
Appeal Decision

Site visit made on 24 August 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 26 September 2016

Appeal Ref: APP/R3650/W/16/3148918

Land at Gold Hill, Lower Bourne, Farnham GU10 3JH

- 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 & Mrs Mark Stayt against the decision of Waverley Borough Council.
 - The application Ref WA/2015/2253, dated 19 November 2015, was refused by notice dated 18 March 2016.
 - The development proposed is described on the application form as '*erection of a two-storey four-bedroom dwelling with basement*'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-storey four-bedroom dwelling with basement at land at Gold Hill, Lower Bourne, Farnham GU10 3JH in accordance with the terms of the application Ref WA/2015/2253, dated 19 November 2015, subject to the schedule of conditions in this decision.

Procedural Matters

2. Whilst I have used the description of development in the banner heading above as was given in the application form, the proposal further entails the creation of a vehicular access and bicycle shed.
3. The proposal is supported by amended drawing entitled D1492.1G. This addresses a discrepancy identified during the course of the Council's determination of the application in relation to other documentation supporting the application. On this basis, and as all parties appear to have had appropriate opportunity to consider the amended drawing, I am satisfied that it is appropriate to determine this appeal with reference to it.¹

Policy Context

4. The relevant development plan policies are saved policies from the *Waverley Borough Council Local Plan* adopted originally in April 2002 (the 'Local Plan'). Saved policy D1 '*Environmental Implications of Development*' thereof sets out that development will not be permitted where it would harm the visual character and distinctiveness of the locality.

¹ As such the relevant drawings are the site plan, location plan, site survey entitled 16/4650, and drawings numbered D1492.3C, D1492.4C, D1027.2, D1492.1G, D1492.2D.

5. Similarly saved policy D4 '*Design and Layout*' of the Local Plan establishes that all development should complement its surroundings and pay regard to existing features such as trees. Saved policy BE3 '*South Farnham Area of Special Environmental Quality*' of the Local Plan explains that new development for housing will not be allowed within this area, as the appeal site falls, where it would be detrimental to its natural character.
6. Specifically in relation to trees, saved policy D6 '*Tree Controls*' of the Local Plan establishes that the Council will protect significant trees with regard to their condition and contribution to the character of the area. Similarly policy D7 '*Trees, Hedgerows and Development*' establishes that important trees should be safeguarded from development and retained as appropriate.
7. The Council do not identify that the proposal would conflict with the approach within their emerging *Local Plan Part 1: Strategic Policies and Sites*, which, on account of its stage of preparation cannot yet be accorded significant weight. However the Council acknowledge in their officer report associated with the original application that they are presently unable to demonstrate a five-year supply of deliverable housing sites in line with paragraph 49 of the Framework. Consequently at this juncture the Council's relevant policies for the supply of housing cannot be considered to be up-to-date.
8. Paragraph 14 of the Framework explains the operation of the presumption in favour of sustainable development. For decision-taking this means that where the development plan is out-of-date permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or where specific policies in the Framework indicate that development should be restricted.
9. However, planning law nonetheless requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.² It remains for the decision-taker, based on sound planning judgement, to determine whether a particular policy is relevant for the supply of housing and to accord due weight to out-of-date policies.
10. By virtue of applying exclusively to new development for housing, saved policy BE3 is in my view a policy specifically relevant to the supply of housing, and the weight that can be accorded to it must be tempered accordingly. However the approach to ensuring sensitive design in policies D1 and D4 are generally stated principles which broadly accord with the encouragement given in *The National Planning Policy Framework* (the 'Framework') to seeking to secure high quality design that responds to local character.³ Consequently I accord significant weight to policies D1 and D4 in the determination of this appeal.⁴
11. Paragraph 109 of Framework establishes that the planning system should contribute to and enhance the natural environment, with the *Planning Practice Guidance* (the 'Guidance') identifying that trees can make an important

² With reference to Section 38(6) of the *Planning and Compulsory Purchase Act 2004* and Section 70(2) of the *Town and Country Planning Act 1990* as amended.

