
Appeal Decision

Site visit made on 17 January 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 8th February 2017

Appeal Ref: APP/X0360/W/16/3159432

145 Nash Grove Lane, Finchampstead RG40 4HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Chris Evans against the decision of Wokingham Borough Council.
 - The application Ref 161709, dated 20 June 2016, was refused by notice dated 18 August 2016.
 - The application sought planning permission for the proposed demolition of existing bungalow and erection of replacement dwelling with integral garage. Closure of existing access and formation of new access without complying with conditions attached to planning permission Ref F/2014/2676, dated 6 February 2015.
 - The conditions in dispute are Nos 4 and 11 which state that:
 - (4) The existing dwelling shall be demolished and all resultant materials shall be removed from the site and the land shall be restored within 3 months of the first occupation of the dwelling hereby approved unless the local planning authority gives written approval to any variation.
 - (11) The existing vehicular access as stated on plan PL-14 to the site shall be stopped up and abandoned, and the footway and/or verge crossings shall be re-instated within one month of the completion of the new access in accordance with details to be submitted to and approved in writing by the local planning authority.
 - The reasons given for the conditions are:
 - (4) In the interests of the amenity of the countryside.
 - (11) In the interests of highway safety and convenience.
-

Decision

1. The appeal is allowed and planning permission is granted for the proposed demolition of the existing bungalow and the erection of a replacement dwelling with integral garage and the closure of the existing access and the formation of a new access at 145 Nash Grove Lane, Finchampstead RG40 4HG, in accordance with application Ref 161709 without compliance with condition number 11 previously imposed on planning permission Ref F/2014/2676, dated 6 February 2015, but subject to the following conditions:
 - 1) This permission is in respect of the submitted application plans and drawings numbered PL-01, PL-02, PL-03, PL-04, PL-06, PL-07, PL-08, PL-09, PL-10 Rev A, PL-11, PL-12 Rev A, PL-13 Rev A, PL-14 and PL-15 Rev A received by the local planning authority on 5 December 2014. The development shall be carried out in accordance with the details shown on the aforementioned plans and drawings other
-

than in instances where the details have been superseded through the approval of details in discharging other conditions imposed on planning permission F/2014/2676.

- 2) The existing dwelling shall be demolished and all resultant materials shall be removed from the site and the land shall be restored within 3 months of the first occupation of the dwelling hereby approved unless the local planning authority gives written approval to any variation.
- 3) The dwelling hereby approved shall not be occupied until the surface water drainage scheme has been installed in accordance with the details approved further to condition 6 imposed on planning permission F/2014/2676 and the drainage scheme shall be retained thereafter.
- 4) The landscaping scheme approved further to condition 7 imposed on planning permission F/2014/2676 shall be implemented in the first planting and seeding seasons following the occupation of the dwelling. Any trees or plants which, within a period of 5 years from the date of planting (or within a period of 5 years of the occupation of the dwelling in the case of retained trees and shrubs) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species or as otherwise approved in writing by the local planning authority.

Background and Procedural Matters

2. Planning permission F/2014/2676 (the permission) is for a two storey house as a replacement for the original bungalow (the bungalow) at 145 Nash Grove Lane (No 145). Condition 4 of the permission, as varied by appeal decision APP/X0360/W/15/3084324 (which deleted the originally imposed conditions 8 and 10), requires the bungalow to be demolished within three months of the replacement dwelling's occupation.
3. Application 161709 seeks to vary condition 4 so that the bungalow can be retained, with a rear outbuilding being demolished instead. This variation of condition 4 would materially change the nature of the development subject to the permission, from one for a replacement dwelling to one for an additional property. That change is of significance because if the original proposal had been for an extra dwelling then permission might not have been granted. That is because No 145 is located beyond Finchampstead's 'development limits' and is thus in the countryside, where development is discouraged under Policy CP11 of the 'Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document' of 2010 (the Core Strategy).
4. As the variation of condition 4 sought would result in two dwellings in No 145's grounds I have considered the appeal as if the development is for the provision of a second dwelling, given that the new house is virtually complete, albeit unoccupied.
5. The third reason for refusal concerned the absence of a planning obligation to secure the payment of financial contributions to mitigate any effects of the development on Thames Basin Heaths Special Protection Area (the SPA). The appellant and the Council have recently entered into a Section 106 agreement obligating the appellant to make contributions towards an SPA Access

Management and Monitoring Project (SAMB) and the Rooks Nest Wood Strategic Suitable Alternative Natural Green Space (SANGS). However, the agreement does not stipulate the actual sums the appellant would be obligated to pay, with a range of values, based on the number of bedrooms to be provided in any given new dwelling, being listed in the agreement's definition section. The Council has advised that with the appellant having entered into this agreement the '... the relevant reason for refusal (no. 3) no longer applies', which I take to mean that it has been withdrawn. I shall, however, refer to this matter in my other matters section below.

6. Application 161709 also sought the removal of condition 11 (closure of an existing access), with the reason for that condition's imposition being to safeguard highway safety. The Council in its officer report has stated that the removal of condition 11 would '... not result in issues of highway safety'. As the Council has raised no objection to condition 11's removal and given the lightly trafficked nature of Nash Grove Lane at this point, I see no reason why condition 11's removal would give rise to circumstances that would be harmful to highway safety. I therefore consider that condition 11 is neither necessary nor reasonable and that it should be removed and my formal decision above reflects this. There is therefore no need for me to give any further consideration to condition 11.
7. Further to clarification I have sought the appellant and the Council have confirmed that in terms of the conditions imposed on the permission, conditions 3, 6 and 7 have been discharged.

Main Issues

8. Having regard to the first and second reasons for refusal and the cases made by the appellant and the Council, I consider the main issues are whether condition 4 is reasonable and necessary having regard to:
 - the effect of the development on the character and appearance of the area; and
 - the accessibility of the development to everyday local services and facilities by a range of modes of transport.

Reasons

Character and Appearance

9. No 145 is situated towards the northern end of Nash Grove Lane, a linear street which has a total length of around 1.6 Km (1.0 mile). The majority of Nash Grove Lane lies to the south of No 145 and is quite intensively developed, while No 145's grounds have a much more spacious character, given their size. To the north of No 145 there is a paddock, while opposite there is a recreation ground, which is also very open in character. The street within the vicinity of No 145 and to the north of this property is lined by trees and hedgerows and it has the character of being a rural lane, not least because the bollards a little to the north prevent the through movement of traffic between Nash Grove Lane and Evendons Lane.
10. I found No 145 to be much more in keeping with the rural section of Nash Grove Lane than the significantly more built up stretch to the south and in my opinion this explains why No 145 has been excluded from Finchampstead's

development limits. The approved development in replacing one dwelling for another is consistent with maintaining both the low intensity of development within No 145's grounds and this property's compatibility with the rural character of the northern end of Nash Grove Lane. With respect to the latter point, the fact that the new dwelling is sited centrally within No 145's grounds, rather than being offset like the bungalow, means that it will contribute to the maintenance of the plot's spacious character.

11. Although the bungalow is to a degree screened from Nash Grove Lane by the planting along the front boundary it is nevertheless in part visible from the street. When seen together both the original and new properties would leave the northern corner of No 145's grounds with a much more built up appearance than would be the case if there was just one dwelling. Having two dwellings would be at odds with the less intensively developed rural character of Nash Grove Lane. I therefore find that the retention of the bungalow alongside the new two storey house would amount to urban encroachment into the countryside that would be harmful to the area's character and appearance.
12. I also consider that regard needs to be paid to the extant permission, granted under file reference F/2014/1529, for the addition of a storey to the bungalow (the extension permission). That permission expires on 20 October 2017 and, if implemented, would result in the bungalow being significantly larger and more prominent.
13. The appellant has submitted that there is now no intention to implement the extension permission, but for so long as it remains extant, its implementation remains a possibility and were that to happen I consider that would compound the harm that would result from the bungalow's retention. To stop the extension being built the appellant has suggested that a condition could be imposed, with the purpose of revoking the extension permission. However, the extinguishment of a planning permission by the imposition of a condition on another planning permission would be unlawful and could only be secured either by the appellant entering into an obligation under Section 106 of the Act or the Council or the Secretary of State revoking the permission, respectively under Sections 97 and 100 of the Act. There is, however, a liability for compensation to be paid when a planning permission is revoked under Sections 97 or 100.
14. The revocation of the extension permission under Sections 97/100 or 106 would in any event not overcome the harm to the area's character and appearance arising from the bungalow's retention that I have identified. I therefore consider that revoking the extension permission would not make the development acceptable.
15. The appellant contends that demolishing the outbuilding behind the bungalow would serve to maintain the rural character of the area, because that building has a greater footprint than the bungalow and it occupies a backland position in an area where frontage development is prevalent. I recognise that the outbuilding has an extensive footprint, however, it is sited so far back from Nash Grove Lane that it has a very discrete presence within the streetscene. The outbuilding's discrete presence is reinforced by the screening afforded by the hedgerow along the No 145's northern boundary and the vegetation adjacent to the property's other boundaries.

16. I therefore consider that there would be no appreciable improvement in the area's character and appearance if the outbuilding was to be demolished instead of the bungalow. I also consider that imposing a condition removing the permitted development rights for both the original and new properties would do little to address the harm to the area's character and appearance that would arise from there being two dwellings in No 145's grounds.
17. For all of the above reasons I conclude that condition 4 is reasonable and necessary in order to avoid the development being harmful to the character and appearance of the area. The development, through the retention of the bungalow, would therefore result in conflict with Policies CP1 and CP11 of the Core Strategy because it would not maintain or enhance the quality of the environment and would lead to encroachment in the countryside. The retention of the bungalow alongside the new dwelling would also give rise to conflict with the fifth core planning principle listed in paragraph 17 of the National Planning Policy Framework (the Framework) because the resulting development would fail to recognise the intrinsic character of the countryside.

Accessibility to everyday local services and facilities

18. No 145 is situated on the edge of Finchampstead's development limits and this is a settlement with a population of around 8,900 people¹. It is clear from the evidence provided by the Council that the accessibility from No 145 to employment opportunities, schools, shopping areas, community facilities and public transport is not particularly good. That is because most of the previously mentioned destinations are several kilometres away from No 145. No 145's location means that everyday local services and facilities are beyond a reasonable walking distance and I recognise that there may also be issues about gaining access to them by bicycle.
19. I therefore accept that there is a likelihood of high private motor vehicle dependency amongst the occupiers of both the original and new dwellings and that the resulting vehicular movements would not be sustainable. However, the number of additional vehicle movements generated by an extra dwelling would be very modest and comparable in number to those generated by each of the many properties on or immediately adjoining Nash Grove Lane.
20. I therefore conclude that while the development's accessibility to everyday local services and facilities by a range of modes of transport would be poor, the extra vehicular activity would be modest and would, of itself, not give rise to significant additional levels of pollution. I therefore find there to be no conflict with Policies CP1, CP3 and CP6 of the Core Strategy because the generation of emissions would be modest and the accessibility to everyday local services and facilities and the choice of travel modes would not be unreasonable for the dwellings' occupiers. I also find that there would be no conflict with the Framework, most particularly paragraphs 32 and 55, because the development would not generate a significant amount of movement and the degree of isolation from everyday local services and facilities would be comparable with the numerous other properties in the area and not unreasonable.

