



Appeal Decision

Site visit made on 9 July 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/Y3615/W/24/3336292

Land to the rear of 39 Culverlands Crescent, Aldershot GU12 6TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by A Kennedy against the decision of Guildford Borough Council.
 - The application Ref is 23/P/01796.
 - The development proposed is described as one residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle, an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or 'permission in principle' stage) establishes whether a site is suitable in-principle and the second ('technical details consent' stage) is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted.
4. Permission in principle has been sought for the erection of a maximum of one dwelling at the appeal site. For the avoidance of doubt, I have determined the appeal on that basis.
5. A decision on whether to grant permission in principle following a valid application must be made in accordance with relevant policies in the development plan unless there are material considerations, such as those in the National Planning Policy Framework ("the Framework") and the Planning Practice Guidance ("the Guidance"), which indicate otherwise.

Main Issue

6. Whether the proposal would be habitats development under Article 5B(1) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) ("the Order").

Reasons

7. Under the Order, permission in principle must not be granted for development which is habitats development. There is a specific process to deem what would constitute habitats development which I must assess.
8. As set out in the Guidance¹, habitats development is, amongst other things, defined as development which is likely to have a significant effect on a qualifying European site referred to as habitats sites in the Framework (either alone or in combination with other plans or projects).
9. The appeal site is located within the 400m to 5km buffer of the Thames Basin Heaths Special Protection Area ("the SPA"). The Council's adopted Thames Basin Heaths Special Protection Area Avoidance Strategy ("the AAS") states that the SPA is a designated European Site with internationally important habitat supporting a characteristic landscape and distinctive flora and fauna under threat and in decline.
10. The AAS confirms that the cumulative effect of further residential development up to five kilometres from these protected heathlands would have a significant effect on the heaths with populations of rare birds very susceptible to predation by cats and disturbance from informal recreational use such as walking.
11. It is incumbent on me to ensure that there are no likely significant effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The likely significant effects arising from the proposal need to be considered in combination with other development in the area adopting the precautionary principle.
12. Even though the appeal site is within land currently associated with 39 Culverlands Crescent, the proposed development would be for housing and considering its proximity to the SPA, there is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupants of this development. Any additional recreational pressure, such as walking and the keeping of pets has the potential to impact upon the integrity of the SPA. This additional activity is, either alone or in combination with other development in the area, likely to have an adverse effect on the European sites. The development therefore constitutes habitats development.
13. Guildford Borough Council has developed an avoidance and mitigation strategy to deliver the measures to address direct and in-combination effects of recreational disturbance on the SPA. The AAS details mitigation measures that would secure financial contributions via an obligation at a specified tariff per bedroom. Since these also include a range of measures such as education, communication, and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA.
14. However, the Guidance states that it is not possible for conditions to be attached to a grant of permission in principle². Planning obligations also cannot be secured at this stage³ and no obligation is before me. As a result, I am unable to conclude that the proposed development would not have an adverse

¹ Paragraph: 005 Reference ID: 58-005-20190315

² Paragraph: 020 Reference ID: 58-020-20180615

³ Paragraph: 022 Reference ID: 58-022-20180615

effect on the integrity of the SPA. As such, the proposed development would constitute habitats development and permission in principle cannot be given for habitats development as it would not comply with the Order.

15. Therefore, the proposal would conflict with the relevant provisions of Policy P5 of the Guildford Borough Council Local Plan Strategy and Sites (2019) and saved policy NRM6 of the South East Plan (2009). These, amongst other things, seek to ensure designated sites are protected from development that would give rise to adverse effects on their integrity.

Other Matters

16. I appreciate that other development may have been granted planning permission elsewhere in the local area. The details of these cases are not before me, so it is difficult to make reasonable comparisons. That said, it is likely that any other recent development which falls within the 400m to 5km buffer zone, should have demonstrated that it did not give rise to adverse effects on the integrity of the SPA. I have considered the appeal on this basis.

Conclusion

17. I have found that in the absence of a mechanism to mitigate the proposed development's impact, I am unable to conclude that it would not have an adverse effect on the integrity of the SPA. Consequently, the proposed development would constitute habitats development and procedurally permission in principle cannot be given for such development.

N Praine

INSPECTOR