
Appeal Decision

Site visit made on 27 September 2016

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 11 October 2016

Appeal Ref: APP/T0355/W/16/3153212

The Chalet, Ravensdale Road, Ascot SL5 9HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Heywood Real Estate (The Chalet) Ltd against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/00947, is dated 17 March 2016.
 - The development proposed is erection of two detached houses with integral garages and revised access arrangements (involving the demolition of the existing house).
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council indicated that, had it been in a position to do so, it would have refused the application on the basis that it considered that the proposal would be cramped and out of keeping with the character and appearance of the area, would result in the loss of protected trees on site and there was insufficient information to assess the possible effects on the remaining trees and on protected wildlife, in particular bats.
3. On 1 September 2016 the Council introduced the Community Infrastructure Levy (CIL). It subsequently confirmed that mitigation for the effects of development on the Thames Basin Heaths Special Protection Area (SPA) was continuing to be dealt with outside CIL.

Main Issues

4. The main issues are:
 - the effect on the character and appearance of the area, including the effect on protected trees;
 - the effect on protected ecology;
 - the effect on the living conditions of the occupier of the adjoining property, Elmwood House, in terms of light, outlook and privacy; and
 - the effect of the development on the SPA.
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Reasons

Character and appearance and trees

5. The Chalet lies on the west side of Ravensdale Road. This is an unmetalled road which also serves as a public right of way. The properties generally face onto the street, although there is an enclave of development immediately to the north of the appeal site which is known as the Fairacre development, which includes Elmwood House¹ immediately to the north and west of the appeal site. The properties in the area, with the exception of a single pair of semi-detached properties, are detached and are set in their own grounds.
6. A number of trees on the site are protected by a Tree Preservation Order². There are two individual trees which are protected; a Scots Pine (T17³) to the north of the dwelling and a Sweet chestnut (T14) to the west. In addition, two groups of trees towards the southern boundary and southern part of the eastern boundary are also protected.
7. The Council has published the Royal Borough of Windsor and Maidenhead Townscape Assessment to inform the forthcoming Local Plan. It was also used as evidence behind the Ascot, Sunninghill & Sunningdale Neighbourhood Plan 2011 - 2026 (the NP). The appeal site and surrounding area is noted as falling within an area described as a Leafy Residential Suburb. This area is made up of low density residential suburbs comprising large detached houses in spacious irregular well treed plots, typically dating from the early 20th Century to the present day. It is defined by large properties set well back from the road, behind dense/high ornamental hedges with gravel drives and gates. These suburbs are neat, manicured and managed, with a private character including private roads and gated communities. Some distinctive building styles are evident including early 20th Century 'Arts and Crafts' architecture, although larger, more modern properties are also present. Ravensdale Road is one of the cul-de-sacs that helps define this urban form.
8. The proposal is to demolish the existing property and construct two new detached properties one beside the other on an approximately north/south axis. There would be new accesses, one to each property, rather than the in/out arrangement at present with the more southerly existing access replanted. The design of the two properties would be in an Arts and Crafts style and would be in keeping with the overall design aesthetic of the area. Although the layout has been criticised as being 'backland' it seems to me that because the development would face the open area of the Fairacre development this would complement the layout of that development and would be in keeping with the overall pattern of development in the area.
9. The gaps between properties in the area vary, but there is a spacious feel. The gap between the two properties would be similar to others in the area, although these are more typically between two storey houses and single storey elements such as garages. Within the overall form of the area, given the space to Ravensdale Road to the east and the increased space from the loss of trees around the development, assuming that this was to be acceptable which I will discuss below, there would be sufficient space around the properties so that

¹ Shown as Plot 2 of the adjoining Fairacre development on the application drawings

² Tree Preservation Order 003 of 2014

³ The tree numbers are those given on the Tree Protection Plan which accompanied the application

they would not appear cramped and out of keeping with the character and appearance of the area.

10. However, the proposal would involve the loss of a number of the existing trees which add to the character of the area. Protected Scots Pine T17 is close to another Scots Pine (T16) which would be removed. The Council is concerned that the amount of development within the Root Protection Area (RPA) of T17 would be such that it would threaten its health and longevity. In addition, the proposal would involve the loss of the Sweet Chestnut (T14) and another Scots Pine (T15) close to that. All four of these trees have both been categorised at category 'B' against the relevant British Standard⁴ (the BS). This means that they are trees of moderate quality with an estimated remaining life expectancy of at least 20 years.
11. In looking at these trees they all add significantly to the sylvan character of the area and their loss would be significantly harmful to the character and appearance of the area. Of these four trees, three are proposed to be removed, and it is clear that works would be necessary within the RPA of T17. While the BS⁵ indicates that the default position should be that structures are located outside the RPAs of trees to be retained it does acknowledge that where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the trees.
12. The Council indicates that some 31.9% of the RPA of T17 would be affected by the development taking into account the hardsurfacing proposed as part of the development. Even taking into account best practice construction methods this would be above the 20% set out in the BS⁶ as being the maximum design recommendation for the provision of hardstanding within an RPA. It is therefore likely that the long term health of the tree would be threatened.
13. The appellant maintains that the loss of trees is the minimum necessary to allow for the development, but given the harm found elsewhere in this decision there is no overriding justification for the loss of the trees.
14. The Council is also concerned that the remaining garden areas for the two proposed properties would be overshadowed leading to pressure for the removal of some of the remaining trees to the south. These trees currently have a high canopy, but there is a degree of shadowing, and if the understorey planting proposed as part of the application were to be introduced this would further restrict the amount of light into these essentially south facing rear gardens.
15. Taken as a whole, I consider that the proximity of the trees to the south, particularly for Plot 1, would give rise to pressure for otherwise unnecessary works to the protected trees either to allow light into the properties or allow a reasonable sized garden for these family houses. Such works would be harmful to the character and appearance of the area. This means that within the constraints of the site the development would be incompatible with the character of the area and would not display a high standard of design in that it fails to take appropriate account of the constraint of trees.

⁴ BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

⁵ Paragraph 5.3.1

⁶ Paragraph 7.4.2.3

16. As such the proposal through the loss of protected and other trees and the potential effect on protected trees the proposal would be harmful to the character and appearance of the area. As such it would be contrary to Policies N6, DG1, H10 and H11 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 Incorporating Alterations adopted June 2003 (the RWMLP), in that it would not allow for the retention of existing suitable trees, would result in the loss of important features, trees, that contribute to the character of the surrounding area, would not display high standards of design and would be incompatible with the character of the area. It would also be contrary to Policies NP/DG1, NP/DG2, NP/EN2 and NP/EN3 of the NP in that it would not protect the character and distinctiveness of the area, be sensitively placed within its plot, retain the green and leafy character of the area and result in an unacceptable impact on the landscape of the site. It would also be contrary to paragraphs 58 and 64 of the National Planning Policy Framework (the Framework) which aims to ensure that development responds to local character, reflecting the identity of local surroundings, and improve the character and quality of an area.

Ecology

17. The proposal involves the demolition of the existing buildings which is of some age and has a pitched, tiled roof with some features that could provide roosting opportunities for bats including gaps in the soffit board. There are a number of trees within and surrounding the proposed development, which may also give roosting opportunities for bats. In addition, there are records of bat roosts within 50m of the proposed development and good foraging and commuting habitat surrounding the proposed development, which increases the likelihood of this group of species being present. The appellant acknowledges this but considers that this matter could be left of a planning condition in the event that the development was otherwise found to be acceptable.
18. Advice on the use of conditions is set out in paragraph 206 of the Framework and the national Planning Practice Guidance (the PPG). In addition Circular 06/2005 *Biodiversity and geological conservation - statutory obligations and their impact within the planning system* gives advice on this topic. This states "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. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted"⁷.
19. Given the records show that protected species are present in the area and that the building to be demolished could provide roosting opportunities there is a reasonable likelihood of bats being present. That being the case, and given the creation of dwellings is not an exceptional occurrence, this matter should not be left to conditions after planning permission has been granted as this would be contrary to the advice in the Circular, the Framework and the PPG and may not lead to appropriate mitigation measures.

⁷ Paragraph 99

20. As such at present it is not possible to be sure that the development would not have a detrimental impact on protected species. As such the proposal would be contrary to Policy NP/EN4 of the NP in that it cannot be shown that it would enhance biodiversity. It would also be contrary to paragraph 118 of the Framework in that it would not conserve biodiversity.

Living conditions

21. Plot 2 would be located towards the western side of the site set to the side and behind Elmwood House. There is a level change so that Elmwood House is set at a lower level than Plot 2. The proposed floor level of Plot 2 has not been fixed, but given the proposal would be to provide a no-dig solution for the hardsurfacing in front of Plot 2 this would be commensurate with the existing property. There would also be the loss of some vegetation along this boundary.
22. In a sub-urban area such as this there will always be some intervisibility between properties; the concern is the degree of that and whether it would have harmful effects. I viewed the appeal site from within the rear garden of Elmwood House, and noted the patio doors to a room on the eastern side of that property closest to Plot 2. The rooms within Elmwood House face down its garden. As a two storey property with rooms in the roof the proposed Plot 2 would be relatively high, but there would be sufficient separation for the property not to result in an unacceptable loss of light within Elmwood House or for there to be an overbearing effect leading to a loss of outlook for its occupiers.
23. There is one window proposed in the side elevation of Plot 2 facing Elmwood House. However, this is to an en suite shower-room, and I am satisfied that provided that this window were to be obscure glazed and fixed shut at a lower level, which could be secured by condition, there would be no unacceptable overlooking towards Elmwood House leading to a loss of privacy for the occupiers of that property.
24. The proposal would therefore not have an adverse effect on the living conditions of the occupiers of Elmwood House. As such the proposal would comply with Policy NP/DG2 of the NP in that would not dominate, in height or bulk, neighbouring properties. It would also comply with paragraph 17 of the Framework which seeks a good standard of amenity for all existing occupiers of land and buildings.

SPA

25. The site lies within 5km of the SPA which is designated under the Habitats Directive for its populations of woodlark, nightjar and the Dartford Warbler. In line with the Habitats Directive and the Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) planning permission is to be refused if development either on its own or in combination with other plans or projects would have a significant adverse effect on the SPA. The additional resident human population associated with the development proposed has been shown through research to be likely to recreate on the SPA leading to such significant harm.
26. To provide mitigation for such developments the Council has published a Thames Basin Heaths Special Protection Area Supplementary Planning

Document (the SPD) which sets out a strategy of providing additional greenspace to provide an alternative location for recreation (Suitable Alternative Natural Greenspace or SANG) and access management (Strategic Access Management and Monitoring or SAMM).

27. As set out above while the Council has introduced CIL this does not include the provision of such mitigation. The Council indicates that the necessary mitigation could be secured by a condition on any planning permission granted, which would require a scheme to be submitted to and approved by the Council for the delivery of SANG and SAMM.
28. The PPG makes clear⁸ that conditions cannot be used to require payment of money. The proposed condition is phrased negatively and the Council suggests that mitigation would be secured by an agreement under Section 111 of the Local Government Act 1972 (as amended). The PPG notes⁹ "in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence 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".
29. However, it seems to me that the situation here is not exceptional in the sense that there will be many other applications of this type, nor could an application of this size and scale be described as strategically important. Consequently the imposition of a condition as proposed by the Council would not meet the tests for conditions set out in paragraph 206 of the Framework or the guidance in the PPG.
30. That being the case, the proposal would not provide sufficient mitigation for the effects of the proposed development on the SPA. As such it would be contrary to Policy NRM6 of the South East Plan which seeks to protect the SPA. It would also be contrary to paragraph 118 of the Framework which indicates that if significant harm resulting from a development cannot be avoided or mitigated then planning permission should be refused.

Other matters

31. Local residents have expressed concern that the proposal would have insufficient car parking, but I am satisfied that the layout makes adequate provision for parking given the overall accessibility of the development and the size of the properties.

Conclusion

32. The Council has indicated that it does not have a 5 year supply of housing land. However, the effect on protected trees harmful to the character and appearance of the area, the lack of information to ensure the preservation of bats and the effect on the SPA all represent significant and demonstrable reasons why the harm caused by the development would outweigh the benefits of the proposal. As such the proposal would not represent sustainable development.

⁸ Reference ID: 21a-005-20140306

⁹ Reference ID: 21a-010-20140306

33. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR