

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: 18 October 2016

Appeal Ref: APP/T0355/W/16/3153088

The Garden Lodge, Bagshot Road, Ascot SL5 9JG

- 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 Alchemistico Ltd against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/01232, is dated 12 April 2016.
 - The development proposed is redevelopment of Orchard Cottage and Garden Lodge plots with one new dwelling in grounds of retained Garden Lodge.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Alchemistico Ltd against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Procedural matters

3. 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, including its effect on protected trees, would be cramped and out of keeping with the character and appearance of the area and that it would have an unacceptable effect on the living conditions of the occupiers of the neighbouring property, Nunthorpe House.
 4. 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 (the SPA) was continuing to be dealt with outside CIL.
 5. The appellant submitted a plan showing that services for the proposed new dwelling to front St Mary's Road could be arranged to/from Bagshot Road. I have taken this plan into account as to do so would not prejudice the interests of any party.
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Main Issues

6. The main issues are:

- the effect on the character and appearance of the area;
- the effect on the living conditions of the occupiers of Nunthorpe House in terms of outlook and light; and
- the effect of the development on the SPA.

Reasons

Character and appearance

7. The appeal site lies on the north side of Bagshot Road. Currently on the appeal site are two buildings, known as Garden Lodge and Orchard Cottage. These two properties are served off a joint access which also serves another dwelling, Hunters Moon. Orchard Cottage is located to the west of Garden Lodge and is at a slightly lower level. Until recently the garden of Garden Lodge extended to St Mary's Road, but a fence has been constructed approximately 21m to the rear of Garden Lodge to separate the area between the fence and St Mary's Road.
8. Around the periphery of the site are various trees which are covered by a Tree Preservation Order¹. The areas around Orchard Cottage and Garden Lodge are laid to lawn with ornamental planting.
9. 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 Villas in Woodland Setting. This is characterised by the extremely low residential density and wooded setting resulting in a semi-rural character. There are extremely large villas located in spacious plots with long drives and security gates. The narrow rural lanes and unmade/private roads amongst woodland contribute to the semi-rural character. Thick vegetation, close board fencing and brick walls prevent views into the individual plots. I agree with this analysis.
10. The proposal is to remove a single storey side part of Garden Lodge, adding various extensions to the rear, erect a new dwelling to the side of Orchard Cottage and convert the existing building to ancillary accommodation and a car port, and erect a new house, with detached car port to the front, in the area to the rear of Garden Lodge facing and with an access from St Mary's Road. This second new property is described as "Plot 1". The existing joint access with Hunters Moon would be stopped up and a new access serving Garden Lodge and the new Orchard Cottage (Plot 2) created to Bagshot Road some distance from the existing access.
11. The Council does not object to the alterations to Garden Lodge in themselves and I would concur with this analysis. The proposals are in keeping with the design of the property and would not affect either the character or appearance of the area or the living conditions of any adjoining occupier. However, these

¹ TPO 006 of 2015

alterations form part of the larger proposal and cannot be considered as an individual element.

12. The appellant has provided an analysis of the plot sizes in the Villas in Woodland Setting area which seeks to show that, if permitted, the density of the appeal site would not be out of keeping with that of the surrounding area, and also seeks support from other developments in the area which, it is maintained, show similar developments. However, it seems to me that while showing the area as a whole this is of limited use in assessing this particular proposal. Firstly, density in the terms of dwellings per hectare is a very crude measure in that it does not take into account the size of the individual properties nor the spacing around them, nor individual constraints such as topography, tree cover or the relationships with other properties. Secondly, it does not take account of the history of the area, the planning policies applicable at the time and how the properties came into existence. The properties shown as being at a higher density are spread widely throughout the area and some would appear to be of some vintage, while others are more modern. In considering this application, what is of more import is whether the proposals would be in keeping with the individual context and constraints of the site given the current planning policy situation.
13. St Mary's Road is a narrow, traffic calmed street. The properties are set some distance back from the road, and mostly extremely large. Whatever their size, they all exhibit a sense of space around them. The properties are generally two storeys in height, although often having single storey elements with vegetation viewed over the building and the design of the properties exhibit a horizontal emphasis over their extensive plots.
14. Plot 1 and its associated car port would be set a similar distance back from Bagshot Road as the existing Garden Lodge. In addition, the single storey wing of South Grange Manor on the opposite side of St Mary's Road is closer to Bagshot Road than either. Set an appropriate level, slightly down from Bagshot Road and with additional landscaping on the Bagshot Road frontage, neither house nor car port would appear out of character or appearance with the area when viewed from Bagshot Road.
15. Although the width of plots along St Mary's Road varies, the width of Plot 1 when facing St Mary's Road would be narrower than that generally prevailing along that street. In addition, while the property would be wider than it is high it does not exhibit the significant horizontal emphasis of the design of other properties. It would also be, relatively, close to its boundaries so that, particularly to the boundary with Nunthorpe House, it would be appear cramped and out of character with the area. That additional vegetation is proposed to limit the effect of the development on Nunthorpe House would only add to that sense of it being cramped.
16. The Council has also raised concerns that providing the access to Plot 1, the entrance pillars and its car port would adversely affect protected trees, adversely affecting their health and longevity. This would, the Council asserts, result in the loss of the trees harmful to the character and appearance of the area. The particular concerns relate to two trees, noted as T17, a Corsican Pine, and T20, a Beech.
17. The application was accompanied by a Tree Survey and an Arboricultural Impact Assessment (AIA). These trees have both been categorised at category

'B' against the relevant British Standard². This means that they are trees of moderate quality with an estimated remaining life expectancy of at least 20 years.

18. The AIA accepts that there would be encroachment into the Root Protection Areas (RPAs) of both trees, but considers that the amount of encroachment would be limited, that the access drive would be constructed with a no-dig system using a three dimensional cellular confinement system, and the car port would be a surface construction supported by pads or piles. The AIA does not address how the entrance pillars would be constructed. Information submitted with the final comments shows that services could be achieved to/from Bagshot Road, which would mean that services would not affect the RPAs of protected trees.
19. Above I have found that the proposed level of Plot 1 would need to be set down from the existing ground level in order so that it would not be intrusive into the street scene when viewed from Bagshot Road. This may compromise the ability to deliver a no-dig solution in order to protect trees.
20. While the BS³ 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. Clearly this is a matter of balance, but, as I have found that the proposed dwelling on Plot 1 would be out of keeping with the street scene when viewed from St Mary's Road and cramped within its siting, there will be no overriding justification for construction within the RPA. Undertaking construction within the RPA, however carefully and using best practice techniques, does increase the risk to the protected trees.
21. In relation to Orchard Cottage (Plot 2) the proposed dwelling would be sited across a substantial part of the width of its site. The gaps either side of the property would not allow for sufficient space characteristic of the area. The proposed property, with the front gabled portico and flat roofed two storey side element, would be cramped within the plot.
22. Overall, the proposed development would not be in keeping with the character and appearance of the area. As such it would be contrary to Policies H10, H11, DG1 and N6 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 Incorporating Alterations adopted June 2003 (the RWMLP) in that it would not create an attractive residential area, enhancing the existing environment, would introduce a scale of development which would be incompatible with the character of the area, would harm the character of the surrounding area through development which is cramped and would not allow for the retention of existing suitable trees. It would also be contrary Policies NP/DG1, NP/DG2, NP/DG3, NP/EN2 and NP/EN3 of the NP, in that it would not protect the character and distinctiveness of the area, would not be in keeping with both the character of the surrounding area and the immediately neighbouring properties, positively contributing through sympathetic, visually attractive design and appropriate landscaping to the spacious, open, green and leafy nature of the neighbourhood, would not be of a high quality of design that sits comfortably with the existing built and natural environment, would not protect

² BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

³ Paragraph 5.3.1

trees of recognised importance and would result in an unacceptable impact on the landscape and environmental value 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.

Living conditions

23. Nunthorpe House is located to one side of its plot closer to the proposed Plot 1 with a wing to the property on this side. Currently there is limited vegetation within the appeal site with additional vegetation within the curtilage of Nunthorpe House. The only window proposed in the first floor of Plot 1 would be to an en suite and this could be obscure glazed and fixed at a lower level to ensure that there was no unacceptable overlooking leading to a loss of privacy. The concern, however, relates to the whether the proposed dwelling would be an intrusive development resulting in a loss of outlook.
24. Although proposed Plot 1 would be two storeys with rooms in the roof, if at an appropriate floor level so it would not to be intrusive into the Bagshot Road street scene as discussed above, there would be sufficient separation to ensure that the dwelling would not appear overbearing, particularly if there was enhanced vegetation. I am also satisfied that there would be sufficient separation between dwellings to ensure that there would not be an unacceptable loss of light within Nunthorpe House. This is a separate matter to whether the proposal would appear cramped which I considered earlier.
25. As such the proposal would comply with Policy NP/DG2 of the NP in that it 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 and future occupants of land and buildings.

SPA

26. 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 developments proposed has been shown through research to be likely to recreate on the SPA leading to such significant harm.
27. 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).
28. As set out above while the Council has introduced CIL this does not include the provision of such mitigation. The Council indicates that this 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.

29. The national Planning Practice Guidance (the PPG) makes clear⁴ 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 continues to note⁵ "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".
30. 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.
31. 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

32. Local residents have set out concerns about additional traffic from the proposed development, particularly on St Mary's Road. However, I note that the Highway Authority has not objected to the proposal, subject to conditions, and the amount of traffic which a single dwelling would generate would be comparatively limited, particularly as it would be likely to turn towards Bagshot Road to gain access to the wider road network. Certainly it would not result in a severe residual cumulative impact which is the test set out in paragraph 32 of the Framework if development is to be prevented on transport grounds.

Conclusion

33. The Council has indicated that it does not have a 5 year supply of housing land. However, the cramped nature of the proposed development, the effect on protected trees 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.

⁴ Reference ID: 21a-005-20140306

⁵ Reference ID: 21a-010-20140306

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

RJ Jackson

INSPECTOR