
Appeal Decision

Site visit made on 8 July 2020

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Appeal Ref: APP/X0360/W/19/3240676

Land adjacent to Whistley Green Cottage, Broadwater Lane, Hurst RG10 0BQ

- 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 McCarthy and Ms Pleace against the decision of Wokingham Borough Council.
 - The application Ref 190862, dated 26 March 2019, was refused by notice dated 21 May 2019.
 - The development proposed is erection of detached dwelling with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The site address on the application form used the spelling "Wistley" for the application site, but the remainder of the documentation uses the spelling "Whistley". Given the latter is used on Ordnance Survey documentation, I have used this spelling throughout this decision other than in this paragraph.
3. The Council refused the application for five reasons. Two of these related to the insufficient information relating to the potential effects on ecology and on the living conditions of the occupiers of adjoining properties. Following information submitted at the appeal stage, the Council withdrew these reasons for refusal although the occupiers of adjoining properties continued to object. In light of the additional information on ecology, and subject to the imposition of appropriate conditions, I can see no reason to disagree with the Council's conclusion on the first of these two matters.
4. The fifth reason related to the lack of a contribution towards the provision of affordable housing. The appellants maintain that such a contribution is not necessary, but in the event that I conclude otherwise has submitted a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended) dated 6 November 2019 to deal with this matter. I will discuss this below.

Main Issues

5. The main issues are:

- the effect on the character and appearance of the area;
- the effect on heritage assets and their settings; and
- whether the proposal makes appropriate provision for affordable housing.

Reasons

Character and appearance

6. The appeal site consists of an approximately rectangular area of land to the northeast of Broadwater Lane, the A321, although the road is on a slight curve. It is essentially flat, although with small undulations within the site. There is intermittent vegetation, including a fruit tree, on the northern boundary, and in the southeastern corner is a clump of brambles and blackberries. There is also vegetation along the road boundary.
7. To the north is Whistley Green Cottage which is located towards the rear of its site. To the southeast is a small enclave of five dwellings; four are in closer proximity to the highway and one is set behind. The property at the front closest to the appeal site, Huntsman's Cottage, is Grade II listed. On the opposite side of Broadwater Lane is the main village of Whistley Green, most properties of which back onto Broadwater Lane, although a gospel hall and industrial building face the A321 directly opposite the appeal site and there is linear development along the opposite side of the A321 to the east.
8. The Council's 'Wokingham District Landscape Character Assessment' places the appeal site within Character Area C2: Hurst River Terrace. The key characteristics of that include a flat to gently shelving lowland landscape, simple and open agricultural landscape, few hedgerows, wooded horizons, and the village of Whistley Green is located around an older core with interspersed new scattered linear development along the network of rural lanes. Settlements in this area are dominated by detached linear settlement located along the rural roads and including clusters of houses associated with the edge of the floodplain. It indicates that although there is no apparent strong rural vernacular in this area it does have a sense of unity, albeit somewhat suburbanised, with warm red brick being characteristic throughout all ages of property and the hedges, brick walls and fences of front gardens creating a continuous frontage to the roads.
9. The appeal site lies in the countryside for the purposes of the development plan. The development limit of Whistley Green includes the area of the enclave of the five dwellings and the area opposite and along Broadwater Lane but does not include Whistley Green Cottage or its garden.
10. Policy CP3 of the Wokingham Borough Core Strategy Development Plan Document (the CS) requires that development should be of appropriate built form, height, materials and character to the area, have no detrimental impact upon important landscape features, contribute to a sense of place in the buildings and spaces themselves in the way they integrate with their surroundings (especially existing dwellings).
11. Policy CP11 of the CS deals with proposals outside development limits. It 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 except where it falls within a list of exceptions. Because

there is some dispute about the interpretation of this policy, I will go through this in detail.

12. Firstly, it seems to me that the policy is essentially binary in application; either the site falls within or outside a development limit. Here it falls outside, so the policy is material. Secondly, the first three points are conjunctive. These deal with rural enterprises or countryside recreation development, and their effects. However, as this proposal is not for these types of development these do not apply. Thirdly, points 4) and 5) deal with residential extensions and replacement dwellings, with specific criteria relating to replacement dwellings; these are not applicable. Fourthly, point 6) allows for essential community facilities and point 7) deals with affordable housing. Point 6) is not applicable to this proposal and I find below that the proposal would not represent affordable housing. All this means that the proposal does not comply with Policy CP11 of the CS.
13. Policy CC02 of the Wokingham Borough Managing Development Delivery Local Plan (the MDD) indicates that proposals for development at the edge of settlements will only be granted where they can demonstrate that the development, including boundary treatments, is within the development limits and respect the transition between the built up area and the open countryside by taking account of the character of the adjacent countryside and landscape. Again, this policy is binary in application, permitting development within the development limits, but not outside. Consequently, the proposal is contrary to this policy.
14. However, this does not mean that material considerations do not indicate a decision otherwise to that of the development plan in this regard. In particular paragraph 79 of the National Planning Policy Framework (the Framework) indicates that planning decisions should avoid the development of isolated homes in the countryside unless it meets various criteria. In this respect the main parties agree that the site is not isolated and I concur due to its proximity to built development on three sides.
15. The CS was adopted prior to the publication of the 2012 version of the Framework. This made significant changes as to how residential development in the countryside should be considered. I have been referred to various appeal decisions where Inspectors have looked at whether Policy CP11 should be considered consistent with the Framework, particularly in the context of whether the development limits are consistent with the level of housing considered appropriate for the area. Policy CC02 of the MDD is parasitic on Policy CP9 of the CS which requires the MDD to set the development limits for each of the borough's specified settlements.
16. In the context of this appeal it seems to be that although Whistley Green Cottage is also not in the development limit, it appears as part of the settlement of Whistley Green, as does the appeal site. The rear boundary, along with those on either side, marks a consistent line and delineation from the open countryside beyond.
17. The Council has referred me to two other areas further to the east a short distance along the A321, but it seems to me that these are of a different character due to their sizes and being part of the adjoining fields rather than a separate, discrete, area of land.

18. The aim of Policy CP11 of the CS is to protect the identity of settlements and maintain the quality of the environment, and this is in accordance with national policy set out in paragraph 170 of the Framework that planning decisions should contribute to and enhance the natural and local environment recognising the intrinsic character and beauty of the countryside. I find that this policy is generally consistent with the Framework. However, the Policies CS9 of the CS and Policy CC02 of the MDD do not reflect national policy in paragraph 78 of the Framework which allows villages to grow and thrive and are thus out-of-date.
19. It is next necessary to look at the effects of the particular proposal because whether the site is suitable or not for residential development the proposal itself has to be appropriate. The proposed dwelling would be located towards the rear of the site, but it is not designed in a conventional style. The ground floor of the dwelling would be constructed approximately 1 m below existing ground level. There would not be a southern elevation as such in that the ground would be re-formed into a mound to the equivalent of all but two storeys in height which would be grassed. This would then link to the green sedum roof of the main house, which would have two storeys facing out over the fields to the north. Access would be via a driveway, apparently into the mound.
20. The northern elevation would have two terraces joined by steps. This, particularly at first floor, would be extensively glazed, with render and timber cladding noted on the application form for the proposed materials, although the illustrative drawings clearly show stone or reconstituted stone for the lower storey walls facing.
21. Although the main rear elevation, which would be set at an angle to the rear boundary of the appeal site, would be approximately two-thirds of the width of the site, the earthworks would extend the overall mound across effectively the whole width. A second, smaller, mound is shown to be constructed towards the southeastern corner of the site.
22. Policy TB21 of the MDD states that proposals must demonstrate how they have addressed the requirements of the Council's Landscape Character Assessment, and should retain or enhance the condition, character or features that contribute to the landscape. There is no dispute that this policy is consistent with the Framework and is thus up-to-date.
23. As noted above, the landscape in the area is effectively flat to gently shelving. In this regard the two apparent mounds with their relatively steep banks would be significantly and demonstrably harmful to the character of this landscape. Even the maintenance of the existing vegetation along the Broadwater Lane frontage would not screen these through the entrance to the site. In any event, and however desirable landscaping may be, it does not make the unacceptable acceptable and does not change this level of harm.
24. To the north of the appeal site lies a reasonably sized open field. To the north of this are a series of smaller fields with a footpath (STNH 5) on the northern edge separate from Hogmoor Lane, which is a byway open to all traffic, slightly further to the north. I walked along both as part of my site visit.
25. From the footpath, the appeal site can be clearly seen between Whistley Green Cottage and the enclave of dwellings, although at a medium distance. In this

regard, I have considered the Landscape and Visual Appraisal submitted with the application and consider that this underestimates the visibility of the appeal site from the footpath, as the hedgerow on the south side of that field is intermittent, and the view depends on the extent of any intervening vegetation. I saw it in summer foliage which would maximise the effects of such vegetation. Furthermore, while there is an intermittent hedge on the northern boundary of the appeal site, this is not structured, and requiring an occupier to maintain it would not be proportionate. My comments about landscaping along the southern boundary of the appeal site equally apply in relation to that to the north.

26. The two storey elevation with its extensive glazing would extend across a considerable amount of the width of the site. The use of a different building aesthetic and palette of materials would be significantly and demonstrably out of keeping with the sense of unity in the area as identified in the Landscape Character Assessment. While the Framework in paragraph 131 does say that great weight should be given to outstanding or innovative designs, the proposal is not being promoted in those terms. In any event, the Framework continues that designs should fit in with the overall form of their surroundings and I conclude that this would not be the case.
27. I appreciate that Whistley Green Cottage is of similar overall width to the appeal proposal, but this building is broken into three elements. This has lesser mass than the proposal that would have an overall 'sweep'. I also note that the appellants have indicated that the materials could be amended, but I consider that it appears that the materials chosen are part of the overall design and this would fundamentally change the nature of the proposal. I therefore consider that this would not be appropriate to resolve by condition.
28. Therefore, the form, material and character of the development here proposed would be significantly and demonstrably harmfully out of keeping with the area and detrimental to the landscape. Consequently, it would be contrary to Policies CP3 and CP11 of the CS and CC02 and TB21 of the MDD as set out above.

Heritage

29. Huntsman's Cottage is a Grade II listed building and, as such, is a designated heritage asset. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in considering whether to grant planning permission for development that affects the setting of a listed building special regard should be given to the desirability of preserving the building or its setting. Paragraph 193 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
30. The Council has also designated part of Whistley Green, including the appeal site and areas on either side, as an Area of Special Character. It indicates that this is a non-designated heritage asset and the appellants do not demur from this analysis. Whistley Green Cottage has also been identified as a non-designated heritage asset in its own right. Paragraph 197 of the Framework indicates that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-

designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

31. Policy CP3 of the CS indicates that proposals should have no detrimental impact on heritage. Policy TB24 of the MDD states that designated heritage assets and their settings will be conserved and enhanced by requiring works to demonstrate they would at least conserve, and where possible enhance the character and special interest of the building. Policy TB26 of the MDD states that planning permission will only be granted in Areas of Special Character where they demonstrate that they retain and enhance the traditional, historic, local and special character of the area. All of these policies are consistent with the Framework and are thus up-to-date.
32. The Council considers that part of the significance of Huntsman's Cottage derives from the rural character of the area and the open space of the appeal site. Huntsman's Cottage dates, originally, from the seventeenth century, when it is clear that the area would have been more rural. However, the large area of brambles and blackberries, currently detracts from its setting. While the application drawings show this area is to be kept open, I consider that this is unlikely to remain the case as it is likely to have domestic paraphernalia on it. Consequently, there would be some harm to the setting of Huntsman's Cottage, although at the lower end of less than substantial harm.
33. Paragraph 196 of the Framework indicates that where there is less than substantial harm to a designated heritage asset this should be weighed against the public benefits of the proposal. I will do that below in the Planning Balance section of this decision.
34. Turning to the non-designated heritage assets, again there would be some harm to the Area of Special Character. This would be principally from the form of the development which I have discussed above. Given that substantial harm is a high test¹, I consider that this would result in less than substantial harm, in the middle of such harm, to the Area of Special Character as a whole. In relation to Whistley Green Cottage, I consider, due to the proximity and development form proposed, that this would also give rise to less than substantial harm to the setting of this heritage asset and would be at the upper end of this range.
35. Overall, the proposal would be harmful to the setting of Huntsman's Cottage as a designated heritage asset and would be harmful to the Area of Special Character and the setting of Whistley Green Cottage as non-designated heritage assets. It would therefore be contrary to Policy CP3 of the CS and Policies TB24 and TB26 of the MDD as set out above.

Affordable housing

36. Policy CP5 of the CS indicates that all residential proposals covering a net site area of at least 0.16 ha will provide up to 50% of the net additional units as affordable dwellings where viable. The site has an area of approximately 0.29 ha.
37. The appellants note that under footnote 26 to paragraph 61 of the Framework self-build properties can represent affordable housing. While the site is being

¹ See Reference ID: 18a-018-20190723 of the Planning Practice Guidance

promoted as a self-build project, footnote 26 makes it clear that self-build properties can provide market or affordable housing. Thus, just because a scheme is self-build does not, of itself, mean that the proposal represents affordable housing. To be affordable housing a scheme has to meet the definition set out in the Glossary to the Framework unless there was some other material definition set out in development plan policy, and I have not been directed to any such policy.

38. The proposal would not meet the definition for a rural exceptions scheme pursuant to Policy CP9 of the CS and there is no planning obligation to ensure that the property would remain affordable in perpetuity. Consequently, I can only conclude that the proposal would not represent affordable housing.
39. Although for fewer dwellings than the threshold for affordable housing set out in paragraph 63 of the Framework the Council has demonstrated that it has an exceptional need for affordable housing. This has been previously supported on appeal² and consequently in light of the evidence provided I conclude that the site should make such a contribution.
40. To that end the Planning Obligation makes provision for a contribution towards affordable housing. The Council has confirmed that it is content with this and consequently I am satisfied appropriate provision is made. Consequently, the proposal would comply with Policy CP5 of the CS as set out above.

Other matters

41. The appellants have emphasised the benefit of the provision of a self-build scheme where they consider that the Council is unable to demonstrate a 5 year supply of such sites. However, the national Planning Practice Guidance (the PPG) makes clear while it is the duty of the Council to maintain a self-build and custom housebuilding register³, at the end of each base period, relevant authorities have 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period⁴. The Council has confirmed that it has met this requirement and consequently very little additional weight falls from these provisions. In any event, that the proposal is self-build would not alter my overall conclusion.
42. Although the Council has withdrawn its reason for refusal relating to the effect on the living conditions of the occupiers of adjoining dwellings these objections are maintained by the occupiers themselves. I am satisfied that subject to appropriate conditions there would not be any unacceptable noise or loss of privacy for the occupiers of those dwellings.
43. The appellants have pointed out that the Council has published a draft Local Plan for public consultation. This shows the appeal site as allocated for three dwellings. However, this draft Local Plan is at a very early stage towards adoption and consequently can only be given very little weight in line with paragraph 48 of the Framework. This does not alter my overall conclusion.

² APP/X0360/W/18/2193528

³ Reference ID: 57-001-20170728

⁴ Reference ID: 57-023-201760728

Planning Balance

44. For the reasons given above, the proposal is contrary to the terms of the development plan as a whole.
45. While I have concluded that Policy CS11 of the CS is not wholly consistent with the Framework the form of dwelling proposed would be significantly and demonstrably harmful to the character of the landscape of the area, and significantly and demonstrably out of keeping with the form of its surroundings. It would also be harmful to the setting of a designated heritage asset and to a non-designated heritage asset and the setting of another. The public benefits of a single dwelling are not sufficient to outweigh these harms.
46. The provision of a contribution to affordable housing is necessary to make the proposal compliant with development plan policies and this is thus neutral in the final balance.
47. Therefore, while concluding that some of the policies relating to the consideration of this appeal are out-of-date, the most important policies for determining the appeal, that is Policy CP3 of the CS and Policies TB21, TB24 and TB26 of the MDD are not. Consequently the 'tilted balance' set out in paragraph 11(d) of the Framework does not apply both in itself and through the application of footnote 6 because of the effect on a designated heritage asset. In any event, the adverse impacts identified would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
48. Consequently, material considerations do not indicate a decision contrary to the terms of the development plan.

Conclusion

49. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR