



Appeal Decision

Site visit made on 20 August 2019

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/D3125/W/19/3229814

Land to the west of Fruitlands, Eynsham, Oxfordshire

- 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 J A Pye (Oxford) Limited against the decision of West Oxfordshire District Council.
 - The application Ref 16/03873/FUL, dated 18 November 2016, was refused by notice dated 13th December 2018.
 - The development proposed is for the erection of 5 dwellings with associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During consideration of the planning application the development was reduced from 6 to 5 dwellings. The Council determined the application on that basis, and I have determined the appeal on that basis also and have therefore used the revised description from the Appeal Form in the heading above.
3. The Council have confirmed that Policy EW1 of the West Oxfordshire Local Plan 2011-31 (September 2018) (WOLP) was referred to in error in their decision notice. The correct policy is EW2 as recognised by both main parties. I have therefore considered the appeal in light of WOLP Policy EW2 and no main parties' interests will have been prejudiced by my doing so.
4. I have determined the appeal on its own merits. However I note that the appeal proposal is a revised scheme following a previous appeal decision (the previous appeal)¹, to which I have had regard, where a development of 19 dwellings was dismissed on the grounds of loss of trees, habitat and the impact on the character and appearance of the area.
5. A signed and dated unilateral undertaking (UU) was submitted by the appellant following the submission of the appeal and relates to the creation and management of on-site public open space and the provision of a footpath through the site. A further signed and dated UU dated 18th October 2018 also accompanies the appeal. This relates to the land outside of the site proposed to offset the loss of biodiversity as a result of the proposal. The Council has been given the opportunity to comment on each UU and they seek to secure proposals that are outlined in documents that were assessed as part of the

¹ APP/D3125/W/15/3039143 – dismissed on 24th May 2016

application. From the evidence that has been provided, I consider that each UU meets the three tests set out in Paragraph 56 of the National Planning Policy Framework (the Framework) for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy Regulation 2010.

Main Issues

6. The main issues are: (i) the effect of the proposal on the character and appearance of the area, with particular reference to the protected trees on the site; (ii) the effect of the proposal on the ecological value of the site, with particular reference to the protected trees on the site; and (iii) the effect of the proposal on the West Eynsham Strategic Development Area (WESDA).

Reasons

Context

7. Since the previous appeal, the Council has adopted the WOLP, whereas previously there was no up to date local plan in place and the site fell outside of the settlement boundary of Eynsham. The appeal site now falls within a large strategic land allocation covered by Policy EW2 (WESDA) that is allocated for the delivery of 1,000 homes.

Character and appearance

8. The appeal site, a large area of predominantly mature vegetation, is located adjacent to the modern residential cul-de-sac of Fruitlands, and at the western edge of the settlement of Eynsham. The site's north and east boundaries adjoin the residential gardens of the properties facing Old Witney Road and those at Fruitlands. To the south is a large playing field, whilst to the west is a long strip of undeveloped land in private ownership, beyond this is a former garden centre and agricultural fields.
9. The site is covered by a Tree Preservation Order (TPO) that was put in place by the Council to recognise the visual amenity and ecological value of the site. This sizeable Order area contains approximately 486 trees or groups of trees, with the vast majority (459) assessed, by the Appellant, as C Category trees of low quality and value, that, even though in adequate condition, are expected to remain for a minimum of 10 years.
10. The dense covering of tall trees within and around the site's boundaries are clearly visible from Fruitlands and Old Witney Road above rooflines of dwellings, and through gaps between houses. A more expansive view of the site is obtained from the playing fields, playground and Bartholomew Close to the south and east. The presence of the trees forms a natural backdrop to this part of Eynsham, and I agree with the previous Inspector's decision, that they soften the presence of the built environment around the appeal site and make a valuable contribution to the area's character and appearance. Although in private ownership with no means of public access into and through the site, it nevertheless forms an area of open space that contributes to the character and appearance of the area.
11. The proposed development of 5 dwellings, including a shared driveway would be confined to the northern half of the site and would require, according to the Appellant's figures, the removal of 173 trees or groups of trees from the TPO area, equating to approximately 35% of the trees across the site. It is

acknowledged that considered individually the quality of some of these trees are at the lower end of the scale, however, their loss removes a substantial tree canopy and significantly fragments the natural structure of the site and undermines its overall integrity as an area of open space. Their loss would create a substantial gap that would diminish the size and form of the group to the extent that its visual qualities would be significantly harmed.

12. This loss would be clearly seen from gardens and rooms of private properties within Fruitlands and from the estate's spine road. Equally, this large loss of protected trees would be evident from Old Witney Road and inevitably from private views within and outside some of the dwellings along its southern frontage, including those adjacent to The Evenload restaurant. The loss of this sizeable natural backdrop at this edge of settlement location would be harmful to the character and appearance of the area. Although some areas of trees to be removed would not be visible they would nevertheless contribute to the area's character.
13. In contrast to the previous appeal proposal, the scheme before me proposes to safeguard the majority of trees in the southern half of the site as part of a management scheme, whilst introducing additional planting. However, I do not consider that this mitigation overcomes the loss of approximately a third of the site's trees and the harmful effect on the area's character this would have. Furthermore, while the dwellings proposed would be single storey and not inconsistent with the design and scale of housing in the immediate area, they would still be viewed from neighbouring public and private vantage points. In stark contrast to the existing trees, residents and observers would be exposed to parked cars, new rooflines and the engineered appearance of the new access road.
14. The Appellant has highlighted that the retained area of trees in the southern half of the site will maintain the site's landscape character when viewed from the south and south west. I do not disagree with this assessment, however, this does not overcome my concerns with how the loss of trees would be perceived when viewed from the residential streets and private areas of dwellings to the immediate north and east of the site. It is also maintained that the proposed dwellings would be integrated into the landscape fabric and set amongst the established vegetated setting. However, this landscaped background would be removed from a large part of the site, particularly along the eastern boundary in the location of proposed Plots 1, 2 and 3.
15. In terms of the mitigation offered, the new planting proposed for the northern half of the site, would be relatively limited compared with the number of trees that would be lost. Moreover, the creation of new woodland off-site, approximately 2 miles away, would fail to address the visual impacts in the immediate locality where the value of the TPO would be most perceptible. Consequently, I do not consider that the compensatory measures outweigh the harm identified.
16. The proposal would cause harm to the character and appearance of the area. The proposed development would therefore conflict with Policy EH2 of the WOLP. This policy seeks to ensure that the natural environment is conserved and enhanced, and that loss of important features would not be permitted unless justified, by appropriate mitigation and/or compensatory measures. It would also fail to accord with the Framework where it seeks to ensure

development contributes to and enhances the natural and local environment and to protect the landscape value of features such as trees and woodland.

Ecology

17. The appellant's figures indicate that 0.88ha of the site's area (1.3ha) accommodates Lowland Mixed Deciduous Woodland, a UK Biodiversity Action Plan (BAP) Priority Habitat. Within this dense composition of woodland are, Ash and Dog Wood trees and flowering species such as Daffodil, whilst the site is of ecological value to species such as bats and badger. The site's TPO also acknowledged its ecological value when attributing the Order. Notwithstanding the Appellant's assessment of the site as having low species diversity, there is recognition that the site is of local biodiversity value in the context of West Oxfordshire.
18. The removal of approximately 0.46ha of Lowland Mixed Deciduous Woodland to make way for the proposed development would amount to over half of the total area (0.88ha) of the site's BAP habitat. This also includes the loss of over 170 trees or groups of trees out of the 486 that comprises the group TPO. This would result in the significant loss and fragmentation of, and therefore harm to, important local biodiversity.
19. The Appellant's mitigation and enhancement proposals would compensate for the habitat loss, through the management and creation of approximately 2ha of new and existing off-site woodland, and management of the existing orchard on site. However, whilst this is considered a substantial net gain, the newly created habitat is estimated to take 25 years to establish a good condition, and 10 years for the existing orchard habitat on-site. Whilst an inevitable part of mitigation, I consider that this is an excessive amount of time that would not justify the extent of BAP priority habitat loss at the appeal site and the resultant development of 5 dwellings. I therefore do not consider there to be any exceptional circumstances in this instance where the importance of the development outweighs the harm. Furthermore, the off-site mitigation and enhancement is over 2 miles from the site, which would be of limited biodiversity value to the immediate locality of Eynsham.
20. The appellant has questioned the quality of the BAP priority habitat, indicating there are no old or veteran trees, or rare species, whilst a greater diversity of tree and shrub species would be provided through off-site mitigation. Nevertheless, the appellant's own assessment method has classified the habitat proposed for removal as being of local importance (i.e. in the context of West Oxfordshire). Furthermore, the lesser value attributed to the species on site is insufficient reason to remove them in favour of the proposed dwellings. Therefore, I have placed greater weight on the retention of the BAP priority habitat, than the proposed off-site mitigation, which has yet to be established and would not adequately compensate for the harm that would be caused.
21. The Council's Biodiversity Officer did not recommend refusal of the application, however, neither did she recommend approval, instead highlighting that the harm to the site's biodiversity needs to be balanced against the benefits of the proposed dwellings. This is an acceptable position to take for a consultee, and therefore I do not consider that the lack of a negative recommendation from the Council's specialist weighs in favour of the appeal.

22. The proposal would result in an unacceptable loss of on-site biodiversity and therefore runs contrary to Policy EH3 of the WOLP. These amongst other matters, require that developments avoid loss, deterioration or harm to locally important and UK priority habitats, except in exceptional circumstances where the importance of the development significantly and demonstrably outweighs the harm. And that the harm can be mitigated through appropriate measures and a net gain in biodiversity secured. It would also fail to accord with the Framework where it states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

The West Eynsham Strategic Development Area

23. The appeal site is located in the north of the WESDA. Policy EW2 of the WOLP sets out the key planning considerations for the development of a sustainable integrated community for up to 1000 homes at the site. These include biodiversity enhancements, landscaping measures to mitigate the potential impact of development and a masterplan that takes adequate account of open space and green infrastructure networks in accordance with the Council's Green Infrastructure Plan.
24. The proposed dwellings would result in the significant loss and fragmentation of a large area of trees in the northern portion of the appeal site, which the Appellant's ecology survey categorises as BAP priority habitat. This would undermine the site's strategic ecological importance in the context of its inclusion within the WESDA, where it could form part of a wider green infrastructure network on a site which the Council recognises as the last remaining substantial woodland block of any size in or near west Eynsham. Furthermore, the policy requires that future green space opportunities are developed through a masterplan, and although this has yet to be prepared, it is a requirement of the policy and approving housing without one in place would undermine the sustainability objectives and comprehensive approach the development envisaged for the WESDA. Additionally, in the absence of a masterplan it cannot be assumed that the site would be appropriate for development.
25. The appellant has pointed to the two planning approvals (77 and 160 dwellings) as justification that development has been allowed within the WESDA, however, the strategic objectives of the site wouldn't have applied at the time of these permissions as they predated the adoption of the WOLP. And whilst the principle of housing at the WESDA may be acceptable, future development needs to be assessed against the specific policy criteria relating to this Development Area.
26. Planning Practice Guidance² outlines the benefits of green infrastructure and these include reinforcing and enhancing local landscape character, facilitating ecological connectivity and biodiversity net gain, as well as contributing to carbon storage and improving the well-being of communities as a part of well-designed places.

² Paragraph: 006 Reference ID: 8-006-20190721

27. Consequently, the proposal would significantly undermine the delivery of the green infrastructure objectives of the WESDA. The proposed development therefore conflicts with Policy EW2 of the WOLP, which requires the comprehensive development of WESDA to be led by an agreed masterplan, that takes adequate account of open space and green infrastructure networks and needs and maximises opportunities to create and strengthen green infrastructure.

Planning Balance

28. I recognise that the appeal proposal would result in direct and indirect economic, social and environmental benefits for the area, increase housing supply, albeit by a modest amount in the context of the WESDA and the district, provide compensatory on and off-site habitat, and improved pedestrian accessibility through the provision of a new public footpath through the site. However, these matters do not outweigh the harm identified in respect of the effect of the proposed development on the character and appearance of the area, loss of protected trees, biodiversity and the WESDA, and the resultant conflict with the development plan. The fact that the proposed development would not result in any significant highway safety or residential amenity impacts, are neutral factors that neither weigh for or against the determination of the appeal.

Conclusion

29. For the reasons set out above, the scheme would conflict with the development plan when considered as a whole and the Framework. There are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR