



Appeal Decision

Site visit made on 3 December 2019

by **S Edwards MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/R0335/W/19/3237448

Don Beni Restaurant, Winkfield Row, Bracknell RG42 6NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Beni against the decision of Bracknell Forest Borough Council.
 - The application Ref 18/00832/FUL, dated 1 June 2018, was refused by notice dated 12 July 2019.
 - The development proposed is redevelopment of the site to the rear of Don Beni to form 2 detached 3 bedroom dwellings with associated parking and amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on (1) highway safety, (2) protected species and (3) the Thames Basin Heaths Special Protection Area (SPA).

Reasons

Highway safety

3. The appeal site lies prominently at the junction between Winkfield Row and Chavey Down Road. It comprises a two-storey building in use as a restaurant, ancillary outbuildings and a large car park located to the rear of the site which, according to the Transport Statement¹ (TS) prepared by Sanderson Associates, can accommodate approximately 22 cars. There are many residential properties within proximity to the site, several of which do not benefit from off-road parking.
4. For restaurants such as the appeal premises, the Council's Parking Standards Supplementary Planning Document² (SPD), requires the provision of one standard car parking space per 5 square metres. The TS confirms that the usable public floor area of the restaurant is approximately 120 square metres. Having regard to the Parking Standards SPD, this would equate to a requirement of 24 car parking spaces. This represents a current shortfall of 2 spaces, which would be exacerbated as a result of the proposal, given that the car parking provision for the restaurant would be reduced to 11 spaces. Regardless of whether it is compared with the existing situation or the

¹ Report Ref: 10491/LOB/001/02, dated February 2019.

² Dated March 2016.

requirements of the Parking Standards SPD, the shortfall would therefore be significant.

5. I visited the site on a weekday in the afternoon when the restaurant was closed, and noted that there were several spaces available within proximity to the site, notably along Winkfield Row and in the lay-by on Chavey Down Road. That said, my observations can only represent a snapshot of parking conditions. The TS refers to a number of parking surveys which were undertaken in April 2018 and January 2019 to demonstrate that there was spare capacity within the local network to accommodate any potential on-site parking shortfall. It is clear that for instance on Friday evening, Saturday and Sunday, the number of vehicles within the restaurant's car park and along the surrounding roads increases significantly over and above what I saw at the time of my site visit.
6. Both surveys show that the parking demand for the restaurant could not be solely accommodated within the car park during peak hours. The survey undertaken in April 2018 identified a limited number of spaces on Winkfield Row and within the lay-by. As part of the parking survey carried out in January 2019, the surveyed area was extended a further 100 metres south-east on Winkfield Row. This revealed a higher number of available spaces. Whilst the scope of the surveys may have been agreed with the Council, it is unclear how the number of potential on-street spaces was calculated, particularly in the absence of marked bays. It is suggested that any overspill could also be accommodated within the recreation ground car park, but I understand that it closes at dusk and therefore, this would not generally constitute a suitable alternative for visitors to the restaurant.
7. Furthermore, I share the reservations of the Council and local residents, insofar as the surveys were carried out in quieter periods of the year, and the results may not therefore represent a true reflection of the level of activity at the restaurant. The surveys are unlikely to be representative of the demand for parking from customers, notably in the summer period when the outside dining area would also be in use. I am not satisfied, therefore, that it has been adequately demonstrated that there is sufficient on-street parking capacity to accommodate the shortfall which would result from the proposal.
8. Despite the lack of absolute certainty, I find it highly likely that the significant reduction to the number of off-road parking spaces would increase the demand for on-street parking within proximity to the site to a harmful degree, by exacerbating existing parking issues in the area. The greater pressure which the proposal would place onto the local network would lead to the displacement of vehicles onto surrounding roads, and increase the risk of illegal, inconsiderate or obstructive parking, which would in turn have an adverse effect on the free flow of traffic and highway safety.
9. The absence of recorded accidents in the area does not in my opinion provide justification for a development which could compromise highway safety. Although it is suggested that parking restrictions could be introduced at the junction between Winkfield Row and Chavey Down Road, this does not form part of the proposal before me. In any event, such measures would only displace parking pressures elsewhere.
10. In reaching this conclusion, I have taken into account the fallback position presented by the appellants, who have stated that the car park could be

closed. However, there is no substantive evidence before me suggesting that this is a greater than theoretical possibility, and I agree that it would not be in the commercial interests of the operators to close the car park. I accept that the proposed layout would create a more formalised parking arrangement, enable drivers to enter and leave the site in a forward gear, and include the provision of a disabled bay. Whilst these would be positive aspects of the proposal, they would nevertheless not outweigh the harm which I have identified.

11. For the foregoing reasons, I therefore consider that the proposal would compromise highway safety for all road users. The proposal would therefore conflict with Policy CS23 of the Council's Core Strategy Development Plan Document³ (CS), Saved Policy M9 of the Bracknell Forest Borough Local Plan⁴ (LP) and the Parking Standards SPD, which notably seek to increase the safety of travel and require development proposals to provide an adequate level of off-street parking provision. By causing unacceptable harm to highway safety, the proposal would also fail to accord with paragraph 109 of the National Planning Policy Framework (the Framework).

Protected species

12. The Council is concerned that the proposal could have an adverse effect on protected species, following the demolition of a detached storage building which would be required to enable the construction of the proposed dwellings. A Preliminary Bat Roost Appraisal⁵ (PBRA) carried out by Middlemarch Environmental Ltd on 19 March 2018 was submitted as part of the planning application. The PBRA identifies the storage building as having high potential to support roosting bats, notably because by reason of its poor state of repair, the existing structure presents numerous features which could be used by bats. The PBRA therefore recommends further surveys to be undertaken during the bat emergence/re-entry survey season, which extends from May to September, but these have not been carried out.
13. Circular 06/2005 advises that it is 'essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'. Whilst the Circular states that surveys should only be required where there is a reasonable likelihood of species being present, it recommends surveys being carried out before planning permission is granted. Having regard to the recommendations set within the PBRA, and in light of the advice contained within the Circular, I consider that this matter could not be satisfactorily addressed through the imposition of a planning condition.
14. My attention has been drawn to a recent appeal decision⁶ in respect of a proposal for a replacement dwelling, where the Inspector considered that a mitigation strategy could be required through the imposition of a condition. However, I note that the preliminary ecological assessment found that there was a 'low potential for individual bats using the roofspace opportunistically'. In this particular instance, the reasonable likelihood that protected species were

³ Adopted February 2008.

⁴ January 2002.

⁵ Report No: RT-MME-127172, dated March 2018.

⁶ APP/C1625/W/18/3211901.

present on site was therefore not established. For this reason, I am not certain that the circumstances of this appeal are directly comparable to the proposal before me which, in any event, I am required to determine on its individual merits.

15. On the basis of the available information, there is a reasonable likelihood that protected species may be present on site. Consequently, and in the absence of substantive evidence demonstrating otherwise or measures to mitigate against the effects of the proposal, I am unable to conclude that the proposal would safeguard protected species and thus biodiversity. It would therefore be contrary to CS Policies CS1 and CS7 which, amongst other things, require development proposals to protect and enhance the quality of natural resources, including biodiversity, as well as paragraph 175 of the Framework.

Thames Basin Heaths SPA

16. The appeal site is within 5 km of the Thames Basin Heaths SPA. The Council, in consultation with Natural England, consider that the proposal would have, either alone or in combination with other plans and projects, a likely significant effect on this internationally important area, by reason of the increased recreational pressure which additional residential development places on the SPA.
17. The Thames Basin Heaths SPA Supplementary Planning Document⁷ (SPD) sets out an avoidance and mitigation strategy showing how the adverse effects of development on the integrity of the SPA should be avoided and mitigated. In respect of developments resulting in a net increase of fewer than 109 dwellings located between 400m and 5km of the SPA, the SPD requires the provision of financial contributions towards the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) measures, which are normally secured through the completion of a planning obligation.
18. The appellants however consider that no specific project has been identified in respect of additional SANGs, and the requested contribution would therefore not be directly related to the appeal proposal. Additionally, it is argued that the contribution towards the provision of SANG would also be met through the Community Infrastructure Levy (CIL) charge which would be required as part of the development. On this basis, no planning obligation has been submitted as part of this appeal. Additionally, no alternative measures have been put forward by the appellants to mitigate the effects of the proposed development.
19. Within their submissions, the Council have confirmed that there is a SANG in reasonable proximity to the site, and provided additional information in respect of the necessary mitigation components required as part of the development. SANG enhancement works would be funded through CIL, as these would comprise relevant infrastructure. SANG in-perpetuity maintenance, administrative, education and facilitation costs, as well as SAMM measures would have to be secured through a legal agreement. Having regard to the additional information provided by the Council, I consider that these financial contributions are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The CIL charge alone would not be

⁷ April 2018.

sufficient to ensure that the development would have no likely significant effect on the SPA.

20. Accordingly, and in the absence of adequately secured mitigation measures, for example in the form of a duly completed planning obligation, I am unable to complete the Appropriate Assessment required by the Habitats Regulations. Consequently, I cannot be certain that the proposal would not prejudice the integrity of the Thames Basin Heaths SPA. The appeal scheme would therefore fail to accord with Policy NRM6 of the South East Plan (May 2009), LP Policy EN3 and CS Policy CS14, as well as the Thames Basin Heaths SPA SPD. Amongst other things, these seek to ensure that development proposals do not compromise the integrity of the SPA.

Other Matters

21. The appeal site is located within the Winkfield Row Conservation Area. The Council have not raised specific concerns in respect of the effect of the development on the character or appearance of the Conservation Area. In particular, I note that the Historic Buildings team did not object to the proposed development. There are no reasons for me to take a different view.

Conclusion

22. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR