



Appeal Decision

Site visit made on 2 May 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/N1730/W/22/3310028

10 Richmond Close, Fleet, Hampshire GU52 7UJ

- 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 Moogram House Ltd against the decision of Hart District Council.
 - The application Ref 22/01359/FUL, dated 20 June 2022, was refused by notice dated 26 August 2022.
 - The development proposed is erection of a new 3-bedroom detached bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effect of the proposal on:
 - The integrity of the Thames Basin Heaths Special Protection Area; and
 - The character and appearance of the area.

Reasons

Special Protection Area

3. The appeal site is in the "Zone of Influence" for the Thames Basin Heaths Special Protection Area (SPA). This SPA affects the heathland areas that provide habitats for internationally important birds, including three rare species: Dartford Warbler, Nightjar and Woodlark. These birds are particularly sensitive to disturbance from walkers, dog walkers and cat predation because they nest on or near the ground. 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. Natural England (NE) states that new residential development within this zone of influence is likely to have an adverse significant effect upon the qualifying features of the SAP, when considered either alone or in combination, due to the risk of increased recreational pressure resulting from this type of development. Therefore, proposals for residential development require an Appropriate Assessment. The purpose of the assessment is to ascertain whether or not the proposal would adversely affect the integrity of the area.

5. As the proposal would result in an additional residential unit in the zone of influence of the SPA, reflective of NE's guidance on this matter, without mitigation, the development would likely have a significant adverse impact on the SPA. NE has not objected to this proposal subject to suitable mitigation being secured. NE also state that measures to mitigate the likely impacts of residential development in the form of a strategic solution are in place in the area, and that this mitigation is considered to be effective.
6. This strategic mitigation solution includes 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. The Council state that there is SANG capacity available, but this is subject to the proposal's compliance with the development plan.
7. Even if the proposal was found to be compliant with the development plan in respect of other matters, the Council's guidance suggests that the SANG procurement should be through a S106 legal agreement. I note the appellant's comments regarding the Planning Committee's approach to this matter on a subsequent planning application at the appeal site. However, in the context of the proposal before me, the Council clarified, in its pre-application advice, that the mitigation would need to be in place at the time of determination of any application.
8. The appellant has provided a letter¹ confirming that they would pay the SANG tariff to access the Council owned SANG. The evidence presented in this appeal also states the appellant's willingness to enter into a legal agreement. However, no legal agreement has been submitted with this appeal. Consequently, the mitigation that is necessary to make the proposal subject of this appeal acceptable in planning terms, is not in place.
9. The appellant has drawn my attention to the Sweetman Court Judgment. This Judgment reinforces earlier court judgments in respect of the precautionary principle embedded in the Habitats Directive²; that is, a risk of significant effects exists if it cannot be excluded on the basis of objective information that the plan or project would have significant effects on the conservation objectives of a designated site. Without a completed legal agreement, there is no certainty that the mitigation necessary to address the identified likely significant adverse effects on the SPA would be delivered in this case.
10. The Council has suggested a condition to address ecology, but this is in respect of biodiversity in the appeal site, and is not related to mitigation for the impacts on the SPA. In any event a condition for the required SPA mitigation, outlined above, would unlikely satisfy the test for planning conditions as set out in Planning Practice Guidance and the National Planning Policy Framework. (The Framework) On the basis of the above, I cannot be confident that the development would not have a detrimental impact on the integrity of the SPA.
11. For the reasons outlined, 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 the proposal would be contrary to the Conservation of Habitats and Species Regulations 2017, Policies NBE3 and NBE4 of the Hart

¹ Ref: Letter dated 1 November 2022

² Ref: The Conservation of Habitats and Species Directive 2017

Local Plan (Strategy and Sites) 2032 (Local Plan) and Policy 17 of the Fleet Neighbourhood Plan (Neighbourhood Plan). These policies collectively state, that developments that have a likely significant effect on the ecological integrity of the Thames Basin Heaths Special Protection Area will be required to demonstrate that adequate measures will be put in place to avoid or mitigate any potential adverse effects, and that the measures must be based on a combination of Strategic Access Management and Monitoring and the provision and maintenance of Suitable Alternative Natural Greenspace.

12. The proposal would also be inconsistent with Policy NRM6 of the South East Plan in respect of this matter.

Character and Appearance

13. The appeal site is a part of an existing residential plot that comprises a semi-detached bungalow. The site is located in a residential cul-de-sac with a roundabout at its head. This roundabout is off set from the access road and also hosts trees. With these features it provides partial screening of dwellings at the end of the Close and this includes the appeal site.
14. Dwellings in the area are generally paired bungalows constructed in matching materials. Many dwellings in Richmond Close have been altered, and this includes a few dwellings being extended to the side close to the shared boundary. Despite alterations, the bungalows are unified by their traditional architectural style with hipped roofs and through consistency in materials. There is space between the respective paired bungalows, but these gaps are partially filled by detached garages. The gap between the appeal property and No 11 is notably larger than is common in the wider street scene.
15. The low profile of the dwellings and garages in the Close allow views of the trees at the rear of the properties. This creates a sense of spaciousness in the area. This spaciousness, the consistency of built form and the verdant features identified above contribute positively to this pleasant street scene.
16. The proposal would remove an existing garage at No 10 and replace it with a detached bungalow. Detached dwellings are not common in the area. However, the proposed design of the dwelling would be consistent with existing built forms in the area, in so much as it would be a modestly sized bungalow, a traditional architectural style with a hipped roof and would be constructed in materials that match surrounding dwellings.
17. The proposal would significantly fill the existing space at the side of No 10, and would be set close to that existing dwelling. However, the hipped roof of the proposed bungalow would retain a visual gap between the new dwelling and No 10 at roof height.
18. While the proposed dwelling would be close to the shared boundary with No 11, the dwelling would be next to the flat roofed garage at this shared boundary. Set against this relatively low profile existing structure, a sense of spaciousness, generally reflective of gaps elsewhere in the Close, would be retained near the appeal site. Furthermore, in addition to the gaps at the side of the proposed dwelling, there would be reasonable space to the front and rear of the dwelling such that it would be comfortably accommodated in the site, without the site appearing overdeveloped.

19. The depth of the proposed dwelling would be deeper than neighbouring dwellings. However, the proposed footprint would not be substantially larger than that of surrounding dwellings. Moreover, there would be limited views of the side of the proposed dwelling from the street given its end of cul-de-sac location. Also, the front elevation would be a similar width to the existing neighbouring semi-detach bungalows, and as already outlined the appearance of the proposed dwelling would generally reflect the appearance of other dwellings in the area.
20. The proposed dwelling would be set back from the front building line of Nos 10 and 11. However this would be by a small amount and, located at the curve of the road, this would not harmfully interrupt the common front building line of the wider area.
21. Also, the appeal site is partially screened from the wider street scene by the configuration of the round-about and its verdant features. As a result, the appeal site could absorb a degree of variation without disrupting the rhythm of existing pattern of development on the Close. In any event, consistent with the guidance set out in the Council's Urban Characterisation and Density Study, the proposed design features outlined above would be sensitive to the architectural uniformity in the area and would preserve the general character of the area. Furthermore, as with other properties in the area, the mature trees at the rear of the appeal site, would be largely visible in the Close, above the proposed bungalow, and therefore this important positive feature would also be retained.
22. For the reasons outlined above, I find that the proposal would not have a harmful effect on the character and appearance of the area. In this regard the proposal would not be contrary to Policy NBE9 of the Local Plan, Policy GEN1 of the Hart Local Plan (Replacement) 1996 - 2006 and Policy 10 of the Neighbourhood Plan. These policies collectively, amongst other matters, require that all developments should seek to achieve a high quality design and positively contribute to the overall appearance of the local area.
23. The proposal would also not conflict with the Framework or National Design Guidance which seek well-designed places.

Other Matters

24. The appellant states the appeal site is brownfield. However, the glossary of the Framework, in defining previously developed land, excludes land in built-up areas such as residential gardens. Even if this was not the case, although the Framework provides support for as much use as possible of previously developed land, this is except where this would conflict with other policies of the Framework. The proposal would conflict with the Framework in respect of habitat sites. This matter does not weigh in favour of the proposal for this reason.
25. The Council state that it is able to demonstrate a 5 year housing land supply and I find no compelling evidence to dispute this. The provisions set out in Paragraph 11 of the Framework are therefore not triggered in this case.
26. This aside, the proposal would make a small contribution to the Government's objective to significantly boost the supply of homes. It would provide a type of dwelling suitable for those with mobility issues which has some support in the

Local Plan as well as through comments made by the Fleet Town Council, subject to conditions.

27. Also, it would be an efficient use of land and as a windfall site it could be built quickly. The appeal site is in a built-up area, well related to services and public transport. There would also be some economic and social benefits through the construction phase of the development and from the future occupants supporting local services when the dwelling is occupied. The development could deliver on-site biodiversity net gain and energy efficiencies. However, these social, economic and environmental benefits would be limited given the small scale of the proposed development. Even when considered collectively, these benefits would not outweigh the harm identified in this case with regards the adverse impact on the SPA.
28. The Council has not raised concerns about the impact on living conditions. Highways matters are considered acceptable subject to conditions. I have also found no harm in respect of the character of the area. However, proposals should not have adverse effects on these matters and therefore these are neutral factors in this case.
29. The appellant has drawn my attention to a planning permission for a detached bungalow at the appeal site which has been granted during the process of this appeal.³ Although this is a material change at the appeal site, the presence of the planning permission does not address the issue, with regards to the impact on the SPA and the uncertainty regarding the deliverability of the mitigation required, in this case. This matter has not altered my findings in this appeal for this reason.
30. My attention has also been drawn to development plan policies that are not in dispute in this case. Be this as it may, I have found that the proposal would have likely significant adverse impact on the SPA for the reasons outlined above. In this regard, the proposal would conflict with the development plan when read as a whole.

Conclusion

31. I have found that the proposal would not be harmful to the character and appearance of the area. 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 site would be secured in this case. Having regard to the development plan and other material considerations, I therefore have no alternative other than to dismiss the appeal.

A J Sutton

INSPECTOR

³ Ref: Decision Notice 22/02554/FUL