



Appeal Decision

Site visit made on 24 October 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/T0355/W/22/3307946

The Frith, Brockenhurst Road, Ascot SL5 9HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Nicholas Daley (Concept Developments (Land) Limited) against the decision of the Council for the Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/01187, dated 29 April 2022, was refused by notice dated 12 August 2022.
 - The development proposed is demolition of existing buildings and the erection of 9 no residential apartments, including associated access, tree works, landscaping and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal submissions, the appellant has provided a copy of a completed agreement made pursuant to powers set out under section 106 of the Act (the S106 agreement). This includes planning obligations covering:-
 - i) mitigation provisions in response to the development's effect on the integrity of the Thames Basin Heaths Special Protection Area (the SPA); and
 - ii) carbon offset provisions, involving the payment of building emissions and lifestyle contributions as well as a shortfall contribution if found necessary following a performance review of the completed development.
3. I have had regard to these planning obligations in my assessment of the appeal.
4. Natural England (NE) has submitted comments on the appeal proposal and the planning obligations covering mitigation in response to the development's effect on the SPA. I have considered these comments as well as the Council's and the appellant's responses.

Main Issues

5. The main issues are (i) the development's effect on the integrity of the SPA, (ii) whether it would provide adequate outdoor garden space for its occupants, (iii) the effect on trees, (iv) the effect on the character and appearance of the area, and (v) whether the development would be designed so as to adapt to and mitigate against climate change.

Reasons

Effect on the integrity of the SPA

6. The SPA has been designated due to its population of nightjar, woodlark and Dartford Warbler, 3 internationally rare bird species. Additional housing has the potential to adversely affect these bird species due to an increase in local population and subsequent visits to the SPA for recreational purposes.
7. The Council's Thames Basin Special Protection Area Supplementary Planning Document Part 1 dated July 2010 (SPASPD) explains the local mitigation strategy to ensure new residences do not harm the integrity of the SPA. A zone of influence is defined measuring 5km around the SPA boundaries. The appeal site lies within the SPA zone of influence and the proposal would increase the number of residences on the site. As such, the development would increase the local population and potentially lead to more visits to the SPA. These may affect the populations of rare birds and so undermine the conservation objectives of the SPA. Likely significant effects on the integrity of the SPA cannot be excluded. Therefore, as the competent authority, I am required to conduct an appropriate assessment under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations).
8. The SPASPD's strategy to mitigate the effect of new residences involves the provision of suitable alternative natural greenspace (SANG) to draw recreational visits away from the SPA. Also, financial contributions are required towards strategic access management and monitoring (SAMM).
9. The s106 agreement requires confirmation to be provided to the Council that a legal contract has been entered into which secures the allocation and provision of SANG capacity. The s106 agreement identifies no specific SANG. The appellant has referred to SANG providers that are looking to provide SANG within the SPA zone of influence but the s106 agreement does not require a contract to be entered into with any particular party. The terms of the s106 agreement would not allow the proposed development to be occupied until the relevant SANG has been granted planning permission, has been provided and is open to the public.
10. The SPASPD only refers to the options of providing SANG as part of a development proposal or through a financial contribution towards a SANG provided by the Council. Therefore, the SPASPD and policy NR4 of the Council's Borough Local Plan 2022 (LP) offer no explicit support for the approach set out in the s106 agreement.
11. Moreover, NE have raised objection to the terms of the s106 agreement as it would, in effect, defer finding a definitive SANG solution until after planning permission is granted for the proposed development. The NE is concerned that this leaves uncertainty over whether adequate mitigation could be provided. It is suggested that the appellant should agree a contract with a SANG provider and refer to a specific SANG within any planning obligations.
12. I appreciate that the NE's suggested approach would require the appellant to make a financial commitment by entering into a contract with a SANG provider before any determination on the planning appeal. However, as part of an appropriate assessment I am obliged to consider the robustness and certainty of proposed mitigation measures. It is noteworthy that LP policy NR4 and policy

NRM6 of the South East Plan (SEP) state that mitigation measures to avoid potential adverse effects on the SPA must be agreed with NE. No such agreement exists. LP policy NR4 also states that a precautionary approach will be taken. Given this policy context and in the absence of firm details within the S106, I find insufficient measures are in place to secure appropriate SANG as mitigation against the likely significant effects of the proposal on the SPA.

13. The appellant has referred to other appeal decisions which it is claimed supports the approach to SANG provision as set out in the s106 agreement. However, with these other cases, it would appear that NE raised no objections to the proposed mitigation measures and how they would be secured. As such, different circumstances apply in this case and so the other decisions fail to significantly influence my views on the matter.
14. The s106 agreement includes a planning obligation that requires an appropriate financial contribution towards SAMM. In these regards, sufficient mitigation is firmly secured. However, the SPASPD is clear in stating that both SAMM contributions and SANG provision are required to ensure sufficient mitigation to address the potential harm to the SPA.
15. For these reasons, I conclude the development would adversely affect the integrity of the SPA and that the proposed mitigation measures are insufficient to ensure no harm would be caused. No case is made that there are no alternative solutions or imperative reasons of overriding public interest and compensatory measures. As such, the Regulations precludes the proposal from proceeding. Also, it follows the development would be contrary to LP policy NR4 and SEP policy NRM6. These require new development that is likely to have a significant effect on the SPA to include adequate mitigation measures that are agreed with NE.

Outdoor garden space

16. The existing building contains 4 apartments. Currently, there is a sizeable garden to the rear consisting of a small patio and a larger lawn and an area containing trees and bushes towards the rear of the plot. The proposed building would contain 9 apartments. It would extend a significant distance further back into the plot than the existing building so as to cover most of the open lawn.
17. Each of the ground floor apartments would be provided with their own terrace while the apartments on the upper floors would have balconies. However, these would be fairly small and I am unconvinced the ground floor terraces would be private as they would be easily overlooked by people using the proposed car park area or back garden. As such, it is likely that the residents of the development would use and rely upon the proposed communal outdoor area.
18. Most of the back garden that would remain following the development would be occupied by fairly dense trees and bushes. On my visit I saw there are small spaces that allow walking and sitting out amongst this vegetation. Even so, the area feels enclosed and overshadowed by the mature trees and bushes.
19. It is suggested residents may consider a shaded and secluded garden to be attractive. However, to my mind, a garden that consists mainly of a wooded area would be unusual. There would be no open space provided for typical garden activities such as sitting out in the sun, outdoor entertainment or for

most recreational purposes. This would be particularly unsatisfactory given that the communal area would be shared by 9 different households.

20. It is likely that any residents of the development would be aware of the nature and limitations of the available communal space prior to occupation. However, this does not take away from the aim of LP policy QP3 to achieve high quality design through a range of principles, including the provision of high quality private amenity space. This accords with the provisions of the National Planning Policy Framework (the Framework) that seek the creation of places with a high standard of amenity for users of properties.
21. The appellant has referred to an appeal decision where an inspector suggests that residents of a development would see trees as a pleasant leafy outlook that provides screening from surrounding properties. This appeal decision has not been submitted and so I am unable to draw accurate comparisons with the appeal scheme. In any event, the quote provided fails to address the issue relevant to this appeal as to whether the trees and vegetation would unduly affect the quality of the garden space so as to be unacceptable. As such, this previous decision fails to affect my views on the matter.
22. The Council raises a concern that the outdoor space would be inaccessible for residents. However, gaining access to the back garden from the proposed units would not be unduly difficult as it would be adjacent to the building and a lift would be provided to serve occupants of apartments on the upper floors.
23. Even so, for the above reasons, I conclude the development would not provide outdoor garden space of sufficient high quality to serve the occupants of the apartments. In these regards, it would be contrary to LP policy QP3 and the provisions of the Framework.

Effect on trees

24. The appellant's aboricultural and planning integration report identifies and classifies a number of trees on and near the appeal site. The Council's first concern relates to the effect of the building on a Scots pine tree identified as T37 in the appellant's report. It is rated as being of high quality and value and is subject of the tree preservation order. The appellant states the tree currently stands at 23m in height. The pine makes a noticeable and positive contribution to the natural feel and visual qualities of the area.
25. By reason of its tall trunk, the pine appears imposing when standing on the existing lawn. The rear wall of the existing building is set away from the tree with the open lawn in between. In contrast, the rear wall of the proposed building would be much closer to the pine so that it would have a marked effect on the outlook from the windows, balconies and terrace areas to the rear. The height of the pine and its proximity to the rear apartments would lead to an uncomfortable overbearing effect. Therefore, I envisage the development would give rise to additional and irresistible pressure to prune or even remove the tree in order to address residents' concerns over the effect on living conditions. From the evidence, I am unconvinced that such concerns would be appropriately addressed through minor pruning or normal tree management.
26. It is likely that any residents would be fully aware of the pine and its proximity to the building prior to occupation of any apartment. Even so, it does not follow that the pine would avoid an imposing effect. To my mind, the development

- would create a new and inappropriate relationship between a building and the Scots pine so as to indirectly threaten the T37 tree.
27. The Council is also concerned that the construction of the proposed building would damage T37's root system. However, the footprint of the building is shown to be just outside the identified root protection area. The appellant's evidence provides me with sufficient confidence that any root damage caused by construction works would not meaningfully undermine the well-being of the tree. Therefore, I find the development would not directly harm tree T37.
28. The Council also objects to the effect of the development on a tree identified as T2 in the appellant's tree survey report. This is another Scots pine rated as being of high value and subject to the tree preservation order. With this tree the concern relates to the potential harm caused by the proximity of proposed re-surfacing works. However, the pine is already surrounded by existing surfacing that does not appear to have unduly affected its growth. Through careful management, I am satisfied that the re-surfacing works could be designed and carried out so as to avoid harm to the trunk or roots of the tree and to enable future growth. Such measures could be reasonably secured through the imposition of an appropriate planning condition.
29. In summary, I find the proposal would not directly harm any tree worthy of retention. However, the proximity of the proposed building to the T37 Scots pine would introduce pressure for works to the tree that could indirectly threaten its well-being or require its removal. Therefore, my overall conclusion on the issue is that the proposal would have a harmful effect on trees. In these respects, it would not accord with LP policy NR3 and policy NP/EN2 of the Ascot, Sunninghill and Sunningdale Neighbourhood Plan 2011-2026 (NP). Amongst other things, these policies seek the retention of important trees.

Character and appearance

30. The appeal site lies in an area defined as villas in woodlands setting in the Council's townscape character assessment. This is a suitable description of the locality as the residential buildings tend to be large but set within trees and hedges so that they are not prominent within the street scene. The appeal property is unusual as it sits closer to Brockenhurst Road than most other buildings and it is seen from the highway through the access and gaps in the boundary vegetation. Even so, the trees on the site provide a verdant context to the building that is in keeping with the area. The boundary vegetation also ensures the building is not unduly prominent in the street scene.
31. The front of the proposed building would be a similar width as the existing and in a similar position. It would be slightly taller but the top floor would be within the roof space and so it would not appear excessively high. The front elevation would include a single doorway and its overall scale and proportions would reflect those of a large, detached house. When viewed from the front, the building's design would be consistent with other local properties.
32. The proposed building would be significantly deeper than the existing property when measured from front to back. As such, it would reduce the amount of open land on the site. However, the rear part of the building would be partially screened by the belt of trees and hedges alongside Brockenhurst Road. Even at times of leaf-fall, the trunks and branches of the trees would veil the building and so ensure it would not appear unduly prominent. Also, the highway rises

above the ground level of the appeal site as it approaches the junction with St Marys Hill. This means the full size of the building would not be readily apparent from the highway, even when seen through gaps in the boundary vegetation. The development would retain a sense of space and a natural treed environment that reflects local distinctiveness.

33. Furthermore, there are 2 apartment buildings slightly further along Brockenhurst Road from the appeal site. These are sizeable and have a noticeable effect on the street scene. Within this context, the introduction of a larger building than the existing on the appeal site would not appear incongruous. Also, the proposal would contain traditional architectural features that reflect the style of local development.
34. Consequently, I conclude the proposal would avoid unacceptable harm to the character and appearance of the area. In these regards, it would accord with LP policy QP3 as well as NP policies NP/DG1 and NP/DG2. Amongst other things, these policies seek to ensure schemes respect and avoid harm to local character. The Council's refusal reason also refers to NP policy NP/DG5 but this contains no provisions relevant to this main issue.

