

11/02106 Pins Ref 2183086	St Gabriel's Convent, The Ridge, Cold Ash, Thatcham, RG18 9HU	Demolition of a convent, chapel and conference centre (with the retention of the Gate Lodge) and the erection of eleven detached houses.	Dele. Refusal	Dismissed 11.01.2013
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Main Issues

The Inspector considered the main issues to be whether the proposed development would:–

- a. Ensure that appropriate mitigation measures are taken for the conservation of protected species on the site; and
- b. Make adequate provision or mitigation on or off site to accommodate its impact on local infrastructure and services.

Reasons

Background

The proposed development would erect eleven detached houses, together with the refurbishment of the existing Gate Lodge, on a site in the open country, currently occupied by a convent and conference centre. The buildings of the latter date from the first half of the 20th century and none are listed. The site sits on a south facing slope commanding fine views and is adjacent to the recently built St Finian's School. The Council has declared that it is '*...keen to approve the application...*' in order to provide '*...much needed housing ... on a brownfield site in a sustainable location.*' The Inspector agreed and considered that the revised layout (set out on Plan 1088 GA 11 (Rev.J)) provides an acceptable means to fit the proposed development on to the site in a manner that will respect its setting. He also noted that English Heritage has declined to list the chapel and has no objections to its demolition.

The Council had, however, raised two issues that it considers unresolved – the measures needed to mitigate the identified presence on the site of bats, a species protected by both national and international statute, and the lack of a completed Unilateral Undertaking. These issues comprise the two matters on which the Council concluded that it should refuse the original application.

The presence of protected species on the site

A survey in 2009 reported that bats, including an example of the Soprano Pipistrelle, a Biodiversity Action Plan priority species, had been seen on and around the site. In these circumstances, the Council considered that an up-to-date survey should identify in more detail the extent to which bats, for which national and European legislation affords special protection, were present on the site and, if they were, what steps by way of mitigation would be needed to allow the development to go ahead. Such a requirement is supported by the National Planning Policy Framework ('the Framework') published earlier this year and by the still-extant Circular 06/2005 which advises that such steps should be taken before planning permission is granted. Nor would it be acceptable to allow the proposed development to go ahead on the basis of imposing a condition that a European Protected Species (EPS) licence should be obtained from Natural England. The Courts have held this to be insufficient for a Council to demonstrate that it had properly fulfilled the requirements of the European Union's Habitats and Species Directive.

The appellants consequently commissioned a further Bat Survey (Ref. E1726R1) from Bioscan (UK) Ltd which was carried out in August 2012 and submitted both to the Council and

to the Inspector. The report showed no significant increase in bat activity since 2009 and provided an up-to-date picture of current bat use on the site sufficient as to overcome this reason for refusal. Nevertheless, the Council has also pointed out that more details of the mitigation measures are required, e.g. the location within the site of bat boxes and bat bricks. However, he agreed with the Council that this should not represent an on-going reason for dismissing the appeal. A condition requiring the submission and prior approval of a bat mitigation scheme, providing such details, would meet the necessary requirements.

The lack of a Unilateral Undertaking

West Berkshire adopted its Core Strategy in July 2012. Policy CS5 sets out the requirement to identify and deliver the necessary infrastructure and services needed to facilitate new development, whilst Policy CS18 identifies a need to enhance the District's Green Infrastructure through, amongst other means, the provision of additional public open space by contributions from developers. The latter is reinforced by Saved Policies RL1 and RL2 of the adopted West Berkshire District Local Plan 2007 whilst the means to secure the overall provision of infrastructure to support development is in the Council's Supplementary Planning Guidance (SPG) 4/04, *Delivering Investment from Sustainable Development*, originally adopted in 2004 and updated in 2010. SPG 4/04 is supported by a series of Topic Papers that set out, in detail, how contributions will be calculated.

The appellants have not disputed the general principle that financial contributions should be made to offset the impact of the proposed development nor that this should be achieved through the provision of a Unilateral Undertaking made under section 106 of the Town and Country Planning Act 1990.

However, there is a dispute as to the appropriate figure needed to meet the required funding for public open space. Topic Paper 7, as amended, seeks contributions for public open space on the basis of occupancy by size of dwelling. The Council's contention that its request for contributions towards improvements at the Cold Ash Recreation Ground would meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, 2010 was not disputed by the appellants, or by the Inspector. However, the appellants argued that the methodology for residential developments, as exemplified by the Table in paragraph 5.16 of Topic Paper 7 has been incorrectly applied.

The Council's appeal statement comments that the agreed layout, to which the Inspector had referred in paragraph 3 above, provides for a net gain of eleven units, 2 x 2 bed houses, 5 x 4 bedroom houses and 4 x 5 bedroom houses. Applying Topic Paper 7's assumptions yields a total occupancy for the proposed development of 35.8 persons and a total required contribution of £26,448. However, the appeal statement goes on to comment that this figure should be adjusted downwards to £21,291. Although the calculations supporting the adjustment are not explicitly set out, paragraph 11 of the paper on public open space contributions that accompanies the appeal statement says that it takes account of 27 occupants of the existing buildings on the site. The discount applied is £191 per person and appears to be derived from the assumption per employee set out in the Table that follows paragraph 6.7 of the paper. The existing residents have been treated in a similar manner.

The appellants' dispute with the Council depends on the application of a discount based on residential occupancy rather than the application of the employee discount. On this basis, whilst the appellants agree that the current occupancy of the site is 27 persons, they contend that the net gain of residents will be only some 9 persons (i.e. 36 – 27), thereby yielding a public open space contribution of only £6,649.

The Council has made no specific comment on the appellant's assumptions but Topic Paper 7 identifies the necessity for taking account of residential properties that will not generate the same demands for equipped play space or playing fields because, as the most obvious example, they are unlikely to have dependent children. A convent may be a *sui generis* use but it clearly falls within those categories of occupancy for which a lower demand for public open space will be generated. The Inspector therefore rejected the appellants' argument that the net occupancy gain will be as low as 9. Indeed, it could be argued that the standards to be applied should be the same as for sheltered, special needs or one-bedroom dwellings as set out in paragraphs 5.14 and 5.15 of Topic Paper

For these categories of dwelling no contributions for equipped play space or playing fields are sought and thereby no discount for existing occupancy should be applied. Nevertheless, the occupants of the convent may have generated some demand for public open space and, in these circumstances, the Council's discount seemed a reasonable one.

Notwithstanding the above comments, it remains the position that no completed Unilateral Undertaking has been submitted to either the Council or to the Inspector. In these circumstances, despite the agreement on other matters, and the resolution of the 'bat issue', the proposed development remains in conflict with the policies of the recently adopted Core Strategy, with Saved Policies RL1 and RL2 and with the supporting material provided through SPG 4/04.

Other matter

A local resident has objected to the development on the specific grounds of the demolition of the chapel, to which the Inspector had referred above, and the possible desecration of the graveyard that lies to the west of the site. However, the latter is well beyond the limits of the proposed development and there is no suggestion that it will be affected.

Conclusions

For the reasons given above he concluded that the appeal should be dismissed.

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