



Appeal Decision

Site Visit made on 4 January 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal Ref: APP/R3650/W/20/3258343

Land at 8 Kiln Lane, Lower Bourne, Farnham, GU10 3LR

- 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 Andy Brown against the decision of Waverley Borough Council.
 - The application Ref WA/2019/1215, dated 16 July 2019, was refused by notice dated 6 August 2020.
 - The development proposed was originally described as “the erection of single dwelling with integral garaging to replace previously approved permission WA/2016/2277”.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a dwelling and detached garage at land at 8 Kiln Lane, Lower Bourne, Farnham, GU10 3LR, in accordance with the terms of application WA/2019/1215 dated 16 July 2019, and subject to the submitted Legal Agreement and attached schedule of conditions.

Procedural matters

2. The proposal was amended during the application process. This resulted in the integral garage becoming separate from the main dwelling. I have therefore adjusted the description of development to both reflect this change and remove those parts of the description that do not describe development.
3. The site is within 5kms of the Thames Basin Heaths Special Protection Area (TBHSPA) and the Wealdon Heaths Special Protection Area (WHSPA). These are afforded protection under the Conservation and Habitats and Species Regulations 2017 (The Habitat Regulations) and as amended 2019. The Appellant has provided a S106 Legal Agreement, in the form of a Unilateral Undertaking¹ (UU), to secure the required mitigation in association with the effect on the integrity of the TBHSPA. Although this issue is no longer in dispute between main parties, it is a matter that I will return to later in my decision.
4. The Habitat Regulations (2017) were subject to changes in 2019 through the Conservation of Habitats and Species (Amendment)(EU exit) Regulations 2019. This has made a number of alterations to the 2017 Regulations, in particular with respect to the creation of a national site network and the management functions of this network. These changes came into effect from 1 January 2021. However, the obligations of a competent authority for the protection of

¹ Unilateral Undertaking 22 November 2019

sites and species do not change. Given the general nature of these changes it has not been necessary to seek the views of the main parties on their implications for the present case.

5. An appeal for a dwelling on the site was dismissed in 2015. Although the Council advanced two reasons for refusal, the appeal was dismissed solely on the basis that the proposal provided inadequate mitigation to prevent an adverse impact on the integrity of the SPA's. I have taken this into account in my decision.
6. A more recent proposal for a dwelling was approved by the Council in 2016². This scheme was recently subject to an extended implementation period under the provisions of The Business and Planning Act 2020, allowing implementation until 1 May 2021. I have afforded significant weight to this fall-back position.

Main Issue

7. The main issues are:

- the effect of the proposed development on the character and appearance of the surrounding area and upon the non-designated heritage asset,
- the effect of the proposal on the living conditions of occupiers of neighbouring properties of 3 Winston Walk (No 3) and 4 and 6 Kiln Lane (No's 4 and 6) with particular regard to outlook, and
- the effect of the proposed development on the integrity of the SPAs.

Reasons

Character and appearance

8. Kiln Lane is located to the south of Farnham in a low-density suburban area. Local topography is hilly with Kiln Lane falling downhill from Burnt Hill Road towards the Bourne Stream at the bottom of the valley. Local housing consists of a variety of styles, scales and heights with traditional dwellings on large plots interspersed with more modern infill estates. Winston Walk, to the west of Kiln Lane, consists of a small estate of bungalows. Whereas, Kiln Lane contains largely two-storey detached and semi-detached dwellings. The appeal site is a parcel of grassed land to the side of 8 Kiln Lane (Kiln Farm). The Farm is domestic in character. The building sits within the hillside with gardens to the rear falling away to the stream and woodland areas.
9. The appeal site is a large area of land that tapers towards its eastern end. The site is on substantially higher land than the adjacent farmhouse and is also higher than Winston Walk to the south. It is a spacious plot of garden land that is somewhat divorced from the main farmhouse site due to the substantial change in levels. It is also well screened from the public realm due to it being located to the rear of existing dwellings and local tree cover. Nevertheless, as a green and open area of land, the site makes a positive contribution to the surrounding area.
10. The proposed dwelling would be located on high land and would be taller than the adjacent dwellings of 3 and 8 Kiln Lane. The proposal would result in the loss of an area of green space. However, the site is within a built-up area and

² Planning Application Reference: WA/2016/2277

suitable in principle for development as found by the extant approval and previous appeal decision. The submitted location plan illustrates that the footprint and scale of development would be comparable to the size of local two-storey dwellings. Therefore, it would not appear as an anomalous feature in comparison to the local pattern of development.

11. 8 Kiln Lane has been identified as a non-designated heritage asset (NDHA). The significance of this building derives from it being representative of the agricultural character of the area in the 19th Century and therefore is of local interest as a historic asset. The National Planning Policy Framework (The Framework) requires a balanced judgement to be made as to the effect of development on such assets. This must have regard to the scale of any harm or loss of significance to the heritage asset. The building has a simple form and pitched roof that incorporates dormer windows conveying a cottage character. It is located within relatively extensive grounds on a substantial gradient. Adjacent land includes several functions including a domestic garden, courtyard and woodland areas. Although having some architectural and historic interest, having only local interest the significance of the dwelling is comparatively low.
12. The hillside location of the farmhouse forms a strong relationship to its adjacent garden and woodland areas. It also has a clear visual link to the grounds to the north, west and the adjacent courtyard garden. In contrast, the appeal site is located on a raised plateau and is, to some extent, dislocated from the remaining land. Consequently, the appeal site appears to have no meaningful relationship with the farmhouse. Therefore, although the building has some local merit, the proposal would have only a limited effect on the setting of the building. As a result, due to the limited scale of the impact and the low significance of the NDHA, the effect would be negligible. Consequently, taking this and the wider character considerations into account, the proposal would accord with the character and appearance of the surrounding area.
13. Accordingly, the proposal would satisfy policies TD1 and HA1 of the Waverley Borough Council Local Plan 2018 (Part 1) (2018LP), which requires development to be high quality, create an attractive environment that would also conserve the significance of heritage assets. Furthermore, the proposal would accord with policies D1 and D4 of the Waverley Borough Council Local Plan 2002 (2002LP). These seek amongst other things for development to not harm the visual character of an area, prevent damage to buildings of historical or architectural interest and be appropriate in terms of scale, height, form and appearance. Also, the proposal would satisfy policy FNP1 of the Farnham Neighbourhood Plan 2013-2032 (2020) which requires development to be high quality and respond to the character of individual areas including in terms of height and scale. The proposal would also satisfy the Farnham Design Statement (2010) that requires design of new development to respect and be sympathetic to the immediate architectural surroundings in terms of pattern, scale, materials and form. These policies conform with the Framework which seeks development that would be sympathetic to local character.
14. The proposal does not involve an extension or alteration to the Farmhouse. Furthermore, the Council has raised no objection to the demolition of the non-descript outbuilding within the appeal site. Therefore, policy HE5 of the 2002LP is not relevant to the consideration of this scheme.

Living conditions

15. The proposed dwelling would be set around one metre into the ground. This would reduce the visual impact of the structure, albeit limited, on the surrounding views of the dwelling.
16. The front elevation of the proposal would address the rear elevations of No's 4 and 6, over a separation distance of around 30 metres. The land levels between both plots are relatively even. As such, this relationship can be adequately assessed without a cross section plan. The proposed double garage would replace an existing, albeit slightly smaller, garage and store. There is also tree and hedge planting on the shared boundary that affords some screening and a sense of separation between the plots. Photographs submitted in evidence illustrate that occupiers currently experience a relatively open aspect from rear windows, especially at first floor level. This would inevitably be altered by the proposed dwelling. However, the impact of the proposal would be lessened due to the separation distance, the submergence of its ground floor slab level and intervening screening. Furthermore, this view would inevitably change if the approved scheme was undertaken. Consequently, although having an impact on rear views, the proposal would not result in demonstrable harm to the outlook of occupiers of No's 4 and 6.
17. Winston Walk consists of bungalows on various sized plots. The rear garden of No 3 is relatively short. However, it includes a substantive wall and hedge screen to its rear boundary. The Appellant's cross section drawing³ shows the relationship of the proposal to No 3. Although, its accuracy has been queried by interested parties, this reflects a reasonably accurate indication of the relationship that I observed during my visit. Evidence from interested parties indicate that the most affected room within No 3 serves a large kitchen, having rear and side facing windows. Photographs illustrate that the rear boundary wall varies in height between 1.5 and 2 metres, with the hedge above varying in height but being one metre high at its lowest point. In mind of this context, the proposal would be partially evident from the kitchen window. However, its visual effect would be lessened by the intervening screening and separation distance.
18. Furthermore, the roofline of the proposal would be diminished through the use of half-hipped roofs and lowered eaves. The design would also include a range of materials, and front and rear projections that would, in combination, disaggregate the overall mass. Moreover, in lowering the site levels the proposed dwelling would be partially embedded into the local landscape. These design features would reduce the overall perception of the proposal and its effect on the outlook of adjacent occupiers.
19. The side elevation of the proposed dwelling would be set away from this shared boundary, this would be only marginally nearer than the extant approved dwelling. Therefore, together with the extensive earth mound and boundary enclosure, the effect on outlook would be further reduced. Furthermore, even in the unlikely event that the boundary hedge was to be removed or should fail, the impact on outlook would be limited. Consequently, the proposal would

