



Appeal Decision

Site visit made on 3 December 2019 by G Sibley MPLAN MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal Ref: APP/T0355/W/19/3235507

Orchard Cottage, 61 Horton Road, Datchet, Slough SL3 9HD

- 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 James Lawrence against the decision of the Royal Borough of Windsor and Maidenhead.
 - The application Ref: 19/01214/FULL, dated 2 May 2019, was refused by notice dated 8 July 2019.
 - The development proposed is for a replacement dwelling.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the street scene and linked to that the effect of the proposed development on the setting of The Lawn which is a Grade II listed building; and
 - The impact of the proposed development upon a nearby Oak tree which is the subject of a Tree Preservation Order.

Procedural Matters

4. The site is located in flood zone 3b (functional flood plain) and where development is defined as having a 'high probability' of flooding it must be supported by a site-specific Flood Risk Assessment (FRA). An FRA was submitted with the application and the Council concluded that because the proposal was for a replacement dwelling which would have a similar footprint to the original dwelling, they were satisfied that the development would not increase flood risk on site or elsewhere and I agree with this conclusion.
5. The Examination in Public for The Borough Local Plan 2013 – 2033 Submission Version (BLPSV) was held in June 2018. The Council has since then undertaken additional work and in late 2019 the Council consulted on the proposed

changes to the BLPSV. Policies SP3 and NR2 are referred to by the Council in the decision notice but have been revised as part of the consultation and the Inspector has yet to reach a final view on the Plan's soundness. Therefore, these policies can only be afforded limited weight.

Reasons for the Recommendation

Character and Appearance and Setting of the Listed Building

6. Orchard Cottage is located off Horton Road and shares a driveway with a number of dwellings, including The Lawn which is a Grade II listed building, located approximately 20 metres to the north of the site. The existing building is a single storey bungalow which has been painted pink. There are two additional buildings that share the driveway, one of which is the Lodge which is not a curtilage listed building but is understood to be historically connected to The Lawn. There is a larger dwelling located to the rear of the Lodge that is relatively modern compared to The Lawn and the Lodge. The existing building is understood to have been constructed later than The Lawn after the land associated with The Lawn had been sold. The existing dwelling fronts the driveway and is not particularly visible from Horton Road. The proposed dwelling would change this relationship and would have its active frontage face onto Horton Road, although its vehicular access would remain via the driveway. The proposed dwelling would be a two-storey dwelling with a relatively steep hipped crown roof.
7. The significance of The Lawn is its architectural and historic special interest. The dwelling was constructed around the 18th Century and is an attractive red brick building. The Lawn has been converted into apartments and the remaining grounds around The Lawn are relatively small for a building of that size. It is understood that the dwelling historically had much larger grounds, but these have been sold off and now encompass the residential estates that surrounds the dwelling. Consequently, the setting of The Lawn has changed significantly and is now surrounded by relatively modern residential development. What remains of the historic grounds are understood to be the gardens around the building, the Lodge, the driveway and the front gates. The Lodge, driveway and front gate posts are not curtilage listed although the Council consider the Lodge and gate posts to be non-designated heritage assets.
8. When approaching The Lawn from the driveway the surrounding modern residential development is not clearly visible and the nature of the entrance drive, with mature vegetation and lodge style properties along it give an indication of the grandeur and status of the listed building situated to the rear. Thus, whilst the setting of the listed building has undoubtedly been changed significantly, the character of the driveway leading to the house still contributes significantly to the character of The Lawn. The existing dwellings along it provide an indication of the historic importance of the listed building as a result of their scale and appearance.
9. The Lodge is understood to have a historic connection to The Lawn and the shared architectural appearance of the two dwellings does provide evidence of this. The Lodge appears as a subsidiary building in scale and design and the gateposts at the entrance also provide an indication of the status of the house and driveway, irrespective of whether they were erected at a contemporary period to The Lawn. Established hedgerows sit either side of the gateposts on

Horton Road providing a visual break in the otherwise built up frontage. That break and the position and alignment of the Lodge effectively frames the entrance drive and provides a clear indication that it forms the entrance to a house of status. The importance of the driveway as a remaining visible vestige of the status of the listed building is heightened as a result of the changes elsewhere to the original setting of the building.

10. The existing dwelling at the appeal site also fronts the driveway, rather than Horton Road and is set well back within the site and as such that there is limited visibility from the highway at the front. In addition to the alignment, the scale and design gives the impression of an ancillary lodge, including the prominent crest in the front gable. All three dwellings have active frontages to the driveway and because there is a gradual increase in the size of the dwellings towards The Lawn, there is a pattern of development set within the setting of the driveway with modest buildings located nearer to the entrance. In view of the above, I conclude that the driveway and the arrangement of buildings and mature vegetation along it are important elements which contribute positively to the setting of the listed building
11. The proposed dwelling would be positioned considerably closer to Horton Road than the existing building and would have its active frontage face onto the highway but would keep its access from the driveway. Consequently, there would be little relationship with this driveway even though the proposed dwelling would be very prominent from it. The large flank gable of the proposed property would be prominent from the driveway and offers little in the way of architectural interest for those approaching The Lawn. This would harm the historic importance of the setting of The Lawn as the proposed building would not follow the existing hierarchy of dwellings along the driveway or appear subservient to The Lawn.
12. The proposed dwelling would have similar appearance with the two dwellings located to the west, both of which are relatively modern two storey dwellings that have a very different appearance to The Lawn and the Lodge. The size of the dwelling would appear in contrast with the existing hierarchy of dwellings along the driveway. The choice of materials would also appear in stark contrast to the red brick buildings connected with The Lawn. The proposed dwelling would not be easily readable as part of that group of dwellings that share the driveway which is an important part of The Lawn's setting.
13. In that sense, the proposal would continue the modern pattern of built development fronting Horton Road all the way up to the edge of the driveway and the visual effect of the hedgerow and mature vegetation either side of the driveway would be substantially reduced. In effect, the driveway would be hemmed in by modern two storey properties to a degree that would significantly erode its apparent status as an entrance to a substantial house of some status.
14. The proposed dwelling would be viewed from Horton Road alongside the two adjacent modern dwellings. The appearance of the dwelling would share many characteristics of the neighbouring properties and, although the dwelling would appear taller than the adjacent modern properties, the scale would not be significantly out of kilter with the prevailing pattern. Whilst the Council has concerns about the appearance of the crown roof, I note that a number of

dwelling in the area have similar roof structures and so the design would not look out of place in the general street scene.

15. Although the dwelling would be considerably larger and more imposing than the existing structure the footprint would not be considerably greater and the proposal would not represent an overdevelopment of the site. The existing hedgerows along Horton Road contribute to the 'leafy residential suburb' character of the street scene as identified in the Royal Borough of Windsor and Maidenhead Townscape Assessment (2010) and the proposal would not result in their removal. Having regard to the above, the proposal would not appear out of scale or discordant with the prevailing suburban character of Horton Road.
16. However, as noted, the arrangement of the current dwelling and other properties accessed from the driveway, including the Lodge, play an important role in the setting of The Lawn having regard to the height, design, position and orientation of the dwellings. The current house is comparatively inconspicuous from the street and the sense of space and mature landscaping creates a visual break in the suburban development along the street frontage and emphasises the importance and grandeur of the entrance to The Lawn. The proposal would substantially erode that existing character by introducing a modern, suburban, dwelling directly facing the road frontage.
17. Due to its height and scale the building would dominate the adjacent Lodge and disrupt views of the vegetation alongside the driveway. The incursion of substantial suburban development at such a prominent juncture directly adjacent to the entrance to The Lawn would have a harmful effect on the character and appearance of the immediate vicinity and would harm the established setting of the listed building.
18. For those reasons the proposal would be contrary to Policy LB2, DG1 and H10 of the LP and policy SP3 of the BLPSV, albeit I can only afford Policy SP3 limited weight in light of the identified circumstances around the BLPSV. The proposal would also be contrary to the relevant sections of The National Planning Policy Framework (The Framework). However, the development would only impact on the setting of the building and no works are proposed to the listed building itself. This would equate to less than substantial harm having regard to The Framework. Nonetheless this harm must still be given considerable importance and weight, having regard to the statutory duty under section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Where harm is less than substantial, paragraph 196 of the Framework requires that harm to be balanced against any public benefits of the proposed development. I shall address that matter within the conclusion and recommendation section of this decision.

Tree Preservation Order

19. To the west of the site is a veteran Oak tree which is covered by a Tree Preservation Order. The tree is located between Orchard Cottage and No.59. The Tree Protection Plan within the Arboricultural Report (REF: TPP/APA/AP/2019/001), submitted with the application and shows that the existing dwelling and No.59 are partly located within the Root Protection Area (RPA) of the veteran Oak tree. A corner of the proposed dwelling would be located partially within the RPA as shown in the Tree Protection Plan.

20. When the Council submitted the Questionnaire, they did not provide a copy of the TPO referred to in the decision notice. During the determination of the appeal the Council provided a new TPO dated 16 December 2019. Following comments from the appellant, the Council were then provided with the original copy of the TPO from an occupier of one of the neighbouring dwellings. In light of the submission of the original TPO I find, on balance, that the tree is covered by a TPO. In any event, the parties agree that the tree is a 'Veteran Tree', as defined by the Framework, and that it should be retained and protected during the course of the development. I agree with that assessment and given the age and presence of the tree its loss would cause harm to the character and appearance of the area
21. The Council consider the RPA has been drawn inaccurately because there is unlikely to be any rooting under the two houses and that the RPA would likely go further to the north and the south than shown on the plan and consequently the proposed dwelling would encroach into the RPA. Based on the information before me, on balance, I agree with the Council that the roots for the tree are unlikely to extend in a concentric pattern as shown on the tree survey provided by the appellant. It is likely that the roots would not grow under the two dwellings and would extend further to the north and to the south where the dwelling is proposed. As such, from the information before me, it seems probable that the proposed development would encroach into the RPA for the tree. Consequently, I cannot rule out the possibility that the proposal would result in damage to or the loss of the tree and am not satisfied that measures incorporated into the construction of the property could adequately mitigate against the incursion into the RPA as a result of the position of the dwelling. This would result in the deterioration of an irreplaceable habitat and no wholly exceptional reasons have been identified that would outweigh this harm. In addition, the loss of the tree would add further harm to the setting of the listed building on account of the positive impact that the mature specimen has on the established character of the land which flanks the driveway leading to The Lawn.
22. Therefore, the proposed development would be contrary to Policy N6 and DG1 of the LP and Policy NR2 of the BLPSV, albeit I can only afford Policy NR2 limited weight in light of the identified circumstances around the BLPSV.

Other Matters

23. The appellant has referred to a recent appeal decision which concluded that the Council could not demonstrate a five-year supply of deliverable housing (Appeal Reference: APP/T0355/W/18/3203764). The Council has not responded to that claim and, in the absence of anything to the contrary, there is nothing to indicate that circumstances have altered since that decision was made. Thus, on the information available, the Council cannot demonstrate a five-year supply of housing, as required by the Framework. It follows that the policies that are most relevant for determining the appeal should not be considered up to date, having regard to paragraph 11(d) of the Framework. That has implications for the way in which the planning balance must be conducted, and I shall address that in my conclusion.
24. However, those policies remain part of the development plan and it does not follow that no weight should be attached to them, simply because they are out of date in the context of paragraph 11(d). The policies of the development

plan that are most relevant for determining the appeal are those set out above, namely DG1, LB2, N6 and H10 of the LP. I have not been drawn to any specific conflict between the aims of those policies and the Framework. Policy DG1 is a general development control policy which, amongst other things seeks to ensure that development does not cause harm to the character and appearance of the area. Policy H10 aims to secure good design, taking account of the surrounding environment. Those aims are consistent with the aims of chapter 12 of the Framework, including paragraph 127.

25. Policies LB2 and N6 seek to protect listed buildings and important trees and are consistent with statutory duties and the aims of the Framework, albeit that policy LB2 does not reflect the balance of harm against public benefits with regard to heritage assets, as currently set out in national policy. Nonetheless, the most relevant policies, taken as a whole, are broadly consistent with the Framework and the aims of those policies are of general application, regardless of the five-year housing land supply position. Accordingly, I continue to give the conflict with those relevant policies substantial weight.
26. In addition, the proposal is for a replacement dwelling which would not increase the supply of housing. As such, there would be no benefit to the supply of housing and no public benefits would arise in that respect. The existing dwelling is in poor repair but there is nothing to indicate that it could not be refurbished if the present scheme was dismissed or to indicate that a more sensitive replacement could not be achieved. Consequently, I attach little weight to that matter. The appellant notes that the scheme would result in the removal of invasive species in the garden and that would amount to a benefit, albeit one that attracts limited weight because there is nothing to indicate that the removal of the species is dependent upon this particular scheme coming forward.

Conclusion and Recommendation

27. For the reasons given above, the proposal would have a negative effect upon the setting of the listed building. Whilst that harm would be less than substantial, in the terms of the Framework, it nonetheless attracts significant weight having regard to the statutory duty to protect listed buildings. The proposal would also harm the future viability of a veteran Oak tree that is protected by a TPO and to this I apply great weight. The proposal is contrary to the relevant policies of the development plan in respect of all of those matters.
28. Notwithstanding the absence of a five-year supply of housing land I consider it appropriate to attach substantial weight to the conflict with the policies of the development plan that are most important for determining the application for the reasons given above.
29. Where Council's cannot demonstrate a five-year supply of housing land paragraph 11(d) of the Framework applies. Under subsection (d)(i) planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
30. From the information provided, limited public benefits have been identified and the replacement of a dwelling that has fallen into disrepair and removal of invasive species would not outweigh the harm to the setting of the listed building. Having regard to the harm to the designated heritage asset and the

veteran tree, the policies of the Framework taken as a whole would indicate that planning permission should be refused. As such, the proposal does not represent a sustainable form of development in the terms expressed by paragraph 11 of the Framework and there are no material considerations that would outweigh the conflict with the development plan.

31. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

32. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree that the appeal should be dismissed.

Chris Preston

INSPECTOR