
Appeal Decision

Site visit made on 12 June 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Appeal Ref: APP/V3120/W/18/3208949

97 The Causeway, Steventon, Abingdon, Oxfordshire OX13 6SJ

- 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 Mr Robin Tucker and Mrs Kerry Tucker against the decision of Vale of White Horse District Council.
 - The application Ref P18/V0759/FUL, dated 6 March 2018, was refused by notice dated 13 June 2018.
 - The development proposed is erection of earth sheltered dwelling, garage, associated landscaping and bio-diversity works, demolish garage and garden building.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) was published on 24 July 2018, after the Council had determined the application. It has since been subject to an update in February 2019, when the latest edition was published. However, the parties have had the opportunity to take account of any relevant changes during the course of the appeal.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, including the setting of the adjacent Steventon Conservation Area (SCA) and the settings of nearby listed buildings;
 - the effect of the proposed development on the living conditions of existing and future occupiers of 97 The Causeway, with particular regard to noise and disturbance;
 - whether sufficient information has been provided to assess flood risk; and,
 - whether sufficient information has been provided with regard to the effect on trees.

Reasons

Character and appearance

4. The appeal site comprises part of the rear garden of a detached dwelling at 97 The Causeway, which is located within the rural Oxfordshire village of

Steventon. The appellants' Heritage Statement (HS)¹ indicates that the existing two-storey dwelling at No 97 was built about 25 years or so ago and replaced previous buildings. The house is atypical as it is set back from The Causeway to the rear of most of the existing houses, although it still benefits from a generous back garden. It is located immediately adjacent to the SCA boundary to the north-west, which wraps around the historic core of the village and its listed buildings.

5. The 'Raised Causeway' is an ancient Grade II* listed pathway, which is crossed just to the north of the appeal site by the Great Western Railway line which separates the village, with a level crossing providing access to the northern part of Steventon. Several of the historic buildings along this part of The Causeway are listed, including Nos 99 and 101, The Old Vicarage (all Grade II) and The Priory and Priory Cottage (Grade II*).
6. It is proposed to erect a detached dwelling, partly sunken into the ground and enclosed within a grassed mound, save for exposed natural stone walls and extensive glazing to the north-west and south-east elevations. A more conventional detached triple garage, albeit with a sedum roof, would stand above ground to the north-west alongside a gravel parking and turning area, with a new access running to the side of the existing dwelling.
7. The predominant form of development in the immediate area consists of dwellings fronting onto The Causeway, with long, spacious gardens stretching out to the rear. They once formed orchards and are bounded by Ginge Brook to the south. As I saw on my site visit, these backland areas are largely flat and undeveloped, comprising of paddock-like spaces with some used for the keeping of sheep and hens and others, including the appeal site, with fruit trees reflecting their historic orchard use. Although parts of these backland areas are just outside the SCA boundary to the north-west, they have an open, pastoral quality which contributes to the semi-rural character and appearance of the area and to the setting of the SCA.
8. According to the appellants, the design of the current proposal is in response to a previously refused more conventional scheme. The semi-sunken design forms an attempt to mitigate the effects of the built form by enclosing much of the dwelling within a grassed mound. However, such a mound would itself appear artificial and incongruous given the relatively flat nature of this backland area. Moreover, the form of the dwelling, described variously as '*very unconventional*' and '*radical*' by the appellants, would be out of keeping with the other more conventionally designed buildings in the area.
9. Whilst the SCA encloses the historic core of the village and its numerous listed buildings, the largely open, undeveloped character of these backland areas, which include the appeal site, enables a focus on, and appreciation of, the SCA itself. Public views of the development would be limited because of its location behind existing houses and vegetation but it would still be visible from the rear of nearby properties along The Causeway and Castle Street and their gardens. Although the house would be relatively low-level, its discordant mound-like form, contours and extensive glazing would be likely to draw the eye, including in some views towards the SCA. Whilst trees and vegetation on some boundaries would offer partial screening, that effect is likely to reduce during the winter months when there is generally less foliage.

¹ Prepared by Keevill Heritage Ltd dated: 17 January 2017

10. In that context, siting an earth sheltered dwelling, a more conventional triple garage building and a sizeable parking and turning area, all within the rear garden of No 97, would contrast with the general pattern of development in the vicinity, where these backland spaces have been left largely open, green and undeveloped. Given that there is a substantial two-storey house at No 97, which is already to the rear of the building line of most other dwellings, the cumulative effect of the proposed additional development further to the rear would erode the pleasant, semi-rural nature of these extended garden spaces. Therefore, it would harm the character and appearance of the area, which forms part of the general setting of the SCA.
11. The effect on the settings of individual listed buildings along this part of The Causeway, would, given their relative distances from the appeal site and the presence of intervening trees and vegetation, be more limited. I also note that the relevant reason for refusal in the Council's decision notice does not refer to an adverse effect on the settings of listed buildings. On balance, the proposal would not materially harm the main factors which contribute to the significance of the listed buildings, which are fundamentally rooted in their age, architectural design, fabric and history, with principal views achieved from The Causeway.
12. The appellants' HS appears to have been prepared in relation to a previous scheme as it refers to the proposal as the building of '*a new two-storey house*'. Therefore, whilst aspects of the HS remain relevant, the value of its assessment of the impact of the proposal on heritage assets is compromised to some extent, as it is not examining the effect of the current appeal proposal. In any event, I have made my own assessment of the effects on nearby heritage assets within this decision.
13. The HS refers to historic mapping showing some limited small-scale development, a cottage and agricultural buildings in parts of this backland area in the past and presents this as a justification for the proposal. However, the historic mapping also confirms the predominant use of the area as orchards, with most development fronting onto The Causeway. Moreover, the proposed dwelling would not be replacing, or on the site of, an existing building but in an extended residential garden, with fruit trees redolent of its former orchard use, adjacent to other similar garden, pasture or orchard areas to the rear of the dwellings to the south-west.
14. Much emphasis is placed in the appellants' submissions, including within their HS, on an approved dwelling and garage at Little Lane Orchard, which is on an adjoining plot to the east of the appeal site in a similar backland position to the appeal proposal.² Construction of that dwelling appeared to have been completed at the time of my site visit. However, that plot is immediately adjacent to the railway line with a more discrete relationship to development along The Causeway.
15. Furthermore, the Council advises that the dwelling in that scheme replaced an extensive number of existing dilapidated buildings. It also says that at the time that application was determined, the Council could not demonstrate a 5-year housing land supply (HLS). Therefore, the 'tilted balance' within paragraph 11 (previously paragraph 14) of the Framework, would have come into play in relation to that proposal.

² P14/V2187/FUL

16. The Council currently advises that, in accordance with the Written Ministerial Statement (WMS)³, which temporarily amends the application of paragraph 11 of the Framework in Oxfordshire, its housing land supply, of in excess of 3 years, is considered sufficient so that paragraph 11.d) of the Framework is not engaged, which has not been disputed by the appellants. Therefore, the planning context of the Little Lane Orchard approval differs from that relating to the current application and resulting appeal.
17. Consequently, whilst I do not have comprehensive details of the background and circumstances that led to the Little Lane Orchard scheme being approved, such as the relevant Council Officer's Report, it appears that there are material differences between it and the appeal proposal. For example, the proposed appeal dwelling would not be replacing an extensive number of existing dilapidated buildings and paragraph 11.d) of the Framework is not engaged. Additionally, the appeal proposal with its house, associated garage building and parking and turning area would advance built forms to the southwest of the new house at Little Lane Orchard, further into the mainly undeveloped, open, former orchards and pasture land to the detriment of the character of the area. Moreover, whilst there are some broad similarities with the Little Lane Orchard scheme, all proposals must be judged on their individual merits, which is the approach I have taken in determining the appeal before me.
18. A consideration of the above factors leads me to conclude that, overall, the proposed development would have an adverse effect on the character and appearance of the area, which includes the setting of the SCA. Therefore, it would be contrary to policies CP37 and CP39 of the Council's Local Plan 2031, Part 1, Strategic Sites and Policies (LP Part 1)⁴, which seek to ensure that development is of high-quality design and responds positively to the site and visually integrates with its surroundings. Furthermore, that its scale, height, grain, type, details and materials are appropriate for the site and the surrounding area and that development conserves, and where possible enhances, designated heritage assets and their settings, in accordance with national guidance and legislation.
19. Similarly, the proposal would conflict with saved policy HE1 of the Vale of White Horse Local Plan 2011 (the 2011 LP). That policy aims to ensure that works within or affecting the setting of a conservation area, preserve or enhance the established character or appearance of that area. It also refers specifically to development on paddocks or gardens and in gaps between buildings, where they make a positive contribution to the conservation area's special interest and landscape setting or to views within and without.
20. The proposal would also fail to comply with aspects of similar policies within paragraphs 127.c) and 194 of the Framework, which seek to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting, and protect designated heritage assets and their settings. Although paragraph 127.c) also says that 'appropriate' innovation or change should not be prevented or discouraged, I do not consider that the proposal would be 'appropriate' within this setting for the reasons already given.

³ Dated 12 September 2018 (HCWS955)

⁴ Adopted December 2016

21. As I have not found material harm to the individual settings of listed buildings, there would not be conflict with saved policy HE4 of the 2011 LP, also referred to in the Council's Decision notice, which is focused on protecting listed buildings and their settings.

Living conditions

22. The proposed new driveway would branch off the current access to No 97. It would run next to the north-eastern boundary of the property to the side of the existing dwelling. The appellants say that there are no habitable room windows on the side elevation which would face towards the driveway. However, there is a side door to the house and several windows at ground and first floor level, albeit some are obscure glazed. According to the appellants the gap between the side of the existing house and the boundary wall is about 6.6 metres and the access would be 3 metres wide. Therefore, the new access drive would run in close proximity to the existing house and retained garden, with the stretch before the front elevation running near ground and first floor windows within the gabled façade near the corner of the house.
23. Given that the proposed dwelling would have four bedrooms and a three-bay garage along with a sizeable parking and turning area, it seems to me that it would be likely that the additional traffic, accessing the new independent dwelling, would cause significant noise and disturbance to occupiers of the existing house and users of its retained garden area. A screening fence and hedge planting within the relatively limited space between the house and the access would not sufficiently mitigate those adverse effects on the living conditions of current or future occupiers of No 97.
24. The appellants say that there are numerous examples in the District of accesses to dwellings sited to the rear of properties, which are closer to habitable windows, although no specific examples are given. Even if that is the case, it would not justify allowing the creation of a further unsatisfactory layout which resulted in harm. The appellants' Planning, Design and Access Statement also refers to existing noise from trains, which run regularly close to the access. However, that does not recommend exacerbating the existing disturbance by introducing an additional source of noise closer to No 97.
25. Therefore, I conclude that the proposed development would significantly harm the living conditions of existing and future occupiers of No 97, with particular regard to noise and disturbance from vehicles. Consequently, the proposal would fail to comply with saved policy DC9 of the 2011 LP, which seeks to ensure that development does not unacceptably harm the living conditions of neighbouring occupiers, in terms of noise or vibration. It would also conflict with paragraph 127.f) of the Framework, which similarly seeks to ensure a high standard of 'amenity' or living conditions for existing and future users.

Flood risk

26. The appellants submitted a document titled 'Preliminary Flood Risk Assessment' (FRA)⁵ with the planning application. However, both the Council's drainage consultants and the Environment Agency (EA) have objected to the proposal on the basis of apparent discrepancies and omissions within the FRA. Amongst other things, the EA indicates that part of the site lies within Flood Zones 2

⁵ Prepared by AKSWard Construction Consultants: dated April 2016

and 3, which have a 'medium' and 'high' risk of flooding. It states: *'In particular, the submitted FRA failed to provide clarification on the extent of the proposed property and associated earth slopes in relation to Flood Zones 2 and 3. In addition the submitted FRA failed to identify a suitable climate change allowance to establish the 1% annual probability (1 in 100) plus climate change flood extent. This was necessary to identify if there would be any built development within this extent and thereby require mitigation to ensure there is no increased risk to nearby properties through reduced floodplain storage and displaced water.'*

27. The Council's drainage consultants (WSP UK Limited) also refer to apparent disparities between the level of flooding at the access, as referred to in the FRA, and that shown in the associated mapping. The FRA also says the site has never flooded but the historic flood map provided appears to indicate that part of the access has flooded in the past.
28. In their appeal statement, the appellants say that they have not received clear instructions from the Council as to what is required in relation to the FRA. However, the Council Officer's Report and its Appeal Statement, along with the consultation responses from the EA and the Council's drainage consultants, provide details of the additional information and clarification required. It is reasonable to place weight on the professional expertise and advice of the EA and the Council's drainage consultants, regarding whether the FRA fully complies with the requirements of paragraphs 155-163 of the Framework and the associated Planning Practice Guidance. Whilst I have also put my own mind to the matter, I find that I largely agree with those concerns.
29. Although it may be that these issues could be overcome, no further information or amended FRA has been submitted by the appellants during the appeal to address them. Therefore, I conclude that insufficient information has been provided to assess flood risk in relation to the proposal. The semi-subterranean design of the house adds to the significance of that aspect. Consequently, as it stands, the proposal would not sufficiently meet the requirements set out in policy CP42 of the LP Part 1 and relevant parts of Chapter 14 of the Framework.

Trees

30. There is a line of Poplar trees running to the north-west of the existing garage next to the stone boundary wall. It appears from the submitted plans that the proposed driveway would run along the route where the trees are located. This part of the appeal site is within the SCA and the trees are located near the access off The Causeway and can be seen from various public vantage points. They make a positive contribution to the attractive, verdant character and appearance of this part of the SCA, which I consider forms part of its significance.
31. The appellants suggest that 'a local consultant' has indicated that the trees are of no special merit. However, no documentation or arboricultural impact assessment has been submitted to clarify the effect of the development on trees, including on their root protection areas, or any proposed mitigation. Given the proposed location of the new driveway it appears that at least some of the Poplar trees would be lost. However, it is not clear from the evidence before me if that is so or what the extent of the loss would be. The appellants indicate that it is not their intention to remove or damage these trees but that

does not appear to be consistent with the route of the access. It is suggested by the appellants that the driveway could be re-sited slightly or that the relevant section could follow the existing access instead. However, no definite proposal or amended plans have been submitted with the appeal. Therefore, there is a general lack of clarity in this aspect of the proposal which it would not be satisfactory or appropriate to deal with by condition.

32. Overall therefore, I conclude that insufficient information has been submitted to fully assess the effect of the proposed development on trees within the SCA or whether suitable mitigation could be achieved. It follows that the proposal would be contrary to policy CP44 of the LP Part 1 and saved policy DC6 of the 2011 LP, which seek to protect features which contribute to the nature and quality of an area, including trees.

Planning Balance and Conclusion

33. The appellants refer to permitted development rights, advising that it would be possible to erect an office/gym outbuilding on the site without planning permission, which they say could have a greater visual impact than the appeal proposal. This forms a potential 'fallback' position. A letter from the Council⁶ regarding that proposal suggests that planning permission would not be required, although I note that the final paragraph of the letter states that the views expressed are not binding on the Council and that a 'Certificate of Lawful Development application' would be required for a formal opinion.
34. In any event, although in a different position, according to the plans provided, the posited office/gym building would be smaller than the garage element of the appeal proposal, notwithstanding that the appeal scheme would also include a house, driveway and parking and turning area. Moreover, the office/gym would be incidental to the use of the existing dwelling at No 97 and would not entail or require a separate driveway. Therefore, given the limited extent, scale and nature of the 'fallback' scheme presented, I do not agree that its effects would be similar or worse than the appeal proposal. As the fallback would be less harmful in my judgement, it attracts little weight as a justification for the appeal scheme.
35. The appellants also suggest that a number of outbuildings could be erected without planning permission. However, permitted development rights for outbuildings are subject to detailed criteria, as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, including restrictions on size and on the total area of ground within the curtilage of the main dwelling that can be covered by them. I am not persuaded that there is a realistic likelihood that the appellants would seek to install numerous outbuildings within their garden area or the purpose such buildings would serve. Therefore, I am not convinced that there is a greater than theoretical possibility that a myriad of outbuildings could or would be erected or that they would cause harm similar to or greater than that caused by the appeal proposal. Consequently, I give that aspect limited weight.
36. I have identified that the appeal proposal would cause harm to the character and appearance of the area, which includes the setting of the SCA. The apparent potential loss of at least some of the Poplar trees, which are within the SCA, would also occasion some harm to its character and appearance.

⁶ Dated 19 December 2017

However, given that the proposed house and garage would be to the rear of existing development, just outside the SCA, with limited public views and that the potential loss of the existing poplars would affect a localised part of the SCA, I consider that, in the terms of the Framework, the harm to the significance of the SCA as a whole would be 'less than substantial'.

37. Nevertheless, paragraph 193 of the Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, such as a conservation area, 'great weight' should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Similarly, paragraph 194 of the Framework says that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, requires clear and convincing justification. That is in accordance with relevant statutory protection under s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be given to the desirability of preserving or enhancing the character or appearance of conservation areas.
38. However, as I have found the harm to the SCA to be 'less than substantial', paragraph 196 of the Framework indicates that the harm should be weighed against the public benefits of the proposal.
39. There would be some economic benefits through opportunities for short-term employment and the purchase of building materials during the construction period, and from the contribution of future occupants to the local economy. Socially, the dwelling would add to the supply of housing and occupants would potentially participate in village life and support local services. There would also be some biodiversity enhancements, such as a pond and some orchard planting and energy efficiency measures, which would reduce environmental impacts. However, given that the proposal relates to one house, albeit with four bedrooms, the scale of the public benefits would be relatively limited.
40. Overall therefore, the relatively limited public benefits would not outweigh the harm to the character and appearance of the area, including the potential loss of trees within the SCA and the adverse effect on its setting. Those aspects also form part of the environmental dimension of sustainable development. Furthermore, the benefits would not outweigh the harm to the living conditions of existing and future occupants of No 97, with regard to noise and disturbance from additional traffic passing close to the house and the retained garden area. The lack of sufficient clarity in the information provided about potential flood risk also weighs against the proposal.
41. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.⁷ Although I have considered relevant material considerations, including those contained within the Framework, in this instance, they do not outweigh the harm that the proposal would cause and the resulting conflict with the development plan.

⁷ s.38(6) of the Planning and Compulsory Purchase Act 2004 and s.70(2) of the Town and Country Planning Act 1990

42. Consequently, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR