
Appeal Decision

Site visit made on 25 February 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2020

Appeal Ref: APP/X0360/W/19/3238448

Land off Coombes Lane, Coombes Lane, Arborfield RG2 9JG

- 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 Ms Sara Saund against the decision of Wokingham Borough Council.
 - The application Ref 191457, dated 18 June 2019, was refused by notice dated 30 August 2019.
 - The development proposed is described as 'full planning application for the proposed installation of timber stake & plain wire fencing and 2no gates'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms Sara Saund against Wokingham Borough Council. This application is the subject of a separate Decision.

Background

3. The appeal site forms part of the wider Coombes woodland, which the Council states has been subdivided into plots and sold at auction. The Council made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, which came into force on 23 January 2019. This restricts certain permitted development rights including the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure and requires such development to first obtain the approval of the Council.
4. The appellant proposes the installation of timber stake & plain wire fencing and 2no gates around the edge of the appeal site, which has an area of approximately 0.5 hectares. The fence and gates would be around 1 metre high.
5. The appellant's statement indicates that they intend to use a small livestock enterprise as part of sustainable forestry management plans, which requires fencing. Nonetheless, planning permission is only sought for operational development comprising the proposed fence and 2no gates. I shall therefore proceed to determine the appeal on this basis.

Main Issues

6. The main issues are the effect of the proposed development on (i) protected trees; (ii) biodiversity including protected species; and, (iii) the character and appearance of the area.

Reasons

Effect on protected trees

7. The trees within the appeal site are protected by Tree Preservation Order No 1684/2019. The Council is concerned that insufficient evidence has been submitted to demonstrate that the proposal would not cause harm to the trees. The appellant submits that the proposed fence would not be fixed to trees and it would not require trees to be removed or altered. It is suggested that if there are concerns about the effect on trees, a planning condition setting out safeguarding or working practices could be imposed.
8. There is no information before me to show the relationship of the proposed fence to protected trees; the extent of ground works within the root protection zones of the protected trees; or the method of construction of the proposed ground works. In the absence of sufficient information, the proposed development would have the potential to result in significant harm to protected trees. I have had regard to the appellant's statement that the proposed fencing is intended to protect the trees, however this would not overcome my concerns.
9. I have considered whether a pre-commencement condition could be imposed to require the submission of an arboricultural impact/method statement. However, given the lack of information before me, I do not have sufficient certainty that the proposal would not cause harm to protected trees.
10. In response to the appellant's appeal statement, the Council has raised concerns that any future keeping of livestock on the appeal site would cause damage to protected trees. However, the appeal proposal before me is for the installation of a fence and gates rather than the change of use of land.
11. For the above reasons, I conclude that the proposal would have the potential to result in significant harm to protected trees. It would therefore be contrary to Policy CP3 of the Wokingham Borough Adopted Core Strategy Development Plan Document 2010 (the CS) and Policy CC03 of the Wokingham Borough Adopted Managing Development Delivery Local Plan 2014 (the LP), which, amongst other things, seek to protect and retain existing trees, hedges and other landscape features.

Biodiversity and protected species

12. The Council states that the appeal site is located within a Local Wildlife Site; a Bat Consultation Zone; and a Badger Settle Consultation Zone. The Council's ecologist states that there are records of badgers within The Coombes woodland and depending on the location of the proposed fence it may affect a badger sett. It is also indicated that there may be other ecological constraints, such as nesting birds and bats.
13. Badgers are a protected species. Paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within

the Planning System advises that it is essential that the presence or otherwise of protected species and the extent to which they might be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations will not have been addressed on making the decision. Circular 06/2005 advises that the need to ensure that ecological surveys are carried out should only be left to conditions in exceptional circumstances. The Circular continues at paragraph 99 that "bearing in mind the delay and costs that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development".

14. The appellant states that the Council did not request an ecological survey to be undertaken during the application process. Nevertheless, the appellant has not provided any additional information with the appeal regarding the presence or otherwise of protected species.
15. The appellant submitted a form with the planning application, which indicates triggers as to whether a wildlife report is required. It is unclear as to the origin of the form. Question 1a of Part A states that the application site is not greater than 0.1 hectares and so a wildlife report is not required. However, the appeal site is greater than 0.1 hectares and therefore on the basis of the criteria shown on the form, a wildlife report is required. The form also incorrectly states that the proposal is not within a woodland. Nevertheless, given that the origin of the form is unclear I have given it very little weight.
16. The Natural England Standing Advice¹ states that a badger survey is needed if, amongst other things, historical or distribution records show that badgers are active in the area or there is suitable habitat for sett building. A sett is any structure or place which shows signs it is currently being used by a badger. Aside from tunnels and chambers, other structures used by badgers for shelter and refuge could also be used as a sett, including under hedges and bushes. The Council's Ecologist states that there are records of badgers within The Coombes woodland. Furthermore, at my site visit I observed that there are bushes that could be used by badgers.
17. Given that there is a reasonable likelihood of protected species at the appeal site which may be affected by proposed groundworks, an ecological survey is necessary. I have considered whether this is a matter which could adequately be addressed by a pre-commencement planning condition. However, such an approach would be clearly contrary to the advice to establish the extent to which protected species might be affected before planning permission is granted, as set out within Circular 06/2005. There are no exceptional circumstances to justify the use of a pre-commencement planning condition.
18. I therefore conclude that the proposal would have the potential to result in significant harm to protected species and would be contrary to Policies CP3 and CP7 of the CS, which seek to ensure that proposals would have no detrimental impact upon important ecological features. It would also be contrary to Chapter 15 of the Framework, which, along with other things, seeks to protect and enhance biodiversity.

¹ Badgers: surveys and mitigation for development projects published 28 March 2015

Character and appearance

19. The appeal site is in the countryside and it has a rural character. It forms part of the wider Coombes woodland and the land slopes steeply down to the south from Coombes Lane. The appeal site is visually contained due to the wooded nature of the area, which restricts long views into the site. A public footpath runs to the west.
20. The Wokingham District Landscape Character Assessment (the LCA) sets out the key characteristics of the L1 Bearwood Wooded Sand and Gravel Hills character area, which the appeal site is located within. This includes: undulating upland hills; heavily wooded 'forested' character; smaller scale intimate rural patchwork of deciduous woodland and sheep pasture; woodland defines and screens the western boundary of Wokingham and creates a wooded backdrop to views from the surrounding landscape; and few roads creating a relatively secretive landscape. It is evaluated as being a landscape of high quality with a strong character related to the synergy between topography, woodland and historic ambience. The LCA also refers to the good condition of the landscape, including the relative absence of intrusive infrastructure and development and the dense woodland character accentuating the landform.
21. Fencing and gates of the style proposed are typical in the countryside and I saw similar examples in the area, including along the public footpath to the west of the appeal site. The design of the proposed fence would be discreet and unobtrusive due to its low height of around 1 metre and its high degree of transparency.
22. Furthermore, due to the contained nature of the appeal site, the fencing would only be visible in short range views. In this respect, I note that paragraph 16.28 of the LCA highlights that the wooded context and secluded character may mean that some changes can be accommodated without being visually apparent. The proposed fence would not be apparent from the public footpath to the west of the appeal site due to the separation distance; the low height and inconspicuous design of the fence; and the screening provided by the trees. Taking these factors into account, I find that the proposal would maintain the quality of the environment.
23. Policy CP11 of the CS states that in order to protect the separate identity of settlements and maintain the quality of the environment, proposals outside development limits will not *normally* be permitted. The word *normally* provides a degree of flexibility in the consideration of proposals. The proposal would have no impact on the separate identity of settlements due to its minor nature and I have found that the proposed fence would maintain the quality of the environment. Consequently, the proposal would accord with the objectives of Policy CP11 of the CS. I have had regard to the submissions as to whether the site is/was a commercial forestry plantation in respect of exception (1) of Policy CP11, however, as I find that the proposal would maintain the quality of the environment this consideration would not be determinative.
24. The Council is concerned about the cumulative effect with other proposals in the area that is subject of the Article 4 Direction, in respect of the proliferation of boundary fences and other building operations. Nonetheless, in this case I find that the appeal scheme would maintain the character and appearance of the area. In any event, each proposal falls to be considered on its own merits.

25. For these reasons, I conclude that the proposed development would maintain the character and appearance of the area. The proposal would therefore accord with Policies CP1, CP3 and CP11 of the CS, Policy TB21 of the LP and criteria G1 of the Borough Design Guide Supplementary Planning Document 2012, which, amongst other things, seek development that maintains or enhances the quality of the environment; and, has no detrimental impact upon important landscape. The proposal would also comply with paragraph 170 of the Framework, which states, along with other things, that planning decisions should protect and enhance valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan); and recognise the intrinsic character and beauty of the countryside.

Conclusion

26. I have found that the proposed development would maintain the character and appearance of the area. However, it would have the potential to result in significant harm to protected trees and protected species and these are sufficient reasons to dismiss the appeal. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

C Osgathorp

INSPECTOR