide the necessary mitigation in this case and having opportunity to do so through this appeal process, for the reasons outlined above no mechanism has been submitted as part of this appeal. As such I do not have certainty that this mitigation would be secured if I was to allow this appeal. On this basis, I cannot be confident that the development would not have a detrimental impact on the integrity of the SPA.
14. In light of the above, I find that the proposal would have likely significant adverse effects on the integrity of the Thames Basin Heaths Special Protection Area. In this regard it would be contrary to Policy CP14B of the Surrey Heath Core Strategy and Development Management Policies (Core Strategy). This states, amongst other things, that all new residential development within 5km of the Thames Basin Heaths Special Protection Area is considered to give rise to the possibility of likely significant effects, and also requires such proposals provide appropriate measures to avoid adverse effects upon the Thames Basin Heaths Special Protection Area in accordance with the Borough Councils adopted Avoidance Strategy.
15. It would also be inconsistent with Policy NRM6 of the South East Plan and the Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document in respect to this matter.

Character and Appearance

16. The appeal site is a large plot comprising a former restaurant and associated carpark. The now redundant large building at the site fronts London Road and roughly aligns with a mix of detached and semi-detached dwellings. These neighbouring dwellings form a short row, and they have a common front building line and long relatively narrow plots. Also, unlike the appeal property, they are accessed by a side road, and are largely screened by the vegetation on a verge that fronts London Road. As such, in its immediate context, the appeal site, with the features described above, appears set apart from the neighbouring dwellings in this street scene.
17. The built form in this immediate area is generally two storey dwellings. However, the design of these dwellings varies, as does the space between them and consistency in this part of the street scene is principally derived from the traditional architectural styles and shapes of the built form.
18. The built form in the wider area along London Road is sporadic, well-spaced with several green spaces. As such, although it is a main road, London Road, has a verdant character. However, I saw that the appeal site is in a relatively

concentrated wedge of residential development on the south side of London Road, between School Road and Snows Ride, and this concentration of development has a suburban quality in terms of its density and layout of development. The wider context for the appeal site is therefore a mix of characters, and the appeal site, with a large building in a largely unscreened plot, currently appears an anomaly in this verdant yet edge of settlement location.

19. The redundant building would be replaced by an apartment block comprising six separate units. Communal green space would be provided to the front and rear of the block. There would also be two large-detached dwellings with garages and rear private gardens, located behind the block. The residential units would be accessed by a single access on to London Road. There would be three parking spaces to the front of the apartment block. However, the majority of parking spaces would be located to the rear of the block with the turning space for vehicles mainly contained within this central section of the plot.
20. The apartment block would be set forward of the existing building that it would replace and forward of the common building line of the dwellings to the east of the site. However, similar to those existing dwellings, it would be stepped back from the road with space and landscaping features to the front, and in these regards, it would not appear out of character with the general pattern of development fronting this part of London Road.
21. Comprising a mix of one and two bedroom apartments, the apartment block would result in a higher site density than is the case in existing surrounding plots. However, this is a larger than average plot in this area. Moreover, even with the new block having a larger footprint than the former restaurant and with two new dwellings, the plans show the proposed increased density would be accommodated with a reasonable ratio of building footprint to open space in the site. As such, even with a higher density, a good amount of space would remain in the plot, and in this regard the development would be reflective of character in this part of the settlement.
22. A combination of factors contributes to the above findings, as follows. Although, the width of the new block would reduce the space between the new built form and Glenhurst to the west, the new block would be flanked by the large rear garden of that property. There would also be a considerable space retained between the new block and the side boundary of Madison to the east such that the new addition would not appear cramped in this locale.
23. Also, the proposed dwelling at plot 7 would be visible at the retained gap between the new block and Madison. However, while this new dwelling would be three-storey in height, it would be located on sloping land and set at the rear of the large plot, so that it would not harmfully interrupt the retained space between the new block and Madison. Moreover, the proposed built form would be well-spaced in the appeal plot, with substantial sections retained for gardens, landscaping and parking. These relatively undeveloped sections would ensure that a sense of space would be maintained and that the site would not appear incongruously overdeveloped when viewed from London Road or in the wider context.
24. The apartment block would introduce a different type of residential property than currently exists in this immediate vicinity. Be this as it may, the design of

- the block is of a traditional style, which includes chimneys, front gables, dormers and a hipped roof. With these features, it would be consistent with the prevailing architectural style of built form in the area.
25. Although, the apartment block would be larger than neighbouring properties, the proposed third-floor units would principally be contained in the hipped roof space of the block, and as such the new block would appear only slightly higher than the surrounding properties. Also, the block's gable ends would visually break the appearance of the proposed mass such that it would blend both in scale and shape with the surrounding existing built form and would not have an overly dominant presence in the area. The improved landscaping at the front of the block would also soften the appearance of the mass and this would contribute to the verdant character of this part London Road.
26. The proposed detached dwellings would have minimal street frontage and their respective plot depths would be shorter than neighbouring dwellings to the east and west. However, the new dwellings' garden spaces would not be significantly smaller than the gardens of the properties at the rear of the appeal site on Rosslea. In addition, while these dwellings would be three storeys, they would be on sloping ground so that they would not appear significantly taller than the existing two-storey dwellings on London Road.
27. The proposed second-tier plot layout is not a common feature in this area. However, as the appeal site is somewhat set apart from the properties to the east on London Road due to its unique features, this variation in layout would not harmfully disrupt the linear plot form of this short row of existing dwellings. Furthermore, this unusually large site is also bounded by dwellings that address different roads to the west and south, and with this wider context the proposed layout of development would not appear harmfully discordant at this locale.
28. In summary, the proposal would make efficient use of the large plot while ensuring that the design of the new development would be sensitive to the architectural tradition of the area. The scheme would include some features that would differ from the type and pattern of development in the immediate area. However, the proposed layout would retain considerable space so as to avoid the harmful overdevelopment of the site. Furthermore, given the anomalous character of the appeal site and its mixed character setting, I find that the limited variation proposed in this case would be readily absorbed without harmfully disrupting the rhythm of the existing surrounding development and the leafy character of the wider area.
29. I therefore find that the proposal would not harm the character and appearance of the area. In this respect, it would not conflict with Policies CP2 and DM9 of the Core Strategy and Policies WNP2.1 and WNP2.2 of the Windlesham Neighbourhood Plan. These collectively require that developments are of a high quality design, and amongst other things, ensure land is used efficiently within the context of its surroundings.
30. It would also be consistent with the National Planning Policy Framework (the Framework) and advice of the Surrey Heath Residential Design Guide Supplementary Planning Document which seek well-designed places.

Other Matters

31. Concerns have been raised by local residents and other interested parties regarding matters which include the effect of the proposal of neighbours' living conditions in respect to outlook, privacy, light, noise and smell. These parties have also raised concerns about accuracy of submitted plans, the proposed provision of on-site parking and highway safety. However, as I am dismissing this appeal on other grounds it is not necessary to consider these matters further in this case.
32. I note the appellant's comments regarding housing supply. The Council has provided evidence that demonstrates a five year housing land supply in this area. Even if this was not the case, Paragraph 182 of the Framework clarifies that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on habitats sites, unless an appropriate assessment has concluded that the plan or project would not adversely affect the integrity of the habitats site. I have found that the proposal would adversely affect the integrity of the SPA for the reasons set out above. Therefore, the tilted balance outlined in Paragraph 11 of the Framework is not relevant in this case, having regard to footnote 7 of that particular paragraph.

Conclusion

33. I have found that the proposal would not be harmful to the character and appearance of the area and would not conflict with the development plan in this regard. However, the proposal would have likely significant adverse effects on the Thames Basin Heaths SPA, either alone or in combination with other plans and projects. There is no mechanism before me in this appeal that provides certainty that the necessary mitigation measures to avoid the identified likely adverse effects on the integrity of the designated habitat area would be secured in this case. I therefore have no alternative other than to dismiss the appeal.

A J Sutton

INSPECTOR