Design for climate change

35. LP policy SP2 requires development to incorporate a range of measures to adapt to and mitigate climate change. In response, the appellant's sustainability and energy statement sets out how energy efficiency measures, renewable energy generating facilities, electric vehicle charging points and water efficiency measures would be incorporated into the scheme. The Council has raised no objections to the inclusion of such features.
36. LP policy SP2 refers applicants to a number of supplementary planning documents. However, the policy does not refer to the Council's Position Statement on Sustainability and Energy Efficient Design March 2021 (PSSEED), which is mentioned in the Council's refusal reason. The PSSEED has been published to help ensure developments deliver on the requirements of national and local commitments towards climate change. However, it does not form part of the development plan. Also, it is noteworthy that the PSSEED was published before the adoption of the LP yet it is not referred to in LP policy SP2.
37. The PSSEED sets an aim for all new development to be net-zero carbon. Where this is not achieved a contribution towards a carbon offset fund is required. In this case, the proposal would not be net-zero carbon, despite the proposed measures outlined above. The S106 agreement includes an obligation for the necessary contribution to be made towards the carbon offset fund and so there is no conflict with the PSSEED.
38. Notwithstanding this position, the appellant contends that the measures to be incorporated in the development are sufficient to show compliance with LP policy SP2 and so the contribution towards a carbon offset fund is unnecessary. LP policy SP2 itself does not include a requirement for development to be net-zero carbon. Also, there is no requirement within the policy for contributions to be made towards a carbon offset fund.
39. The Council refers to recent appeal decisions that it says support the necessity for a contribution. However, I have not been provided with copies of these decisions and it is unclear whether the appellants in those cases disputed the

need for any contribution as with this appeal. I consider the failure to meet PSSEED requirements does not mean a proposal would be contrary to LP policy SP2. Given this context, I conclude the carbon offset contribution is not necessary in order to make the development acceptable in planning terms. Consequently, the planning obligation in this regard is not afforded positive weight in my assessment of the appeal.

40. For the above reasons, I conclude the proposal would be designed so as to adequately adapt and mitigate against climate change. It would accord with LP policy SP2 in these regards. Acceptability in these respects is a neutral factor in my overall assessment.

Other Matters and Planning Balance

41. For the reasons set out under the first 3 main issues, I find the proposal would be contrary to LP and NP policies. The scheme would not accord with the development plan when read as a whole. It follows to consider whether other factors justify allowing the appeal contrary to the development plan.
42. A response from the Council to another recent appeal indicates it is unable to demonstrate in excess of 5 years supply of housing land as required under the terms of the Framework. The information provided suggest a position of 4.69 years of demonstrable supply as of March 2023. I am also advised that the latest figures show delivery is substantially below the housing requirement for the previous 3 years. In such circumstances, footnote 8 of the Framework indicates that the provisions of paragraph 11(d) are relevant in the determination of this appeal.
43. However, I have found the development would adversely affect the integrity of the SPA. This constitutes a clear reason for refusing planning permission given the Framework policies that protect areas of particular importance. Therefore, the presumption in favour of granting planning permission as set out at paragraph 11(d) of the Framework does not apply.
44. Even so, the proposal would boost the supply of housing in a location where there is good access to facilities. Also, it would represent a small windfall site within a settlement and so the proposal gains support from paragraph 69(c) of the Framework. The scheme would lead to a modest increase in the number of units but nevertheless the benefits in these regards attract moderate weight in light of the identified shortfall in housing land.
45. The appellant claims the proposal would lead to an enhancement in the biodiversity value of the site. Any benefits in these respects would be limited given the scale of the development and the proposed enhancement measures.
46. Overall, I find the benefits of the scheme do not override the harm identified in respect of the first 3 main issues. As such, there is insufficient justification to grant planning permission contrary to development plan policies.

Conclusion

47. For the reasons given above, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR