
Appeal Decision

Site visit made on 15 May 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/D3125/W/19/3243505

Land at Kearsy Court, Charlbury, Oxfordshire OX7 3BF

- 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 H Willis Limited against the decision of West Oxfordshire District Council.
 - The application Ref 19/00803/FUL, dated 14 March 2019, was refused by notice dated 19 June 2019.
 - The development proposed is the erection of a single dwelling including provision of garage and driveway.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area having particular regard to whether it preserves or enhances the Charlbury Conservation Area (CA) and reference to the Cotswolds Area of Outstanding Natural Beauty (AONB).

Reasons

3. The appeal site is within the CA, which covers the settlement of Charlbury and a considerable amount of the surrounding countryside. Its significance is derived from a combination of factors including how the buildings and spaces in the nucleated historic settlement have evolved over time. Consequently, whilst it contains a significant number of vernacular buildings, especially at its core, it also has more modern development. The settlement pattern tapers out as it transitions towards the surrounding scenic countryside and the rural setting of the town is an important component of its significance. These factors result in an attractive verdant, rural character to the CA.
4. In considering the impact of the proposal, I am mindful of my statutory duty¹ to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
5. The development would also be within the AONB and is categorised as semi-enclosed Limestone Wold (large scale) within the Lower Evenlode Valley in the West Oxfordshire Landscape Assessment 1998. Having regard to that

¹ Section 72 Planning (Listed Buildings and Conservation Areas) Act 1990

document and my own observations, the special and sensitive character of the AONB at this point is derived in part from the pattern and topography of surrounding fields, hedgerows, woodland and drystone walls and the setting of Charlbury within the wider countryside. Paragraph 172 of the National Planning Policy Framework (the Framework) stipulates that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB.

6. The appeal site comprises of an area of land containing a considerable number of trees near the entrance to recent residential development at Kearsy Court. The large, detached dwellings, although taking some design cues from vernacular buildings, nevertheless have a layout and form that overall, has a prevailing suburban character and appearance. The appeal site, due to the presence of trees and absence of built form, together with mature trees on land to the east, provides a visual contrast and shield to the peripheral modern residential development. It marks a palpable change in character along Ditchley Road that becomes overtly rural eastwards due to the proximity of open countryside and the more dispersed and rural form of farm buildings. As such, the site forms part of the transition experienced from the settlement edge into the surrounding natural environment that provides the rural setting to Charlbury. Consequently, the site contributes positively to the rural character and appearance of the area and the CA.
7. The proposal would introduce a detached two storey dwelling and a garage that would be comparable in scale to the nearby recent residential development. As such, it would have a notable physical presence that would encroach into an area that is free from built form. Additionally, the dwelling would be sited closer to the road than most of the dwellings in Kearsy Court and in a prominent location where the cul-de-sac diverges. As a consequence, its presence would be particularly apparent from Kearsy Court and in some views from Ditchley Road.
8. Furthermore, the development would necessitate the removal of 11 trees and a tree group². Of these, two Wild Cherry trees and the multi-stemmed Ash tree are categorised as moderate quality trees. As they are located at prominent positions³ they are visible from the surrounding area and hence, they constitute positive natural features. Moreover, the general loss of trees, albeit of lower quality and in some cases, non-native, would reduce the closely stocked copse character of the land. The replacement of some trees with a domestic building would exacerbate the harm. Additionally, general guidance in the West Oxfordshire Design Guide 2016 Supplementary Planning Document states that trees and hedgerows which make a contribution to a Conservation Area should not normally be removed unless dead, dying or dangerous⁴.
9. In addition, a new dwelling in this location is likely to have associated domestic paraphernalia, boundary treatments and planting. The removal of the trees would open up the central section of the southern portion of the site in order to provide a more usable domestic garden. Notwithstanding the reference to a 'woodland style garden' in the arboricultural report⁵ there is no detailed landscaping scheme before me. Even if planting and boundary details were conditioned, aside from the protection given to trees by virtue of the

² Trees T5-15 and G17 Arboricultural Development Report prepared by Reliance Arboriculture, dated 21.12.2018

³ Drawing 1821 011 Tree Constraints Plan, trees T6, T7 and G17 (noted as T17 on plan)

⁴ Section 6.4

⁵ Paragraph 10.6

- conservation area status, it would be unreasonably restrictive to prevent future residents from having boundary treatments to protect privacy and normal domestic outbuildings, play equipment, washing lines and the like, as well as inhibiting ornamental or vegetable gardening in perpetuity. Nevertheless, such factors would further domesticate the appearance and character of the land.
10. Taking these points together, the development would be harmful to the natural character and appearance of the land and the visual role it currently plays in distinguishing and shielding the surrounding countryside from the development at Kearsy Court. This was recognised and provided for during the consideration of the planning applications⁶ for Kearsy Court which is illustrated in the extract of the approved site plan submitted⁷ for planning application 15/01563/FUL, whereby the site is annotated as an 'existing tree screen'. The site still fulfils this positive visual function, which is further reinforced by the Town Council's reference to it as a 'buffer zone and amenity area'⁸.
 11. Neither the subsequent thinning of trees on the land, nor the absence of a condition that requires the land to be retained as amenity land significantly alters its present positive contribution and therefore, would not justify harmful development. As such, the proposal would run counter to paragraph 170 of the Framework which states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Moreover, it would fail to comply with paragraph 127 c) of the Framework which requires planning decisions to be sympathetic to local character and history, including the surrounding built environment and landscape setting.
 12. It follows that the proposal would have an adverse impact upon the special qualities of the AONB as it would harm the relationship of the settlement with its natural surroundings. Moreover, the proposal would be harmful to the character and appearance of the CA, albeit that given the relatively modest nature of the proposal, this would be less than substantial harm. This is acknowledged by the appellant⁹.
 13. Paragraph 196 of the Framework indicates that where the development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The proposal would provide an additional family dwelling in a reasonably accessible location which would contribute towards the housing supply in the district. Moreover, there would be economic benefits arising from its construction as well as long term social and economic benefit from the activities of the future occupants. Furthermore, the proposal would rebuild a collapsed drystone wall at the front of the site which would provide some visual benefit.
 14. In combination these factors count in favour of the proposal. However, given its modest scale, they attract limited weight overall. Therefore, the public benefits do not surmount the great weight I must give to conserving the significance of designated heritage assets under paragraph 193 of the Framework.

⁶ Planning application references 15/1563/FUL & 15/03303/FUL

⁷ Figure 12 Appellant's Appeal Statement

⁸ Consultation response from Charlbury Town Council, date stamped 30.4.19

⁹ Paragraph 7.43 Appellant's Appeal Statement

15. The appellant refers to the retention of mature trees both within the site and on the adjacent land to the east as providing a suitable screen and backdrop to the development. I accept that trees shown as retained within the site would be afforded protection due to the legislation covering conservation areas. I further acknowledge that the proposed dwelling would be broadly similar in level, form and materials to those in existence at Kearsey Court. However, these matters do not mitigate or outweigh the visual harm already outlined.
16. The appellant considers that the site does not fulfil technical definitions of 'woodland' and as such, is of limited landscape and ecological significance. Be that as it may, I have assessed the proposal on its own merits based on the information before me and my own observations.
17. Furthermore, although I accept that the proposed rebuilding of the stone wall adjacent to Ditchley Road would have some visual benefit, based on the evidence provided, I am not persuaded that this would inevitably require the felling of the multi-stemmed Ash tree. There is little substantive evidence to show this tree is a threat to highway safety and even if this were the case, it does not necessarily follow that this would require its total removal.
18. I have had regard to the representation in support of the proposal which considered the development would complement the character of the area and referred to the need for housing. However, these are matters which I have taken into consideration and for the reasons already outlined, I have come to a different view.
19. Accordingly, I find that the proposal would be unacceptably harmful to the character and appearance of the area and AONB, and would fail to preserve or enhance the character and appearance of the CA. This would be contrary to the general principles applicable to all development set out in policy OS2 of the West Oxfordshire Local Plan 2031, September 2018 (LP). These include, amongst other things, that development should form a logical complement to the existing scale and pattern of development and/or the character of the area and that the natural and historic environment should be protected and enhanced. It follows that as the proposal fails to comply with these general principles it would also conflict with the requirement to do so in policy H2 of the LP. For similar reasons it would fail to meet the high quality design requirements set out in policy OS4 of the LP.
20. The proposal would also be contrary to policies EH9 and EH10 of the LP which seek to conserve and enhance the historic environment, including conservation areas. Furthermore, it runs counter to policy EH1 of the LP that requires great weight to be attributed towards conserving and enhancing the natural beauty of the Cotswolds AONB.
21. The Council have also cited policy EH3 of the LP in their refusal reason on the decision notice. This policy refers to the protection of biodiversity and geodiversity. Whilst I have found visual harm arising from the loss of trees, the ecological evidence¹⁰ provided suggests that suitable mitigation could be made to prevent harm to the overall biodiversity at the site. As such, I do not find conflict with this policy.

¹⁰ Extended Phase 1 Survey Report 22.1.19 prepared by Lockhart Garratt and supplementary letter dated 29.5.19; comments of Council's Biodiversity Officer 4.6.19.

Planning Balance and Conclusion

22. The proposal would add a dwelling to the overall housing supply in a reasonably accessible location and there would be associated economic and social benefits arising from its construction and occupation. However, there is no dispute between the parties that the Council is able to demonstrate a five year supply of deliverable housing sites¹¹. On this basis, given that the development amounts to a single dwelling, the extent of such benefits would be limited. Therefore, I attach limited weight to these positive factors.
23. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹². The benefits that the proposal would bring do not outweigh the significant weight given to the conflict with the development plan policies outlined above. Accordingly, they do not justify my determining the development other than in accordance with the adopted development plan and Framework.
24. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Paragraph 6.1 Appellant's Appeal Statement

¹² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.