³ Including at bullet point 4 of paragraph 17, paragraph 56, and bullet point 4 of paragraph 58 of the Framework.

⁴ With reference to paragraph 215 of the Framework.

contribution to the quality of an area.⁵ By seeking to safeguard the wellbeing of trees which contribute positively to the character of the area in line with the current approach in the Framework and the Guidance, policies D6 and D7 of the Local Plan can similarly be accorded due weight.

Main Issues

12. The main issues are:

- 1) the effect of the proposal on the character and appearance of the area, with particular regard to trees,⁶ and
- 2) whether or not it has been demonstrated that the proposal would safeguard ecology.

Reasons

Character and appearance

13. The appeal site is a modest parcel of land accessed via Gold Hill, a winding private carriageway. As the appeal site falls within the developed area of Farnham the Council do not object, in principle, to residential development in this location. Gold Hill serves a number of ostensibly individually designed detached dwellings arranged irregularly along its length which are set within varying sized plots. There is therefore no readily apparent consistency in the scale, form or design of properties nearby the appeal site.
14. Gold Hill is flanked in the main by mature trees and established vegetation. As a consequence, and as a result of the changeable topography of the area such that properties are set on notably different ground levels, dwellings served by Gold Hill are not typically clearly visible from the carriageway. Combined with the irregular arrangement of dwellings, this lends a natural character to what is essentially a residential area.
15. There is limited information before me in respect of the history of the surrounding area. However it appeared to me that it once constituted a more extensive patch of woodland which has, in the passage of time, reduced in extent but nevertheless many trees remain. As identified in the *Tree Survey* (the 'Survey') supporting the application,⁷ trees in this area have grown in close competition to one another, resulting in tall thin specimens which are consequently partially visible from distant vantage points.
16. Set within and reflecting this surrounding context is the appeal site, which hosts many mature trees and much low-lying vegetation. The appeal site encompasses a significant circular depression in the land. Consequently the central element thereof is at a substantially lower level than the land nearest its boundaries. It appeared to me that this feature of the site has resulted in a higher density of trees and vegetation around its periphery than within its

⁵ Reference ID: 26-009-20140306 and 26-020-20140306.

⁶ The application was refused by notice dated 18 March 2016 for four reasons. However the first three reasons therein given by the Council essentially relate to the effect of the proposal on the character and appearance of the area, and hence I have addressed these matters collectively.

⁷ Prepared by Green Earth Arboricultural and Environmental Consultancy, dated 27 April 2015.

centre, given natural competition for light is at its keenest within the centre of the appeal site.

17. I understand that a Tree Preservation Order ('TPO') encompassing the appeal site and extending to a broader area was initially made in 1964, which has subsequently been reviewed and recently re-established under TPO Ref 15/15. Whilst this TPO does not identify particular trees, the appeal site is encompassed within area 'W1' thereof, which is described as being formed of '*mixed deciduous and conifer trees of what ever species*'.
18. The proposal is for a detached property located centrally within the appeal site which would incorporate design references drawn from the Arts and Crafts movement and employ a predominantly natural palette of external materials. Although the dwelling would constitute two storeys and a basement level, it would be set into the depression in the appeal site which would serve to limit its apparent scale. Given the paucity of views of the appeal site in conjunction with other dwellings on account of the changeable topography of the land and screening afforded by natural features, the dwelling would consequently not appear out-of-keeping with the scale of properties nearby. Given the diversity of form and design of surrounding dwellings, intrinsically the design of the property would likewise not appear out-of-place.
19. In addition to the Survey referenced above, the proposal is supported by an *Arboricultural Method Statement* (the 'AMS') which includes within it a *Tree Protection Plan* (the 'TPP').⁸ I note the Council's concern that, in their view, these arboricultural documents are '*somewhat generic*' and not in accordance with industry standards. However there is no robust evidence before me in support of this position as the documents appear detailed, comprehensive and are stated to have been prepared in compliance with *British Standard 5837: 2012, Trees in relation to design, demolition and construction - Recommendations*.
20. The proposal would necessitate the felling of between 12 and 16 trees, out of a total of 96 on the site.⁹ The appellant has brought application Ref WA/2015/0964 to my attention which relates to development proposed immediately to the north of the appeal site, and which entailed the felling of a comparable number of trees to that which is proposed via this appeal.¹⁰ However there is limited information before me in respect of the circumstances relevant in that case, for example regarding the health of the trees which were felled or their contribution to the character and appearance of the area. Consequently that development and this appeal are not directly comparable.
21. Nevertheless relatively few trees would be affected compared with the total number hosted by the appeal site. These trees are identified within the drawings supporting the application as falling predominantly within the centre of the appeal site, and consequently their felling would have a highly limited visual effect given that more prominent trees towards the periphery of the appeal site would be largely unaffected. Whilst the tree canopy may as a consequence appear less dense from distant vantage points, given the relatively small number of trees that would be felled and the comparative

⁸ Prepared by Green Earth Arboricultural and Environmental Consultancy, dated 2 June 2015.

⁹ As set out in paragraph 5.04 of the appellant's appeal statement.

¹⁰ An amended proposal following appeal Ref APP/R3650/A/11/2149671.

paucity of trees within the centre of the appeal site at present, in my view this effect would not be readily appreciable.

22. The AMS furthermore indicates that the access proposed could be of a type of construction and undertaken in such a manner so as to safeguard the wellbeing of the majority of trees situated close to the boundary of the appeal site with Gold Hill. Subject to compliance with this approach, in my view the retained trees around the periphery of the appeal site would largely preserve the natural character of the area and serve to limit the prominence of the built form of the dwelling.
23. Whilst the Survey indicates that considerable earth works are required, it nevertheless identifies that some thinning of trees would be beneficial to the health of those which remain. The *Design and Access Statement* supporting the application furthermore sets out that some replacement planting is also proposed, which would serve to augment the natural character of the appeal site, and which could be secured by means of an associated condition.
24. I note that the Council and nearby residents express concern that the proposal may lead to further pressure to fell or prune trees to enlarge the outside space associated with the property or to provide for comfortable living conditions within the proposed dwelling. However in my view as trees and vegetation are a pleasing feature of the area, future occupants electing to reside here would do so on the basis of the character of the area and would consequently be unlikely to seek to significantly reduce tree coverage on site.
25. Moreover the topography of the appeal site is steeply sloping aside from the central element thereof, such that in my view it would be difficult to incorporate much additional land within the open outside space associated with the property. This again would limit the prospect of further reduction in tree coverage being sought in the future. Whilst I note that other properties have proposed felling trees nearby,¹¹ there is limited information before me in respect of these undertakings, and in any event TPO 15/15 would remain in place enabling the Council to resist inappropriate works henceforth proposed.
26. For these reasons I therefore find that the effect of the proposal on the character and appearance of the area would be limited, and that the proposal would not be inconsistent with the prevailing nature of the area. Consequently, and subject to appropriate conditions, in this respect the proposal complies with the relevant provisions of saved policies D1, D4, BE3, D6 and D7 of the Local Plan and with relevant elements of the Framework and the Guidance.

Ecology

27. The application was accompanied by a *Preliminary Ecological Appraisal* (the 'Appraisal') which is stated to be in compliance with the survey methodology approved by Natural England and the Chartered Institute for Ecology and Environmental Management.¹² This recommended that no trees or scrub should be disturbed during the bird nesting season of 1 March to 31 August given the potential for roosting birds to make use of the appeal site.

¹¹ Applications Ref TM/2005/00002, TM/2008/0011, and TM/2010/0072.

¹² *Preliminary Ecological Appraisal*, prepared by environmental consultants the Ecology Co-op, dated 4 April 2015.