¹ Paragraph 4.05 of the appellant's appeal statement

Other Matters

21. The third reason for refusal related to the absence of mitigation for the potential effects of development on the SPA. As I have outlined above the appellant and the Council have entered into a Section 106 agreement obligating the appellant to make SANGS and SAMM contributions. Given this agreement the Council has in effect withdrawn its third reason for refusal.
22. I have no reason to believe that the SANGS and SAMM contributions would not meet the three tests for obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) and the Framework. However, I have not been provided with sufficient evidence to be certain that the SANGS contribution, which would contribute to a form of infrastructure, would comply with the pooling restrictions imposed under Regulation 123 of the CIL Regulations, given that the Council's Planning Advice Note concerning 'Infrastructure Impact Mitigation – Contributions for New Development' of 2014 suggests that there is a history dating back to 2010 of contributions being sought for the Rooks Nest Farm SANGS. Accordingly, even if the variation of condition 4 was otherwise acceptable, I consider that the available evidence does not enable me to attach any significant weight to the obligation concerning the SANGS contribution.
23. I accept that the SAMM obligation would not be an infrastructure contribution for the purposes of the CIL Regulations and its existence therefore weighs moderately in favour of condition 4's variation. The removal of condition 11 of itself is of no consequence to the development's effect on the SPA.
24. The appellant has submitted at the final comments stage that the retained bungalow would be occupied by other family members, including an elderly relative. While I am sympathetic to the appellant's wish to accommodate family members, very little information about that need has been provided, nor has any explanation been given as to why the outbuilding could not be used for this purpose. On the available evidence I am of the opinion that little weight can be attached to the suggested retention of the bungalow for the purposes of accommodating relatives.
25. The appellant contends that the outbuilding could, with planning permission, be converted into two independent dwellings. However, until a planning application has been submitted to and determined by the Council for such a conversion scheme, there can be no certainty that such a development would amount to a fallback position to be assessed alongside the retention of the bungalow. I therefore consider that very little weight can be attached to the suggested fallback position.
26. It has been submitted that the bungalow is structurally sound and that its demolition would be a waste of resources and thus unsustainable. I consider that proposition undermines the rationale for seeking to replace the bungalow when application F/2014/2676 was first submitted. The demolition of the outbuilding could equally be said to amount to a waste of resources. I therefore attach little weight to this part of the appellant's case.
27. The appellant has suggested at the final comments stage that there is currently an absence of a five year supply of deliverable housing sites (HLS). In that regard reliance is placed on a consultation document that the Council published in August 2016 in connection with the preparation of its new Local

Plan. However, the appellant has provided very little evidence to substantiate this matter, notwithstanding the fact that the appeal's submission in September 2016 postdates the Council's consultation on the emerging Local Plan and evidence relating to this matter could therefore have been included in the case originally made by the appellant. That in turn would have provided the Council with the opportunity to respond to this matter when it prepared its case.

28. On the available evidence relating to the HLS it is not possible for me to reach a fully informed conclusion as to whether or not the development plan's policies should be considered as being out-of-date/not up-to-date for the purposes of paragraphs 14 and 49 of the Framework. However, the contribution that one extra dwelling would make to the HLS would be very modest and I find that this would not outweigh the harm to the character and appearance of the area I have identified. Accordingly, even if there is currently an absence of an HLS and the Core Strategy's policies should be treated as being out-of-date, there would still be conflict with paragraph 17 of the Framework and that would be sufficient for me to conclude that condition 4 should not be varied.
29. I recognise that there would be some social and economic benefits arising from the bungalow's retention, in that the development would provide one additional dwelling, some additional household expenditure would arise and the new dwelling would attract a New Homes Bonus payment. However, as the appellant acknowledges those benefits would be modest ones and I find them to be outweighed by the environmental harm, ie the adverse effect on the area's character and appearance, I have identified. I therefore find that retaining the bungalow would not amount to sustainable development for the purposes of the Framework, when read in the round.

Conclusions

30. While I have found that there would be an acceptable level of accessibility to everyday local services and facilities, the retention of the bungalow would be harmful to the character and appearance of the area. I therefore conclude that condition 4 should not be varied and the appeal insofar as it relates to that condition is dismissed.
31. The retention of the access subject to condition 11 is unobjectionable and I therefore conclude that this condition should be removed and the appeal is allowed in this respect. In line with the Planning Practice Guidance's advice on applications made under Section 73 of the Act, for the purposes of clarity it is necessary for me to re-impose any conditions that have not been discharged. Accordingly I have re-imposed the plans condition requiring the development to be implemented in accordance with the plans and drawings submitted with the application. However, I have adapted the wording of the plans condition to take account of any plans that may have been superseded by other plans in connection with discharging other conditions. As I have concluded that condition 4 should not be varied it is necessary that I re-impose it.
32. It has been confirmed that the details required by conditions 6 (sustainable drainage) and 7 (landscaping) have been submitted to and approved by the Council. However, I find it necessary that the elements of conditions 6 and 7

that require the approved details to be implemented, in accordance with their occupancy triggers, should be re-imposed.

33. As the development is virtually complete the standard commencement condition is unnecessary and there is no need for me to re-impose condition 3 (external materials) because it has been confirmed that this condition has been discharged. Condition 9 concerns the timing of vegetation clearance to safeguard breeding birds, however, because of the development's state of near completion I find it unnecessary for this condition to be re-imposed.

Grahame Gould

INSPECTOR