



Appeal Decision

Site visit made on 20 January 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/T0355/W/19/3238418

Land adjacent to Cherry Tree Cottage, Bedford Lane, Sunningdale, Ascot SL5 0NP

- 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 Derek Lamb against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/03524, dated 4 December 2018, was refused by notice dated 2 May 2019.
 - The development proposed is the erection of a detached 4-bedroom dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a detached 4-bedroom dwelling at Land adjacent to Cherry Tree Cottage, Bedford Lane, Sunningdale, Ascot SL5 0NP in accordance with application reference 18/03524, dated 4 December 2018 and the attached schedule of conditions.

Procedural matters

2. The Emerging Borough Local Plan Submission version 2013-2033 (ELP) (2017) was recently submitted for examination. The Council partly refused the scheme as it considered the proposal failed policies NR2, SP1 and SP5 of the ELP. The latest submission has now renumbered some of these policies. As a result, the Council has stated that policy SP5 is now policy QP5, and policy NR2 is now policy NR3. I have afforded only limited weight to these policies as they could be revised through examination.
3. Amended plans have been submitted showing further side windows. The Council has confirmed that it has not considered this revision. Although, the appeal process is not the place to evolve a scheme, the changes would be minor, and supplement proposed side windows. Therefore, to take them into account would not prejudice any party who otherwise would have had an opportunity to comment on them. Consequently, in mind of the Wheatcroft principles¹, I will take these into account in my decision.
4. The Council has provided a S106 Legal Agreement², signed by both main parties. This provides a financial sum intended to offset the impact of the development on the integrity of the Thames Basin Heath Special Protection Area (TBHSPA). Accordingly, the Council has stated that this satisfies its concerns in regard to the impact the development on the TBHSPA. It therefore

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² S106 Legal Agreement, 18 December 2019

no longer wishes to defend the fourth reason for refusal. Nevertheless, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on its integrity. It is therefore still necessary to consider this matter as a main issue.

Main Issues

5. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt and effect its openness, and if inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it;
- the effect of the proposed dwelling on the character and appearance of the area, with respect to the effect on protected trees;
- the effect of the proposal on the living conditions of future occupiers of the dwelling; and
- whether the proposed dwelling would affect the integrity of the TBHSPA.

Reasons

Inappropriate development

6. The site is within the Green Belt. Saved Policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan 2003 (LP) is relevant to this appeal. This policy states that approval will only be given for new buildings in the Green Belt in limited circumstances. This includes in regard to residential development in accordance with policies GB3-GB5. Saved policy GB3 of the LP, allows limited infilling within recognised settlement boundaries. The Council considers that the site falls between Sunningdale and Old Sunningdale and outside a settlement boundary. However, it is not in evidence that these settlements have defined village boundaries and they appear to run together.
7. The National Planning Policy Framework (The Framework) explains that the Government attaches great importance to the Green Belt. Furthermore, the Framework explains that substantial weight is to be afforded to any harm. Paragraph 145 establishes that new buildings would be inappropriate unless they meet a listed exception. Furthermore, paragraph 145(e) states that limited infilling in villages is not inappropriate development. The terms 'limited' and 'infilling' are not defined in the Framework. However, my attention has also been drawn to several Court cases and appeal decisions in connection with limited infilling. Accordingly, I find that settlement boundaries are not definitive when assessing whether a site is part of a village. Therefore, there is some inconsistency between saved policy GB3 and the Framework.
8. The question of limited infilling is consequently a matter of planning judgement and a defined village boundary is not necessarily determinative. The appeal at Maryland³ considered that the Development Plan provided useful direction in this regard. Despite the inconsistency found I concur that the commentary to the policy provides some useful guidance. The companion text for policy GB3 states that an infill plot would normally be a single plot. It also states that such

³ Planning Appeal Reference: APP/T0355/W/19/3220196

a plot should be the same size and shape as comparable adjacent plots and have a frontage to a suitable road. The appeal site defines a plot to the side of an existing dwelling that would also retain its own sizeable plot of a similar size. It is also located in a row of dwellings, consisting of detached and semi-detached properties of various heights and styles.

9. The site is therefore within a continuous row of dwellings in an otherwise built-up area. The site addresses the highway at its front in a conventional manner. Also, the proposed dwelling would be generally in line with the neighbouring dwellings. It would retain gaps to its sides that are also in general conformity with space around the adjacent dwellings. Adjacent properties are of lower density than those to the west of Cherry tree Cottage. However, this in itself does not define the limits of the village. The site has a clear functional and visual relationship with the settlement. Furthermore, the site would close an existing gap between developed plots. Accordingly, I am satisfied that due to the size of the plot and its relationship to adjacent dwellings and plots, the site would constitute an infill site.
10. The proposal would therefore represent limited infilling as sought by the Framework. The proposal would therefore accord with Paragraph 145e of the Framework and would not be inappropriate development in the Green Belt. Furthermore, as I have found the proposal to be not inappropriate, I am not required to consider the issue of openness or very special circumstances.
11. Accordingly, although I have found some inconsistency between the LP and the Framework, the proposal would nevertheless accord with the general approach of saved policies GB1, GB2 and GB3 of the LP. These policies seek to restrict development in the Green Belt and only allow limited infilling within settlements. Furthermore, the proposal would satisfy paragraph 145e of the Framework that seeks to allow limited infilling in villages. Furthermore, although of limited weight, the proposal would accord with policies SP1 and QP5 (previously SP5) of the ELP. These seek amongst other things to protect the Green Belt in line with the Framework and allow limited infilling where sites can demonstrate that it falls within the village envelope.

Character and appearance

12. The appeal site consists of around half of the current plot of Cherry Tree Cottage. The site is adjacent to Bedford Lane and shares a boundary with the adjacent pair of semi-detached dwellings of 'Meadow View' and 'Whitewalls'. Beyond the appeal site is the Appellant's dwelling, and beyond that is another pair of semi-detached dwellings, being 'Cosworth View'. The built vernacular within the village consists of a variety of styles. Dwellings are largely two-storey semi-detached and detached properties. The site is in a comparatively lower density area of the village. It is a wooded area to the side of the existing dwelling. The site also has its own access onto the highway. The open countryside is to its front and rear. The highway boundary consists of a fence and holly hedge. The site is screened from the highway and the trees within it make a positive contribution to the area. Accordingly, the site makes a positive contribution to the character and appearance of the area.
13. The proposal consists of a 'chalet' style dwelling with the majority of first-floor windows being a dormer style. The dwelling would be set slightly into the ground due to it sloping up and away from the highway. The proposal would be generally in scale and in keeping with the design of local dwellings.

Accordingly, in design terms the proposal would respect the established pattern of development.

14. The proposal would include the retention of the majority of trees on site. The Appellant's tree report⁴ identifies that a protected oak tree (no 542) is proposed to be removed. This tree is semi-mature and has a relatively good growth period ahead of it. It is necessary to be removed to facilitate development being within its footprint. There is some disagreement between parties in regard to the category to assign this tree. The appellant states the tree is not a 'category A' tree as it has damage to its exposed roots. This is due to mowing and it will be likely to develop decay which would hamper its vitality in future years.
15. Also, although this tree is of reasonable quality it is set back into the site and its contribution to the public realm therefore reduced. Consequently, its removal would have only a limited effect on the canopy mass of the tree group and on the wider landscape value of the site. The tree is therefore not an essential component in the group of trees and of limited visibility from the street. It is also partially hidden by further trees to the south. Accordingly, the loss of this tree is of moderate harm to the character of the area. Furthermore, the site includes adequate vacant space between existing canopies to accommodate replacement tree planting to off-set this loss. This can be delivered within the required landscape scheme.
16. Furthermore, two further oak trees adjacent to the access are proposed to be pruned. Their root protection areas (RPA) would be affected through the creation of hardstanding and driveway compaction. However, most of this area has been previously disturbed due to the laying of gravel. Also, the area directly affected would be a small proportion of the RPA. The associated root system would be likely to be deeper and/or have been deflected from this area. This limited encroachment into their RPA's would therefore have only a slight impact on the roots of the adjacent trees. Accordingly, even if access to rainfall is reduced this would be likely to have a marginal effect only. Equally the proposed works to create an embankment on the western side of the proposal would be an adequate distance from adjacent trees to prevent a substantial impact. Overall, the proposed tree works would have a limited impact on the character and appearance of the area.
17. The proposal therefore would comply with saved policy N6 of the LP which seeks wherever practical to retain existing trees. The proposal would also comply with policy NP/EN2 of the Ascot, Sunninghill and Sunningdale Neighbourhood Plan 2011-2026 (2014), which seeks to replace trees of recognised importance. Furthermore, although of limited weight the proposal would accord with policy NR3 (previously NR2) of the ELP. This seeks development proposals to carefully consider the impact on existing trees that make a positive contribution to the streetscene.

Living conditions

18. The proposed garden area would be substantial. It would surround the proposed dwelling and would not be appreciably overlooked by the adjacent properties. To the rear it would allow for wide and open views of the surrounding countryside. The land is generally flat and gradually slopes from

⁴ SJA trees Arboricultural Report – September 2019

the rear to the front by around 3 metres. As such, the majority of the garden would be private and useful for normal family use. The proposal is within a wooded setting, some mature trees are relatively close to the proposed footprint of the dwelling. The proposal would therefore be nestled amongst the trees. On site I observed that, although out of leaf, the canopies of many trees did not touch. As such, when in leaf the trees would still provide views of the sky and enable future occupiers to gain reasonable access to daylight. Furthermore, due to the quantity and quality of external space, the occupiers of the proposal would not suffer a substantial sense of enclosure.

19. The amended plans include the addition of side windows serving the lounge and kitchen at ground floor. These would provide greater access to light for occupiers. Therefore, I consider that the amended plans would slightly enhance the proposal and should replace the refused plans. Subsequently, the living conditions of future occupiers of the proposal would not be demonstrably harmed by overshadowing from the retained trees.
20. Accordingly, the proposal would comply with paragraphs 127 and 180 of the Framework, which seek development to create places that promote a high standard of amenity for future users and to take into account the likely effects of development on living conditions.

Special Protection Area

21. The application site is within the 400m-5km zone of the TBHSPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). These Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the TBHSPA, either alone or in combination with other plans and projects. The Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.
22. Circular 6/2005, and flow chart figure 1, sets out the approach to be taken when considering a development proposal which might affect the TBHSPA, in order to fulfil the requirements of the Regulations. The appeal proposal is not directly related to nature conservation and would not therefore satisfy the first criteria of figure 1.
23. The TBHSPA is significant as it provides a protected habitat for populations of Dartford warbler, nightjar and woodlark. It is therefore an area designated to protect a network of important bird conservation sites. The proposal would result in an incremental increase in the local population and be likely to generate further recreational activity and dog walking within the TBHSPA. Furthermore, The Council's associated guidance⁵ states that in the buffer zone new housing has the potential to significantly adversely impact on the integrity of the site. Accordingly, the harmful effect of the proposal on the important features, in isolation or in combination with other projects, would be likely to be significant. The proposal would therefore not satisfy the second and third criteria of figure 1.

⁵ Thames Basin Heaths Special Protection Area- Supplementary Planning Document July 2010

24. It also cannot be ascertained that the proposal would not adversely affect the integrity of the site. Accordingly, the Circular then requires me to consider whether compliance with conditions or other restrictions, such as financial mitigation, would enable it to be ascertained that the proposal would not adversely affect the integrity of the SPA. The Council's mitigation strategy is based on a two-pronged approach. This seeks to provide a Suitable Alternative Natural Green Space (SANG) and Strategic Access Management and Monitoring (SAMM). In combination, these measures are designed to mitigate the impact of the development and to draw visitors away from the TBHSPA. The Council Planning Obligation guidance⁶ seeks residential development to make a financial contribution to reduce the increased recreational use of the TBHSPA. This sets the required sums and explains how they would be spent. This also identifies that a suitable SANG has been created at Allen's Field in South Ascot.
25. The properly certified and executed Section 106 Legal Agreement requires the Appellant to make a SAMM and SANG contribution prior to the commencement of development. Furthermore, the Agreement would satisfy the CIL Regulations in being necessary and relevant to the proposed development. The Council covenants to direct the sums towards the assigned mitigation in accordance with its mitigation strategy and to not be spent on any other purpose. I am therefore satisfied that the appellant's financial contribution and spend objective, would be consistent with the Council's TBHSPA guidance. Accordingly, I am able to ascertain that the sum provides the necessary mitigation to offset the identified impact on the integrity of the SPA.
26. Therefore, for the reasons given above, the proposed development would not have a significant effect, either alone or in combination with other development, upon the integrity of the TBHSPA. I am therefore satisfied, based on the specific evidence before me, that the payment delivers a sufficient mechanism to provide proportionate and relevant mitigation pursuant to the Council's TBHSPA guidance. Accordingly, the proposal would satisfy policy NRM6 of the South East Plan (2009) which seeks mitigation to off-set the harmful adverse impact of the development.

Other matters

27. Parties agree that the Council does not have a 5-year housing land supply. However, as I have found no conflict with the development plan as a whole, arguments advanced in regard to housing land supply and the tilted balance are not relevant.
28. The Parish Council has raised concerns that the front boundary hedge would be removed. Although, this appears to be beyond the protection afforded by the Tree Preservation Order, the Appellant has stated that there is no intention to remove it. In any event, the hedge is of limited significance to the character and appearance of the site.
29. The site is within an area defined in the Council's Landscape Character Assessment as 'Settled Woodland Sands' consisting of mature woodlands and parklands. The plots adjacent to the appeal site illustrate that mature trees and residential areas can coexist within woodland areas. Accordingly, the proposal would accord with this general designation.

⁶ Royal Borough of Windsor and Maidenhead, Planning Obligation and Developer Contributions- Supplementary Planning Guidance March 2014

Conditions

30. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance. This requires conditions to be necessary and reasonable⁷. I shall impose most of the Council's suggested conditions. However, details of levels and driveway gradient are sufficient in the submission to result in such conditions being unnecessary. The requirement to provide the parking areas would repeat the approved plans condition and is therefore unnecessary. I have combined the Council's suggested conditions 9 and 11. This requires the access be provided with appropriate visibility splays prior to the commencement of development to meet highway safety requirements. I have also adjusted the timing for the submission of landscaping details as these are not required prior to commencement.
31. The Council's tree protection works condition 4 had an unclear implementation time frame. Therefore, in the interests of clarity, I have adjusted this to require details prior to the commencement of development. Therefore, three conditions require details to be submitted at a pre-commencement stage; tree protection, archaeology and provision of a suitable access. These are necessary as pre-commencement conditions as the associated issues may be affected by construction and initial land forming works. The Appellant has agreed to these, following formal notification under Regulation 2(4) Notice of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
32. The Framework advises that conditions should not be used to restrict permitted development rights unless there is clear justification to do so. Also, the Planning Practice Guidance states exceptional circumstances should be shown when removing these conditions. Due to the quality and quantity of tree cover on site it is necessary to remove permitted development rights in regard to extensions, roof alterations and outbuildings. This would enable the Council to control the impact of any further development on local protected trees. I am therefore satisfied that this condition is necessary and reasonable in this case.
33. I have applied the following conditions in the interests of certainty and to define the approval [1 and 2]. The details of materials in evidence are insufficient to prevent the need for a condition. Accordingly, condition 3 is necessary in the interests of the character and appearance of the area. Furthermore, the remaining conditions are necessary in the interests of the protection and mitigation for the loss of protected trees [4, 5, 6 and 7]; to meet highway safety requirements [9, 10, 11 and 12]; and to ensure that archaeological interests are properly taken into account [8].

Planning balance and conclusion

34. The Framework seeks to significantly boost the supply of housing. The design of the proposal would complement the local character. It would have good access to public transport and local services. Therefore, the benefits of the proposal would outweigh the identified moderate harm to protected trees. Overall, the proposal would make a positive contribution to the area and street-scene.

⁷ National Planning Policy Framework, Paragraph 55

35. For the above reasons, and having taken into account all matters raised, I conclude that the proposal complies with the development plan as a whole, and so the appeal is allowed, and planning permission given.

Ben Plenty

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: 15 rev D Proposed elevations and section, 11 rev C proposed plans, 10 rev A proposed site layout, 21 rev E Block Plan, 20 rev D site plan, 17 rev B site section, and 16 rev B street section.
- 3) No development above slab level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the dwellinghouse hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details / samples.
- 4) Prior to the commencement of development, details of the measures to protect, during construction, the trees shown to be retained on the approved plan, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to any equipment, machinery or materials being brought onto the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. These measures shall include fencing in accordance with British Standard 5837. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.
- 5) No development above slab level shall take place until details of hard and soft landscape works, shall be submitted to and approved in writing by the Local Planning Authority. These works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree

- or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity.
- 6) Prior to the installation of underground utilities, details including their location shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.
 - 7) Notwithstanding the provisions of Classes A, B and E of part 1 of Schedule 2 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 enlargement, improvement or any other alteration (including the erection of any ancillary building within the curtilage) of or to the dwellinghouse the subject of this permission shall be carried out without planning permission having first been obtained from the Local Planning Authority.
 - 8) Prior to the commencement of development details shall be submitted, for a programme of archaeological work (which may comprise more than one phase of work) in accordance with a written scheme of investigation (WSI), and approved in writing by the Local Planning Authority. The programme of archaeological work shall then be implemented in accordance with the approved development.
 - 9) Prior to the commencement of development details of the access, including visibility splays (of 43 metres by 2.4 metres), shall be submitted to and approved in writing by the local planning authority. All dimensions are to be measured along the edge of the driveway and the back of footway from their point of intersection. The areas within these splays shall be kept free of all obstructions to visibility over a height of 0.6 metres above carriageway level. The access shall be provided in accordance with the approved details prior to the commencement of development.
 - 10) No part of the development hereby permitted shall be occupied until pedestrian visibility splays of 2.0m by 2.0m have been provided at the junction of the driveway and the adjacent footway. All dimensions are to be measured along the outer edge of the driveway and the back of footway from their point of intersection. The areas within these splays shall be kept free of all obstructions to visibility over a height of 0.6 metres above carriageway level.
 - 11) Any gates provided shall open away from the highway and be set back a distance of at least 5 metres from the highway boundary or 7 metres from nearside edge of the carriageway of the adjoining highway.
 - 12) No part of the development hereby permitted shall be occupied until the access has been surfaced with a bonded material across the entire width of the access for a distance of at least five metres measured back from the highway boundary.

End of Conditions