
Appeal Decision

Site visit made on 24 May 2016

by R J Marshall LLB DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 July 2016

Appeal Ref: APP/N1730/W/16/3143436

113-115, Clarence Road, Fleet, Hampshire, GU51 1RS

- 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 Calidus Homes Ltd. against the decision of Hart District Council.
 - The application Ref 15/02402/FUL, dated 5 October 2015, was refused by notice dated 22 December 2015.
 - The development proposed is Demolition of existing buildings and erection of building containing 12 x 2 bed flats with associated car parking, cycle storage and bin stores. Re-submission of application reference 15/00969/FUL.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are: **first**, the effect of the proposed development on the character and appearance of the surrounding area; **second**, its effect on the living conditions of those at No. 117 Clarence Road with special reference to visual impact; and **third**, its effect on the ecological interests of the Thames Valley Basin Heaths Special Protection Area.

Reasons

Character and appearance

3. The appeal site fronts onto Clarence Road. This is a predominantly residential road not far removed from Fleet town centre. Residential development along this road is mixed with many 2 storey houses of varied age and styles but also with quite a few fairly recent 2 and 3 storey flats. Currently on the appeal site is a church comprised of a small Victorian style house at its south-western end that has been incorporated into a more modern building of a relatively low height and varied roof pattern. Opposite the site is a builder's yard. Adjoining the site to the north-east is Clare Court, a 1980's style development of flats with a 2 storey elevation to the highway and an extensive rearward projection. Adjoining the site to the south-west is No. 117 Clarence Road, a 2 storey Victorian style cottage.
 4. The proposed development is for a 3 storey block of flats broadly following the building line of the adjoining developments. To keep the height of the building down the upper floor windows have been set quite high up in the 2 frontage gables and elsewhere along the front elevation upper floor windows have been
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in fairly substantial part set into the roofslopes. Also to limit the height of the building the roof slopes would not extend upwards to create a ridge. Rather they would be truncated and an extensive flat roof area created. In addition the proposed building would appear to be sunk into the ground and thus the cill level of ground floor windows would be notably low. The result would be a squat and poorly proportioned building. And in oblique views of the building from the road the roof slopes would not disguise the fact that this would be a flat roofed development with a notably bulky roof compared to the adjoining properties.

5. The appellant has provided a range of examples of development in this road and the wider locality as justification for what is proposed. However, the apartment buildings in Albert Street are located in an entirely different context close to town centre buildings. An apartment block in Reading Road has a somewhat similar roof form. However, it is in a different main road context and is not an altogether successful design. Clare Court to the north-east of the appeal site has an extensive roof. However, with its double pitched and central valley the building height is kept down whilst ensuring a well proportioned development. Elsewhere in Clarence Road some of the flats have roofs without a ridgeline. However, in general the flat roof elements of these properties do not seem as extensive as they would be on the proposal before me and these flats are generally well proportioned. The varied roof form of much of the church building is out of keeping with the pitched roof housing in the area. However, at a relatively low height it does not appear too bulky. And it is appropriate for a building of this type to have a different appearance from housing in the locality.
6. Considerable thought has gone into trying to limit the visual impact of the scale of the proposed development on No. 117 Clarence Road. To this end lowering the height of the proposed building in comparison with an earlier scheme, and ensuring that eaves line of the nearest part of the proposed development matches that at No. 117, is of some benefit. However, this would be insufficient to prevent its greater bulk and depth appearing out of keeping when seen against this cottage. I have been referred to some developments along Clarence Road where there is a close relationship between new flats and housing. However, this has not always worked out particularly well and does not provide good guidance on what would be acceptable on the appeal site.
7. It is concluded that the proposed development would detract from the character and appearance of the surrounding area. Thus it would be contrary to Policies GEN4 and URB12 of the Hart District Local Plan Replacement 1996-2016 (LP) which require new development to improve the urban design qualities of towns and be sympathetic in scale, massing and height to adjoining buildings.

Living conditions

8. The proposed development would be sufficiently distant as not to appear unduly dominant seen from the rear garden of No. 117. Views from windows in No 117 towards the appeal site would be too oblique for the proposed development to appear overpowering when seen from within the house.
9. It is concluded that there would be no harm to the living conditions of those at No. 117 Clarence Road with special reference to visual impact. As such there

would be no conflict with LP Policies Gen1 and URB12 is so far that they seek to protect residential amenity.

Effect on Thames Valley Basin Heaths Special Protection Area

10. The appeal site lies within 5 km of a Site Special Scientific Interest (SSSI) which forms part of the Thames Basin Heaths Special Protection Area (TBHSPA). The TBHSPA, a European protected site, is an outstanding lowland heathland habitat with significant populations of protected bird species. Circular 06/2005 sets out how development affecting such sites should be considered. This establishes that if priority habitats or species on those sites would be adversely affected by a proposal, and there are no imperative reasons of overriding public interest sufficient to override the harm, then permission must not be granted.
11. It is the view of the Council, apparently accepted by the appellant, that the proposed development would, either on its own or in combination with other plans and projects, have a significant adverse effect on the TBHSPA in the absence of mitigation. There is no suggestion, correctly so given the high bar that needs to be met, that there are imperative reasons of overriding public interest that would outweigh this harm. The TBHSPA considerations are, therefore, potentially a substantial constraint on development and accordingly there is an avoidance strategy whereby developers may make a contribution towards Suitable Alternative Natural Green Space (SANG) and Strategic Access Management and Monitoring (SAMM). These SANG and SAMM contributions are devised to prevent harm to the TBHSPA that would otherwise occur and thus enable development to proceed.
12. At the time the application was determined no legal agreement had been entered into for SANG or SAMM contributions. The absence of such an agreement comprised one of the Council's reasons for refusal. The appellant has since provided a Unilateral Undertaking to make the SAMM contributions sought by the Council. As these contributions do not relate to infrastructure they are not affected by the 5 obligation rule referred to below and therefore may be taken into account. So in part the required mitigation would be provided. However, in itself it would not fully to fully mitigate the harm.
13. Turning to the provision of SANGs 5 or more planning obligations have already been entered into for the 2 local SANGs and, under the provisions of the CIL Regulations, further planning obligations cannot be used to allow the grant of planning permission. That being so the provision for a SANG payment in a Unilateral Undertaking cannot be accepted as a means of mitigating harm to the TBHSPA. The Council suggests that a way of overcoming this is, on developments of this size, to require developers to enter into a land transaction for an appropriate financial sum with the Council to obtain a licence to utilise part of one of the Council's SANGs in mitigation. The land transaction is, says the Council, an arrangement whereby the Council agrees to maintain part of the SANG in perpetuity. However, no such agreement appears to be in place and in any event there is no evidence that Natural England would find such an arrangement acceptable in terms of mitigating harm.
14. I have considered whether a negatively worded condition requiring that development cannot take place until the SANG agreement referred to by the Council has been entered into could be used. Such a condition has been suggested by both parties. I note the appellant's observation that such an

approach has been accepted on appeal and the submission of appeal decisions APP/Y3615/A/13/2200458 and APP/D3640/W/15/3028247 to that effect. However one decision is dated before current Government advice. And the other decision is difficult to square with advice in the Government's Planning Policy Guidance that such conditions are unlikely to be appropriate in the majority of cases. The advice goes on to say that in exceptional circumstances such a condition may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. However, I do not consider the development of the relatively small-scale proposed to be the complex and strategically important development to which the guidance refers. In any event, even were that not the case, my concerns on the lack of evidence from Natural England on the acceptability of the agreement suggested by the Council would remain.

15. In light of my findings above I conclude that there would be harm to the nature conservation importance of the TBHSPA. There would be conflict with LP Policies CON1 and CON2 on protecting the nature conservation value of protected sites.

Other matters

Matters raised in support

16. The appellant has provided a set of figures to show slow housing delivery post 2006. However, it is not alleged that there is a lack of a 5 year housing land supply and the Council has produced a detailed Housing Land Supply statement showing as at 1 October 2015 a 6.7 year supply of housing land. There is no evidence, therefore, to suggest that paragraph 14 of the National Planning Policy Framework (the Framework) is engaged.
17. That said the provision of housing is always advantageous and by being quite close to the town centre the site is well located in relation to facilities and public transport. The proposed development would be beneficial in helping the church to relocate.

Third party concerns

18. The proposed development would be too distant from nearby houses to cause harm through overlooking. There is no evidence that a lack of affordable housing should stand against the proposal. Nor any substantial evidence to support concerns on the adequacy of the proposed parking provision. And for development of this modest scale the level of traffic generated would not be high enough to cause highway danger/congestion or harm to residential amenity. The proposed parking at the rear of the site is located in a way relative to neighbouring properties that is not uncommon in urban areas and should not be detrimental to living conditions.

Presumption in favour of sustainable development

19. The National Planning Policy Framework (the Framework) contains a presumption in favour of sustainable development. The Framework says there are 3 dimensions to sustainable development: economic, social and environmental. The provision of a new dwelling, well located in relation to facilities and services, clearly brings some benefits in relation to these roles, albeit limited due to the modest scale of the proposal. There would also be

some social benefit in assisting the relocation of the church. Set against this would be the substantial environmental harm arising from the adverse impact on the character and appearance of the area and harm to the TBHSPA. And it is this that I find decisive. Seen in the round the proposal would not be sustainable development.

Conclusion

20. For the reasons given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR

Richborough Estates