³ Drawing reference: 09/014-008 2C

not have a substantially adverse impact on the outlook of occupiers of No 3 and would not therefore appear overbearing.

20. Accordingly, the proposal would satisfy policy TD1 of the 2018LP. This seeks to ensure that new development would maximise opportunities to improve the quality of life and well-being of current and future residents. Furthermore, the proposal would satisfy policies D1 and D4 of the 2002LP. These require development to not result in a loss of general amenity enjoyed by neighbours. These policies are largely consistent with the Framework which seeks development to maintain a high standard of amenity for existing and future users.

Special Protection Area (SPA)

21. When considering the effect that a proposal may have on the integrity of a SPA, a decision maker must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the SPA.
22. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of an SPA. The site is within 5kms of both the TBHSPA and the WHSPA. The TBHSPA is designated as it provides feeding grounds for internationally protected populations of species of Dartford warbler, Nightjar and Woodlark. Main parties agree that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would have significant effects on the features of interest of the TBHSPA due to the increased recreational use. The WHSPA includes some of the finest remaining heathland in Southern England. The proposal would have no substantive impact on the integrity of the WHSPA, due to the availability of alternative recreational facilities as agreed between main parties. I have no reason to disagree with either of these conclusions.
23. I may consider any conditions or other restrictions which could secure mitigation of the harm to TBHSPA. The Council states that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of its Avoidance Strategy⁴. This requires small scale development such as the proposed scheme to provide mitigation to prevent an adverse impact on the integrity of the SPA. Natural England⁵ raised no objection to the proposal provided that the mitigation sought by the Avoidance Strategy is secured through a Legal Agreement.
24. The required mitigation would result in a financial contribution towards both Suitable Alternative Natural Greenspace (SANG) and Strategic Access and Monitoring Measures (SAMM). The submitted UU confirms payments to be made towards SANG, to provide access to Farnham Park, and towards SAMM. These sums are in accordance with the Council's Avoidance Strategy. Payment would be made prior to the commencement of development. The Council has previously accepted that these sums, and the payment mechanism, is an appropriate method to address the required mitigation. As such, I see no reason why such a sum would not be directed in the manner intended towards the required mitigation.

⁴ Waverley Borough Council Thames Basin Heaths Special Protection Area Avoidance Strategy 2018

⁵ Natural England email Jess James, dated 10 December 2019

25. Therefore, although the obligation does not bind the Council, I am satisfied, based on the specific evidence before me, that it is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Avoidance Strategy. I am therefore satisfied, following Appropriate Assessment, that the proposed mitigation would be appropriately secured and delivered in a timely manner.
26. The mitigation would therefore accord with policy NRM6, of the South East Plan. This seeks for development that would be likely to have a significant effect the integrity of the SPA to mitigate any potential adverse effects. This would therefore also satisfy the requirement of Policy NE1 of the 2018LP which seeks to prevent development that would have a likely significant adverse effect on the integrity of the SPA.

Other Matters

27. The officer report explains that the proposal would breach the Council's '25-degree code'. This code evaluates the anticipated impact of development on neighbours with respect to natural light. The proposal would breach the code in respect to the rear kitchen window of No 3. However, this breach would be marginal, clipping only the roof of the proposal. Furthermore, the rear elevation of No 3 is north-facing and access to direct sunlight would therefore be unaffected. Moreover, the proposed side windows would not result in overlooking due to the intervening boundary screening preventing views at ground floor. Also, overlooking from the first-floor landing window could be prevented with the application of a suitable condition to require obscure glazing. Therefore, the proposal would not result in a significant loss of sunlight, daylight or privacy for occupiers of No 3.
28. No's 4 and 6 Kiln Lane are to the east of the site and these have relatively deep rear gardens. Although access to afternoon sunlight levels would be affected, the proposal would be set away from the shared boundary with a sizeable separation distance. This coupled with the generally open aspect around the proposal would result in a limited effect on direct sunlight lost to these rear elevations. First floor windows on the front elevation of the proposal would serve a bathroom and two bedrooms. As such, the extent of overlooking that would be capable towards the rear of No 4 and 6 Kiln Lane and No 2 Winston Walk would be negligible. Consequently, the proposed dwelling would not cause a substantial loss of privacy. Accordingly, the proposal would have a limited effect on the living conditions of occupiers of No's 4 and 6 and more distant neighbouring occupiers.
29. Concerns have been raised in regard to construction vehicles gaining access from Winston Walk. Such access would be hazardous, due to its narrow nature and thereby be likely to cause harm to highway safety, albeit temporary. Consequently, exclusive access from Kiln Lane would be necessary. The appellant has shown that he has title ownership of the site and that a draft Agreement has been prepared to enable construction access through the grounds of No 8. As such, a routing agreement requiring construction access through the demise of No 8 within a Construction Method Plan, is reasonable and necessary to be secured by planning condition.
30. The edge of the site is within flood zone 2. However, the site falls steeply away towards the Bourne Stream to the west of the site. Therefore, the majority of the site is significantly above and outside this flood zone. The Appellant's Flood

Risk Assessment (FRA) identifies that the proposed development site lies at a level of approximately 10.8 metres above ordnance datum (AOD). It concludes that the site is at a low risk of flooding. It advises that risk is further reduced by a range of mitigation measures, including internal ground floor level being set at 9.6 metres AOD. Furthermore, the Environment Agency has raised no objection to the submitted FRA. Accordingly, I am satisfied that the proposal would address the flood related requirements of the site.

31. I have also taken into account representations in regard to potential damage to neighbouring properties during construction, the impact of development on local services and refuse collection access, but these matters do not affect my findings on the main issue.
32. No compelling evidence has been submitted to illustrate that the access track, into Winston Walk, would need to be lowered outside the application site.

Conditions

33. I have considered the use of conditions in line with the guidance set out in the PPG. The Council's officer report has suggested the imposition of 25 conditions. I shall impose most of these with some minor amendments and adjustments for clarity.
34. The Council has requested that materials and landscaping details are required prior to the commencement of development. I have adjusted the trigger time for these to prior to the commencement of works above damp-proof course as they are not required earlier. I have also incorporated the requirement for boundary details within the landscaping condition and the requirement for permeable hardstanding in the materials condition for simplicity. Details for earthworks has been incorporated into the levels condition. A condition requiring the garage to be used for domestic use only is not necessary and has therefore been excluded. The burning of waste on site is a matter for the Council's Environmental Health officers and a condition preventing this would therefore also be unnecessary. A condition that prevents external lighting, or requires especially sensitive lighting, would also be unreasonable and unnecessary within this built-up setting.
35. It is necessary for details for conditions [3, 4, 5 and 6] in regard to tree protection (and scheme of supervision), drainage, levels and a Construction Method Statement, to be submitted prior to the commencement of development. I consider these pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. These are required at an early stage as they relate to ground levelling, site set up and how the construction process would be undertaken. These conditions are necessary in the interests of the character and appearance of the area and to prevent disturbance to adjacent residents and other road users. The appellant has agreed to the imposition of these, following formal notification under Regulation 2(4) Notice of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
36. I have imposed the standard conditions advised by the PPG for clarity and certainty [conditions 1 and 2]. Conditions with respect to levels, tree protection, services, landscaping and materials are necessary in the interests of the character and appearance of the area [3, 5, 6, 7 and 8]. Further conditions are necessary, with regard to the removal of permitted development rights for

side windows and to require the approved side windows to be obscurely glazed due to the proximity of neighbouring dwellings [12 and 13]. A construction method statement is necessary in the interests of highway safety, to limit the impact of highway activity on the local roads and protect the living conditions of neighbouring properties [4]. Conditions in regard to sustainable design measures for car charging, water usage and broadband speed are necessary to satisfy the requirements of policy CC2 of the 2018LP [9, 10 and 11].

37. The submitted Ecological Assessment⁶ identifies a series of measures to ensure that the construction is undertaken in accordance with good practice but found limited ecological interest on site. Therefore, a condition is applied that requires works to be undertaken in accordance with the recommendations of the Assessment [14]. Therefore, an ecological management plan, and other measures requested by the Council, would not be necessary.

Conclusion

38. For the above reasons, the appeal is allowed, and planning permission is granted subject to the appended conditions and the associated Unilateral Undertaking.

Mr 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: 09/014-001 2C, 09/014-002 2C, 09/014-003 C, 09/014-004 2C, 09/014-006 2C, 09/014-008 2C, 09/014-009 (excluding indication of footprint of previous superseded proposal) and 09/014-010.
- 3) Prior to commencement of development the following information shall be submitted to and approved in writing by the local planning authority: a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings; full details of the proposed finished floor levels of all buildings and hard landscaped surfaces; and full details of all earthworks including any areas of backfill. The development shall be carried out in accordance with the approved details.

⁶ ERAs Consultancy, Ecological Assessment – Phase 1 Habitat and Protected Species Survey, January 2020

- 4) Prior to commencement of development including demolition works, a Construction Method Statement shall be submitted to, and approved in writing by the local planning authority. The Statement shall provide for: the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; vehicle routing; wheel washing facilities; measures to control the emission of dust and dirt during construction; a scheme for recycling/disposing of waste resulting from demolition and construction works; delivery, demolition and construction working hours. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) Prior to commencement of development, details of groundwork preparation showing on a scaled Tree Protection Plan 'TPP' and related Arboricultural Method Statement, shall be submitted to and approved in writing by the Local Planning Authority. These shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the Root Protection Area of trees (including installation of service routings and site access) and an agreed scheme of supervision for these protection measures. All works shall be carried out in strict accordance with the approved details.
- 6) Prior to commencement of development, details of any services to be provided or repaired including drains and soakaways, on or to the site, shall be submitted to and approved by the Local Planning Authority in writing and shall be carried out as shown.
- 7) Prior to works above damp-proof course, details shall be submitted for a scheme for the landscaping and replacement tree planting of the site, including the retention of existing landscape features, shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of hard landscaping, proposed boundaries, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, and hedge or grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities and an implementation programme. All hard and soft landscaping work shall be completed in full accordance with the approved scheme, prior to occupation of the approved development or in accordance with a programme agreed in writing with the local planning authority. Any trees shrubs or plants planted in accordance with this condition which are removed, die or become damaged or become diseased within five years of planting shall be replaced within the next planting season by trees, and shrubs of the same size and species.
- 8) Prior to works above damp-proof course, details samples of the materials (including permeable hardstanding details) to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 9) The development hereby approved shall not be occupied unless and until the proposed dwelling is provided with a fast charge socket (current

minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with the approved plans and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

- 10) Prior to the occupation of the dwelling, details shall be submitted to and be approved in writing by the Local Planning Authority to confirm that the dwelling has been completed to meet the requirement of 110 litres of water per person per day.
- 11) Prior to the first occupation of the dwellings here by permitted the highest available speed broadband infrastructure shall be installed and made available for use unless otherwise agreed in writing by the Local Planning Authority.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or other openings other than those expressly authorised by this permission shall be constructed in the northern and southern elevations without the written permission of the Local Planning Authority.
- 13) The first-floor window in the southern elevation shall be obscurely glazed to Pilkington level 3 or equivalent, prior to first occupation of the dwelling, and shall thereafter be retained in this form.
- 14) The construction of the approved development shall be undertaken in full accordance with chapter 8 of the ecological recommendations of the ERAs Consultancy, Ecological Assessment – Phase 1 Habitat and Protected Species Survey, January 2020).

End of conditions