
Appeal Decision

Site visit made on 18 October 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 21st November 2016

Appeal Ref: APP/L3625/W/16/3153768

Land adjacent to Angel Place, Cockshot Hill, Reigate, Surrey RH2 7LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Omega Design and Build against the decision of Reigate and Banstead Borough Council.
 - The application Ref 16/00314/F, dated 9 February 2016, was refused by notice dated 17 May 2016.
 - The development proposed is described as 'erection of a 1.5 storey detached dwelling-house (resubmission)'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 1.5 storey detached dwelling-house at Land adjacent to Angel Place, Cockshot Hill, Reigate, Surrey RH2 7LJ in accordance with the terms of the application, Ref 16/00314/F, dated 9 February 2016, subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. The application was amended prior to its determination by the Council following the submission of drawing 152000/A/01 Revision C (entitled Visibility) and I have taken account of this drawing in determining the appeal.
3. The application is accompanied by a Unilateral Undertaking made under Section 106 of the Act, obligating the appellant to make a financial contribution of £8,058.00 towards the provision of affordable housing prior to the commencement of the development. I consider the need for the planning obligation below.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area, including the Woodhatch Lodge historic garden of local interest (the parkland) and whether the setting of the grade II listed Angel public house would be preserved.

Reasons

5. The development would involve the construction of a dwelling with two floors of accommodation, with the upper floor for the most part being within the roof space. The development would also involve the formation of a new vehicular access point on Cockshot Hill. The dwelling would be located within the
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northern extremity of the car park of the Angel public house, a grade II listed building, which is currently vacant.

6. The site historically formed part of the parkland at Woodhatch Lodge, now occupied by the Canon Corporation (Canon), and at some time during the 1960s its use as a car park for the public house commenced. The site and the public house's retained parking have a tarmacked surface. The parkland has been designated by the Council as a 'historic garden of local interest', although it is not subject to any statutory designation. Within the site there are four mature trees, an oak (tree 1359)¹ and three yews (trees 1360, 1363 and 1364). A dense screen of trees and undergrowth extends northwards from the site along the whole of the parkland's boundary with Cockshot Hill. None of the trees within the site are subject to statutory protection afforded by either a tree preservation order or a conservation area designation.
7. Palisade fencing has been installed along the southern and western boundaries of the parkland occupied by Canon and the site has the appearance of being physically quite distinct from the main body of the parkland. Based on my observations of the site and its relationship with the parkland I consider that it now forms part of the area's developed urban fabric and therefore has a much greater affinity with the public house car park and the four dwellings in Angel Place rather than the parkland, with those dwellings forming the backdrop to the site when it is viewed from Cockshot Hill. In this respect I am mindful of the historic photographs of the public house, included in the heritage statement submitted with the application, which appear to show the parkland historically extending nearly as far south as the public house's main northern elevation.
8. I recognise that some of the shrubbery along the site's road frontage has recently been cleared and that its removal will have had some implications for how the site is now appreciated within the streetscene. However, the site's use as a car park and the presence of the dwellings in Angel Place means that for a considerable period of time this piece of mainly hard surfaced land has not shared the same physical attributes as the main body of the parkland. The parkland's attributes being a dense road side planted screen with grassland beyond it, with glimpses of the latter being possible in some places where the undergrowth is thinner.
9. I therefore consider that constructing a dwelling on this site would not of itself have an adverse effect upon the parkland's overall character or appearance, because the area to the south of the Canon site is generally more built up and has an urban character.
10. Although the site is quite small and the dwelling would be sited in close proximity to its northern and eastern boundaries, I do not consider that it would have a cramped appearance when compared with the other residential development in the area, most particularly 1 to 3 Angel Place, which while being properties set behind an access drive, have limited space between them. The fact that the dwelling would have limited space beyond its rear elevation I consider to be of little consequence, in this instance, because this characteristic of the development would not be readily apparent within the

¹ This tree number reference and those that follow being taken from the Tree Survey Report prepared by RGS Arboricultural Consultants

wider streetscene. That is because of the part screening that would be provided by the trees on site and within the adjoining parkland.

11. The development would have some implications for the trees on site, with the works required to form the access and drive requiring some excavation within the route protection areas (RPA) for yew trees 1360, 1363 and 1364. Some excavation works would also be required within the oak tree's RPA, while some pruning of its canopy would also be necessary, given the dwelling's proximity to it. The appellant's arboriculturalist has advised that recognised no dig/minimal dig techniques would be used within the RPAs and that tree protection measures would be installed for the duration of the construction works. It is also suggested, given the extent of the tarmacked surface within the site, that the extent of each of the RPAs may not be as great as has been assumed in the submitted tree report.
12. The Council is particularly concerned about the extent of the works that would be necessary within the RPAs for trees 1360 and 1363. It therefore contends that full details of the works within the RPAs should be available prior to any planning permission being granted, rather than reliance being placed on planning conditions with the purpose of safeguarding the trees' wellbeing (the precautionary approach).
13. In terms of works within the RPAs, the encroachment into the RPA of tree 1360 would be the most significant. However, this tree is the one in the poorest condition, with it having a misshapen canopy and limited visual amenity. I therefore consider that were the construction works to have an adverse effect on tree 1360, resulting in its loss, then that loss would have a limited effect on the area's appearance. Any incursion into the RPA for tree 1363 would be in an area that already has a tarmacked surface and it is therefore likely to have a limited impact on this tree.
14. Concern has been raised that the trees overhanging the dwelling's garden could adversely affect the utility of the latter, creating pressure for their removal. The dwelling's main garden area would be situated within the southern limb of the site and I consider that the distance between this area and trees 1363 and 1364 would be such that no unacceptable overshadowing of the main garden area would arise, with the result that it would be capable of functioning for its intended purpose.
15. Given the foregoing I am not persuaded that the Council's preference for following a precautionary approach for the safeguarding of the trees is justified, having regard to their amenity value, the scale of the works within their RPAs, the site's existing surface treatment and the absence of an adopted development plan policy requiring such an approach. On that basis I consider that this is an issue that could reasonably be covered by planning conditions.
16. The dwelling would be within the grounds of the listed public house and would form a part of the setting to this heritage asset. However, as I have indicated above the setting of this listed building has been subject to significant alteration, with the area immediately to the north of the building changing from parkland to a combination of a parking area and dwellings, with parkland beyond to the north. The provision of an additional dwelling would therefore be compatible with the listed building's current setting.

17. For the reasons given above I conclude that the development would not be harmful to the character or appearance of the area and that the setting of the listed building would be preserved. Accordingly there would be no conflict with saved Policies Ho9, Ho13, Ho16, Pc4 and Pc11 of the Reigate and Banstead Borough Local Plan of 2005 and Policies CS1, CS4 and CS10 of the Reigate and Banstead Local Plan Core Strategy of 2014 (the Core Strategy).
18. As I have concluded that the development would be acceptable in character and appearance terms, I find that there would be no conflict with the National Planning Policy Framework, most particularly paragraphs 17 (the fourth and tenth core planning principles), 56 to 58 and 135.

The Planning Obligation

19. Policy CS15 of the Core Strategy has set a target of providing a minimum of 1,500 affordable homes by 2027 and under this policy residential schemes of up to nine units should make financial contributions to assist with the provision of affordable homes. The required contributions are calculated on a tariff basis, equivalent to around 10% of the level of affordable homes that would otherwise be provided on an on-site basis. Further to the provisions of Policy CS15 the appellant has entered into a Unilateral Undertaking under Section 106, which would obligate it to make an affordable housing contribution of £8,058.00.
20. However, a Written Ministerial Statement (WMS) of 28 November 2014 states that tariff style affordable housing contributions should not be sought for schemes of ten units or less. While the WMS has been subject to legal challenge the Court of Appeal, in a recent judgement² handed down by it, has established that the WMS's provisions should be treated as national planning policy and to that end the Planning Practice Guidance (the PPG) has been revised to take account of the WMS's provisions³.
21. I am mindful of the Council's submissions relating to the operation of Policy CS15. However, as that policy predates the WMS and the PPG, then requiring an affordable housing contribution to be made would be in conflict with national policy, a material consideration of significant weight that I must have regard to.
22. In my reasoning above I have concluded that the development would not be harmful to the character or appearance of the area. Accordingly, notwithstanding the existence of the extant planning obligation, this is a case where the existence of the obligation would not be necessary to make the development acceptable in planning terms. Having regard to the WMS's and PPG's provisions and in the absence of harm to the character and appearance of the area, requiring an affordable housing contribution to be made would be contrary to the tests set out in Regulation 122(2)(a) of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework. Accordingly I have not taken the planning obligation into account.

² Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

³ Most particularly Paragraph: 031 Reference ID: 23b-031-20160519 contained within the PPG's section on Planning Obligations

Conditions

23. The Council has suggested various conditions and I have considered the need for their imposition, having regard to the provisions of the Framework and the PPG.
24. Apart from the standard time limit condition, I find it necessary that the development should be built to accord with the submitted plans for certainty. In order to safeguard the appearance of the area it is necessary that details of the external materials be submitted for the Council's approval. It is, however, unnecessary for the external materials details to be submitted any earlier than the point at which the construction works have reached the slab level nor for them to include matters such as fenestration, downpipes and fascia, as the site is not within a designated heritage asset, such as a conservation area. In order to safeguard the appearance of the area it is necessary that a landscaping scheme and details of the tree protection arrangements during the construction period are submitted to the Council for approval. Those details should be submitted prior to the development commencing because of its implications for the mature trees present on the site and immediately adjoining it.
25. In order to safeguard highway safety it is necessary that a condition be imposed requiring the on-site parking and turning areas be provided prior to the first occupation of the development and retained thereafter. In the interests of safeguarding highway safety and the living conditions for the occupiers of neighbouring properties it is necessary for a construction method statement to be submitted to and approved by the Council prior to the development's commencement.
26. A condition removing the permitted development rights for making roof alterations (Classes B and C) and building porches (Class D) and outbuildings (Class E) has been suggested in the interests of safeguarding the appearance of the development and the living conditions of neighbouring residents. The insertion of rear dormers could result in an unacceptable loss of privacy for the occupiers of Angel Place and it is therefore reasonable that the Class B permitted development rights be withdrawn. I, however, do not consider that removing the Class C, D and E rights is justified in order to safeguard either the appearance of the area or residents' living conditions, given the scale of the dwelling and its siting relative to Angel Place.
27. A condition requiring the submission of the existing and proposed site levels is unnecessary because the site is essentially level and there will be a requirement for the development to be implemented in accordance with the application drawings. Those drawings show various reference points, such as the boundary wall to Angel Place and the garage in front of 1 Angel Place, enabling the development's ground level and the height of the dwelling to be readily established.

Conclusion

28. For the reasons given above the appeal is allowed.

Grahame Gould

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 Rev A (Proposed ground floor/site layout plan; 02 Rev B (proposed elevations, first floor plan, sections, block and site location plans); and 152000/A/01 Revision C (Visibility).
- 3) No development above slab level shall take place until details and samples of all external facing materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence until details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. These details shall include: the retention of the existing trees; any planting plans, written specifications (including cultivation, and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants, noting species, plant sizes and proposed numbers and densities and an implementation and management programme. The hard and soft landscaping works shall be implemented in accordance with the approved details, including the implementation programme and shall thereafter be retained in accordance with the approved management programme. Any trees, shrubs or plants which within a period of 5 years from the completion of the development die, are removed or become damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development shall be commenced, including any preparatory ground works, until a detailed Tree Protection Plan and a related Arboricultural Method Statement have been submitted to and approved in writing by the local planning authority. These details shall include details of the specification and location of exclusion fencing, ground protection measures and the location and nature of any excavations or other construction activity to be undertaken within the Root Protection Areas of the trees shown on the Tree Protection Plan. The Arboricultural Method Statement shall include details of a supervisory regime for the implementation and monitoring of its measures, as well as a reporting mechanism to the local planning authority. The constructions works, for their duration, shall be undertaken in compliance with the approved details shown on the Tree Protection Plan and contained within the Arboricultural Method Statement.
- 6) No development shall be commenced until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. This statement shall include details of:
 - a) the arrangements for the parking of site personnel, operatives and visitors vehicles;
 - b) the arrangements for unloading, loading and storage of plant and materials;
 - c) a programme for the works, including any traffic management measures;
 - d) the location of any site hoardings; and

- e) a communication plan detailing how nearby residents and businesses will be given advanced notification of the construction works commencement and the contact details for the nominated site manager.

The approved Construction Method Statement shall be implemented for the duration of the construction works.

- 7) Prior to the first occupation of the dwelling hereby permitted the parking and turning areas shown on the approved drawings shall be provided and shall thereafter be retained for the purposes of parking or the turning of vehicles for the duration of the development.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within Class B of Part 1 of Schedule 2 of the Order shall be carried out.