28. The Appraisal further identified the presence of an outlier badger set with no signs of recent use, though recommended further surveys to confirm this position before any development is commenced. Although none of the trees within the appeal site showed any signs of features valuable for roosting bats, it nonetheless recommended a further detailed assessment of relevant trees be undertaken.
29. A subsequent *Bat Tree Roost Assessment* (the 'Assessment') was undertaken based on the recommendations within the Appraisal.¹³ Whilst I note the concern expressed by the Surrey Wildlife Trust that they are of the view that it is not clear whether all relevant trees were surveyed for their potential use by bats, the Assessment nonetheless appears to me comprehensive, and sets out that *'each mature tree upon the site proposed for felling was inspected...'*
30. The Assessment identifies that all trees that would be affected by the development fall within 'category 3', defined therein as *'trees that are of negligible potential to support roosting bats'*. Whilst the Assessment concludes that *'there is no need for any further surveys or specific mitigation with respect to bats'*, it nevertheless sets out that if any works affecting trees on site are intended to occur beyond 2 years from the date of the Assessment, that further bat surveys should be conducted.
31. Saved policy D5 '*Nature Conservation*' of the Local Plan establishes that development will not be permitted that would materially harm a protected species. Similarly, paragraph 118 of the Framework sets out that if *'significant harm resulting from a development cannot be avoided... adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'* (my emphasis). This position is restated in the Guidance,¹⁴ and all bat species, badgers and roosting birds are furthermore protected by law.¹⁵ The Guidance further establishes that it may be appropriate to impose conditions on grant of permission requiring subsequent submission, and approval of, further details.¹⁶
32. The evidence before me indicates that, subject to relevant conditions in respect of the timing of development, the proposal would not result in adverse effects upon roosting birds or bats. At present there is no evidence before me to indicate that badgers would be affected by the development proposed, notwithstanding the recommendation within the Appraisal to confirm this finding before development is commenced. As such, and again subject to an appropriate condition, I cannot reasonably find that the development proposed would result in either material or significant harm to badgers.
33. For these reasons, and subject to associated conditions as detailed subsequently, I am satisfied that the development proposed would appropriately safeguard ecology. In this regard the proposal therefore consequently complies with the relevant provisions of saved policy D5 of the Local Plan and with relevant elements of the Framework and the Guidance.

¹³ *Bat Tree Roost Assessment*, prepared by environmental consultants the Ecology Co-op, dated 29 September 2015.

¹⁴ Reference ID: 8-018-20140306.

¹⁵ With reference to *The Wildlife and Countryside Act 1981*, *The Natural Environment and Rural Communities Act 2006*, *The Protection of Badgers Act 1992*, and *The Conservation of Habitats and Species Regulations 2010*.

¹⁶ Reference ID: 21a-006-20140306 and 21a-007-20140306.

Other Matters

34. The proposal would result in an additional dwelling in a suitable location within the Council's administrative area, where relevant policies for the supply of housing are out-of-date, thereby contributing to housing supply in line with the encouragement given in the Framework to boosting significantly the supply of housing. The proposal would furthermore entail some social and economic benefits in supporting employment during construction, and as future occupants would make use of local services and facilities.
35. The officer report associated with the original application sets out that the appeal site falls within the 5 kilometre buffer zone of the *Thames Basin Heath Special Protection Area*, with reference to saved policy NRM6 of the South East Plan and to the Council's *Thames Basin Heaths Special Protection Area Avoidance Strategy* adopted on 13 December 2009. There is a copy of a completed unilateral undertaking providing a financial contribution to mitigate adverse effects in this context before me, dated 27 January 2016, which brings the proposal in compliance with the Council's approach here.
36. Whilst the site is also within the *Wealden Heaths Special Protection Area* Buffer Zone, owing to the availability of alternative recreational opportunities within the area, the Council are of the view that the effect of the proposal is acceptable in this regard, and there is nothing in the information before me to arrive at a different conclusion.
37. I have taken into account the representations raised in respect of the proposal by Farnham Town Council and by nearby residents, much of which concerns the main issues in this case. Other matters raised, such as the fragmentation of land covered by saved policy BE3 and the potential effect of the proposal on the integrity of the road surface of Gold Hill, do not form part of the Council's case in this appeal, and there is no robust evidence before me to indicate that adverse effects would arise in these respects. Consequently neither these, nor any other matters, are sufficient to outweigh the considerations that have led to my findings in respect of the main issues in this case.

Conditions

38. It is necessary to impose a condition requiring compliance with the relevant plans for the avoidance of doubt and in the interests of proper planning. Whilst it is similarly necessary to impose a condition requiring the use of agreed external materials to ensure the proposal is appropriate in appearance with reference to its surroundings, this condition does not need to apply before any development is undertaken as the Council have suggested (as external materials have no bearing upon site preparation or groundworks).
39. Section 197 of the *Town and Country Planning Act 1990* as amended furthermore places upon me a duty to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. As such, and in order that the development safeguards the natural character of the area, it is appropriate to impose a condition requiring that a tree protection scheme and method statement is agreed with the Council before any

development is commenced with reference to the relevant documentation supporting the application. It is necessary to require that this approach is agreed before any development is undertaken, given that any works may affect the wellbeing of trees within the appeal site, and is adhered to thereafter.

40. A landscaping scheme has been proposed as part of the application, which will serve to benefit the natural qualities of the appeal site commensurate with its surroundings. In this context it is therefore reasonable to impose a condition requiring that an agreed landscaping scheme is implemented. It is further necessary to impose conditions related to the construction process in order to safeguard the wellbeing of birds, bats and badgers.

Conclusion

41. The proposal would be appropriate in respect of its effects on the character and appearance of the area, safeguard ecology, and result in an additional dwelling in an appropriate location which would entail some social and economic benefits. For the above reasons, and taking all other matters into account, the proposal therefore complies with the development plan taken as a whole and with the approach in the Framework. The proposal represents sustainable development, and I therefore conclude that the appeal should be allowed.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings supporting application Ref WA/2015/2253: D1492.3C, D1492.4C, D1027.2, D1492.1G, D1492.2D.
- 3) Notwithstanding condition 2, no works other than site preparation and groundworks related to the development hereby permitted shall take place until samples of the materials to be used in the construction of external surfaces have been approved in writing by the local planning authority. Development shall be carried out in accordance with the samples thus approved.
- 4) No works related to the development hereby permitted, including any felling or pruning of trees or vegetation or other alteration of the existing condition of the site shall take place until a tree protection scheme and construction method statement have been approved in writing by the local planning authority.

The tree protection scheme shall include details of: all relevant trees, shrubs, natural features, ground levels, protection measures and the date on which development is proposed to commence.

The construction method statement shall include details of: the tree felling and pruning schedule, driveway construction and hardsurfacing,

boundary treatments, cross sections and details of the proposed finished ground levels of the site, surface and sub-base and foundation materials and method of construction and excavation, edging materials and construction related to protection areas around existing trees and vegetation, the position and installation of all new surface and utility runs, the proposed site set-up and operation during construction, and supervision and monitoring arrangements by an arboriculturalist.

Development shall be carried out in accordance with the tree protection scheme and construction method statement thus approved (including until such point as all equipment, machinery and surplus materials related to the development hereby permitted have been removed from the site).

- 5) Before the dwelling hereby permitted is first brought into use a landscaping scheme shall be approved in writing by the local planning authority. The landscaping scheme thus approved shall be carried out within the first planting season before the dwelling is first brought into use, unless otherwise agreed in writing by the local planning authority, and shall thereafter be maintained for a period of 5 years (including the replacement of any trees or shrubs planted which die or have otherwise become seriously damaged or defective, as agreed in writing by the local planning authority, with those of the same species and size as originally planted).
- 6) The development hereby permitted shall only be undertaken outside of the recognised bird breeding season of 1 March to 31 August.
- 7) No felling or pruning of trees hereby permitted shall take place at a later date than 29 September 2017, pursuant to the recommendations in respect of bats within the *Bat Tree Roost Assessment* prepared by environmental consultants the Ecology Co-op, dated 29 September 2015, supporting application Ref WA/2015/2253.
- 8) No works related to the development hereby permitted shall take place until an approach to protecting badgers has been agreed in writing by the local planning authority (pursuant to the relevant recommendations in section 4.1 of the *Preliminary Ecology Appraisal* prepared by environmental consultants the Ecology Co-op, dated 4 April 2015, supporting application Ref WA/2015/2253). Development shall be carried out in accordance with the approach thus agreed.