



Appeal Decision

Site visit made on 23 January 2019

by **Martin Chandler BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2019

Appeal Ref: APP/Q3630/W/18/3210965

16 Hanworth Lane, Chertsey, KT16 9JX

- 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 Henry Cook, on behalf of Knoll House Developments Ltd against the decision of Runnymede Borough Council.
 - The application Ref RU.18/0526, dated 23 March 2018, was refused by notice dated 12 July 2018.
 - The development proposed was originally described as: 'Demolition of existing attached two storey house and rear garages. Erection of a two storey block of 12 one and two bedroom flats with rooms in the roof space, rear car parking, bin and cycle stores, and private amenity space. Modification of existing access off The Knoll and widening of a section of footpath to Hanworth Lane'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Knoll House Developments Limited against Runnymede Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The planning application was refused for a single reason that related to the effect of the proposal on the character and appearance of the area. However, due to the location of the appeal site within 5km of the Thames Basin Heaths Special Protection Area, this matter also has to be assessed. On this matter, the appeal was accompanied with evidence in relation to mitigation and during the course of the appeal, the main parties were given an opportunity to provide further comments on the effect of this mitigation. Any comments received have been taken into account in my reasoning.

Main Issues

4. The main issues are the effect of the proposal on:
 - i) the Thames Basin Heaths Special Protection Area (SPA); and
 - ii) the character and appearance of the surrounding area, with particular regard to the type of accommodation proposed.

Reasons

Special Protection Area

5. The appeal site is located within 5km of the SPA. Due to this location, the Conservation of Habitat and Species Regulations 2017 (the Regulations) places a duty on competent authorities, before deciding to give permission for a plan or project which is likely to have a significant effect on a European site, to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives.
6. The Council have adopted Supplementary Planning Guidance (SPG), dating from 2009, in relation to the SPA. This states that the SPA comprises an area of lowland heath and woodland and is designated because of the presence of breeding populations of three bird species: Dartford Warblers, Woodlarks and Nightjars. These birds are particularly susceptible to predation of adults, chicks and eggs and to disturbance from informal recreation, especially walking and dog walking.
7. The SPG adopts the approach of the Regulations and states that two tests must be applied in deciding whether to grant planning permission for any development. Firstly, it must be considered whether there is likely to be a significant effect on the SPA, alone or in combination with other plans and projects. Secondly, if that threshold is passed, following an Appropriate Assessment, it is necessary to determine that the proposal will not have an adverse effect on the integrity of the SPA.
8. The SPG states that the first test sets a low threshold and, in accordance with the Regulations, should be approached on a precautionary basis. Due to the nature of the development proposed, it would be likely to increase demand for informal recreation. I have not been presented with any evidence in relation to other plans and projects, however, adopting a precautionary approach, in combination with other plans and projects, the proposal is likely to have a significant effect on the SPA. It would therefore fail the first test of the SPG. Furthermore, in view of the conservation objectives for the SPA, without appropriate mitigation, the proposal would also have an adverse effect on the integrity of the SPA. It would therefore fail the second test of the SPG.
9. Despite this, the SPG identifies how development proposals can mitigate this impact. It states that the impact on the natural habitats in the SPA can be managed, in combination with on site access measures, by the provision of Suitable Alternative Natural Green Space (SANG), either through new open space or significant improvements to existing sites. The SPG envisages that financial contributions towards the costs of the measures to enhance SANG are secured through Section 106 of the Town and Country Planning Act 1990.
10. Both the Council and the Appellant are satisfied that mitigation in relation to SANG can be provided by way of a suitably worded condition. Whilst such an approach could offer the Appellant the ability to provide, lay out and ensure maintenance of a SANG, both parties agree that such an approach would be more suitable for developments in excess of 60 dwellings. The most likely means of delivering the necessary mitigation would therefore be through a financial contribution.

11. On this point, the Planning Practice Guidance (PPG) is clear that conditions cannot be used to require the payment of money when granting planning permission. It may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken. However, such an approach should only be utilised in exceptional circumstances in the case of more complex and strategically important development where there is clear evidence that delivery would otherwise be at serious risk.
12. Due to the scale of the proposal, it is not a strategically important development. Furthermore, the fact that the site is located within the zone of influence of a Special Protection Area is a circumstance that will arise in many locations. It is therefore not an exceptional circumstance. Consequently, the suggested condition would fail to meet the tests required by the National Planning Policy Framework (the Framework) or comply with guidance set out in the PPG. Accordingly, it would not be an appropriate mechanism through which to secure the necessary mitigation measures in relation to the SPA.
13. The appeal has been accompanied by a Unilateral Undertaking in relation to a contribution towards Strategic Access Management and Monitoring (SAMM) measures. It is suggested that the contribution would help fund wardens and the monitoring of visitors and bird species to understand the effectiveness of mitigation. Regulation 123 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) states that a planning obligation may not constitute a reason to grant planning permission where five or more obligations which provide funding to the same infrastructure project or type of infrastructure. The management and monitoring of the SPA would be a dynamic function and would take many different forms. In this respect, I am satisfied that it would not constitute infrastructure and consequently, the obligation would not breach the requirements of the CIL Regulations.
14. However, for the reasons identified above, the use of a condition would not be a suitable mechanism for SANG. Therefore, in the absence of suitable mitigation, I conclude that the proposed development would be likely to have a significant effect, either alone or in combination with other development, upon the integrity of the SPA. Consequently, it would conflict with Policy NE20 of the Runnymede Borough Local Plan (Second Alteration 2001) which requires development to not cause demonstrable harm to species of animal and plant, or its habitat, protected by legislation.

Character and appearance

15. The appeal site comprises of an end of terrace house with its associated gardens and outbuilding. Its immediate neighbours are formed by single houses but the broader context of the site includes a variety of uses. An industrial estate is located to the north of the appeal site but its presence is very noticeable, particularly from Hanworth Lane where views of industrial buildings can be achieved. Furthermore, views of nearby modern apartment buildings are also prominent from Hanworth Lane.
16. The architecture of the surrounding buildings also exhibits significant diversity. There are cottages, houses that appear to date from the 1950s and 1960s, as well as late 20th Century suburban housing. When combined with the context of the nearby industrial uses and apartment buildings, the area has little by way

of uniformity in use or appearance to define it. Instead, the character and appearance of the surrounding area is defined by its variety.

17. The proposal would introduce an apartment block that would contain 12 flats with vehicular access provided from The Knoll. It would be 2 storeys in height, albeit some accommodation would be provided in the roofspace and it would introduce a series of front doors to the principal elevation facing Hanworth Lane. It would also respect the staggered building line of this road.
18. The development would introduce apartments onto the appeal site and this would be a more intense use of the site than the existing single dwelling. However, due to the layout, form, and appearance of the proposed building, it would complement the variety of architecture and uses found in the surrounding context. I therefore conclude that the proposal would not harm the character and appearance of the surrounding area, with particular regard to the type of accommodation proposed.
19. Consequently, the proposal would accord with Saved Policies HO9 and BE2 of the Runnymede Borough Local Plan (Second Alteration 2001). Taken together, these policies require sensitively designed proposals that do not damage the character and amenity of established residential areas and which respect townscape character with reference to existing buildings, street patterns, building lines, street scene and building heights. These policies are consistent with Policies in the Framework in that regard.

Other Matters

20. The Council cannot currently demonstrate a 5 year supply of deliverable housing sites. As a consequence, Paragraph 11 of the Framework is engaged. This states that where the policies that are most important for determining the application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development; or any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. Footnote 6 to Paragraph 11 states that policies in the Framework that protect areas of particular importance include those that relate to habitat sites. I have already found that the proposal would be likely to have a significant effect, either alone or in combination with other development, upon the integrity of the SPA. Consequently, the application of the Framework provides a clear reason for refusing the development proposed.

Conclusion

22. For the reasons identified above, the proposal would be likely to have a significant effect, either alone or in combination with other development, upon the integrity of the SPA. That it would not harm the character or appearance of the area neither outweighs or alters this conclusion. Consequently, the appeal is dismissed.

Martin Chandler

INSPECTOR