



Appeal Decision

Site Visit made on 6 July 2021

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Appeal Ref: APP/R0335/W/21/3266675

Land Adjacent to Silver Trees, Birch Lane, Ascot SL5 8RF

- 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 John Simmons against the decision of Bracknell Forest Borough Council.
 - The application Ref 19/00862/FUL, dated 12 September 2019, was refused by notice dated 11 September 2020.
 - The development proposed is the erection of two storey dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. Comments were sought from the main parties on this, and where received have been taken into account in my decision. I consider that there have been no fundamental changes relevant to the main issues in this appeal and therefore no injustice has been caused to any of the appeal parties by my taking account of the revised Framework.

Applications for Costs

3. An application for costs was made by Bracknell Forest Borough Council against Mr John Simmons. An application for costs was also made by Mr John Simmons against Bracknell Forest Borough Council. These applications are the subject of a separate Decision.

Main Issues

4. The main issues of the appeal are the effect of the proposed development on:
 - The character and appearance of the area, with particular regard to protected trees; and
 - The Thames Basin Heaths Special Protection Area.

Reasons

Character and Appearance

5. Existing views into the site are of the mixed type and size of vegetation growing on it. This unmanaged and natural appearance provides a connection with the larger area of woodland beyond it, that, along with the appeal site

itself, is subject to Tree Preservation Orders¹ (TPOs). At present the site contributes positively to the enclosed, dense canopy and woodland setting of the area identified in the SPD².

6. The proposed plot would be located between existing similar sized spacious ones and there is no consistency to the scale or position of properties along Birch Lane. There are glimpsed views of properties along Birch Lane, generally through and over the formalised access points and frontage boundary treatments. However, the large number of both mature and smaller trees to the road frontage and within plots gives Birch Lane a pleasant and verdant appearance.
7. Other than a dead tree at the frontage of the site, the Arboricultural Impact Assessment identifies that no trees would be removed to create the access. The dwelling would be positioned in a more open area without much tall vegetation and would be screened in part from the road by the existing trees.
8. Nevertheless, the removal of low-level growth for the access, driveway and dwelling would be needed. Along with other associated domestic paraphernalia this would undoubtedly and significantly alter the undisturbed woodland character of the site. The proposal would unfavourably contrast with the existing appearance of the site where unmanaged natural growth contributes towards the woodland appearance of the site and where the absence of built form allows views towards the mature trees beyond. This would be obvious from along the lane itself and within adjacent plots.
9. The proposed dwelling would be set back from the road in an area of the plot where there are few mature trees. A large area of outdoor space would be provided. Nonetheless, there would be a number of mature features near the building, including near the rear elevation of it and throughout most of the proposed outdoor space. This would result in a largely enclosed outdoor space reducing its usability and there are several openings orientated towards existing trees. Due to the extent of the tree coverage and their height, it is likely that a shading effect would occur throughout large parts of the day. No assessment has been provided to demonstrate otherwise.
10. From within the dwelling and garden area, the trees would be imposing features even if potential future increased canopy heights reduced the need for pruning. While future occupiers may have the knowledge that trees on the site are protected, the scale and position of them would be likely to lead to future pressure to lop, top, or fell trees at the site. Permission would be required for such works. Nevertheless, their removal would bring about benefits to the future occupiers that the Council, or Inspector, would need to consider.
11. The access route would be within the root protection areas of several trees. However, methods to prevent damage and restrictions to future growth are suggested. There is no compelling case that the construction of the dwelling would require substantial works to, removal of, or damage future health of trees along the access or that their growth would be substantially restricted. Conditions could be imposed in relation to protection measures were the appeal to be allowed.

¹ TPO 606, TPO 1025, and woodland TPO 1263

² Bracknell Forest Character Area Assessments Supplementary Planning Document

12. Notwithstanding this, on the basis of the evidence before me, the above factors would result in the scheme eroding the aesthetically pleasing influence the trees have on the area and go against the aim of the SPD to retain existing tree cover and protect mature trees.
13. There are existing large dwellings set back from the road along Birch Lane. The varied scale and appearance of the existing built form means the proposed dwelling, although not following the design of those nearby, would not be incongruous.
14. Nevertheless, the proposed development would unacceptably harm the character and appearance of the area. It would fail to accord with Policies CS1, CS7 and CS9 of the Core Strategy³ and Policies H5, EN1, EN8 and EN20 of the Local Plan⁴. These, in part, require schemes to be in sympathy with the appearance, quality and character of the local area and seek to avoid the loss of important trees.

Thames Basin Heaths Special Protection Area (SPA)

15. The site falls within 5 km of the SPA. The SPA comprises an area of lowland heath and woodland supporting a characteristic landscape and distinctive flora and fauna under threat and in decline. It is designated because of the presence of breeding populations of certain birds. These birds nest on or near the ground and as a result they are very susceptible to predation and to disturbance from informal recreational use, especially walking and dog walking.
16. There is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupiers of the proposed dwelling. Although small in itself, this may lead to the harmful disturbance of the habitat of birds and is likely to have a significant adverse effect on the integrity of the SPA, when considered in combination with other residential development in the surrounding area.
17. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site.
18. I have undertaken this assessment on a proportionate basis and adopting a precautionary approach.
19. The information before me, including the Thames Basin Heaths Special Protection Area Supplementary Planning Document (Thames Basin SPD), indicates that Natural England considers that the impact of development such as that proposed on the natural habitats in the SPA can be managed, in combination with on-site access measures and by the provision of enhancements to Suitable Alternative Natural Green Space (SANG).
20. Natural England has commented that providing avoidance and mitigation measures are secured that they have no comment to make on the application.

³ Core Strategy Development Plan Document

⁴ Bracknell Forest Borough Local Plan

21. The appellant indicates that a direct payment has been made to the Council for SANG and SAMM (Strategic Access Management and Monitoring) financial contributions in line with the Thames Basin SPD and that they are willing to enter into a legal agreement. The Council state that SANG mitigation would likely be at Shepherds Meadow, but that it could apply the mitigation to any of its SANG where there is capacity and that it could be applied to various funds as specified in the Thames Basin SPD.
22. However, there is no obligation stipulating which SANG the contribution would be allocated for and how it would be spent. Given that there is no legal commitment, I have no certainty as to how, where or when the money would be spent, and that the payment has been properly secured. There is insufficient legal guarantee that the contribution would be used for its intended purpose.
23. As such, I cannot be certain that the contribution would ensure that there was alternative green space of appropriate quality and as conveniently located to the appeal site as the SPA. Therefore, I am unable to give this any weight in my decision.
24. There is insufficient information to demonstrate that conditions are an appropriate mechanism of securing the mitigation, and that they would meet the requisite tests in Planning Policy Guidance.
25. Accordingly, I am not satisfied that appropriate mitigation has been secured. The evidence before me indicates that there is potential for recreational disturbance to the SPA through additional activity associated with the proposed development, which has the potential to affect the integrity of the SPA.
26. Where suitable mitigation cannot be secured the Habitats regulations state that planning permission should only be granted if there are no alternative solutions, that there are reasons of overriding public interest and suitable compensatory measures are secured. There is no compelling evidence to indicate that the appeal proposal is the only solution for such a scheme. Based on the individual merits of the case, the provision of 1 dwelling is not sufficient to amount to imperative reasons of overriding public interest. Finally, no compensatory measures have been put forward.
27. Consequently, having regard to the Habitat Regulations, permission should not be granted. The proposed development could result in harm to the integrity of the SPA and conflict with the Habitats Regulations, Policy NRM6 of the South East Plan, Policy CS14 of the Core Strategy and the Thames Basin SPD.

Planning Balance

28. Even in light of the existing shortfall in the area, given the size of the scheme, the contribution towards housing supply would be small and attracts little weight. For the same reason the weight given to benefits arising from the construction period and future spend of occupants giving support to local services and facilities is limited.
29. The proposal is described as a self-build dwelling and there is positive support for the provision of such units in national policy. Notwithstanding this, even if I were to consider that the Council are not meeting their targets for such housing, no means has been put forward to secure the property as a self-build dwelling as there were in the Green End/Heath Road, Corner Mead and Hepworth Road appeal proposals and this factor attracts minimal weight.

30. My attention has been drawn to a number of other decisions, both at appeal and by the Council. The scheme between Pineacres and Spinney Lodge was some time ago and I do not have full details of the considerations or policy context at that time. The Green Road, Scotlands House and Tilehurst Lane appeals related to considerably more properties than the scheme before me and again I do not have all the evidence available to those Inspectors when reaching their decision and judgements on policy. Therefore, these are materially different to the scheme before me.
31. The appearance of outdoor storage at nearby properties does not alter my findings on the main issues. The refusal reasons do not include matters such as effects on the living conditions of neighbouring occupiers and highway safety. However, a lack of harm would be a neutral factor. There is limited information before me regarding the energy efficiency and sustainable construction of the dwelling and I give this small weight.
32. There is no compelling evidence that the dismissal of this appeal would lead to the need to use greenfield land elsewhere that would result in greater harm than the scheme before me.
33. I appreciate that the appellant has amended the scheme in an attempt to overcome previous refusal reasons. However, the proposal would be contrary to development plan policies relating to the character and appearance of the area and those seeking to protect the SPA. The Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.
34. The officer report refers to the scheme being outside a defined settlement and in the countryside. However, this was not included as a refusal reason but rather the effect of the scheme on the character and appearance of the area. To my mind, the Council have not sought to add an additional reason for refusal as part of their statement of case but instead made reference to it. Therefore, as Policy CS2 of the Core Strategy relates to the allocation of land and proposals within settlements, which this site is not, it weighs neither for nor against the proposal in relation to this issue.
35. Policies CS9, EN8 and H5 of the Core Strategy do not directly reflect the Framework with regard to differentiating between different landscapes within the countryside in the manner of the Framework. Notwithstanding this, they are in general conformity with the Framework where it requires schemes to be sympathetic to local character, including landscape setting and recognises the intrinsic character and beauty of the countryside and of trees and woodland. Therefore, as with the character and appearance aspects of Policies CS1 and CS7 of the Core Strategy and Policies EN1 and EN20 of the Local Plan, in regard to this appeal scheme and its main issues they are broadly consistent with the Framework.
36. Policy NRM6 of the South East Plan and Policy CS14 of the Core Strategy accord with the Framework where it seeks to protect and enhance biodiversity and that projects should not adversely affect the integrity of SPAs.
37. When looking at the basket of policies relevant to the scheme, on the basis of the information before me, the most important policies are those relating to character and appearance matters and the SPA. They are not out of date and

the presumption in favour of sustainable development outlined in paragraph 11d)ii. of the Framework is not triggered.

38. Therefore, I give the conflict with these policies significant weight and the proposal would conflict with the development plan as a whole.
39. The proposal would align with the Framework where it seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting the housing requirement. Windfall development is also identified in national policy. Nonetheless, as it relates to a single property the contribution attracts little weight. Without a mechanism to control the dwelling as self-build this matter attracts minimal weight.
40. The Framework seeks to support economic growth. The scale of the proposal restricts the economic and social benefits from the build and occupation of the dwelling and their weight in favour of the scheme is limited.
41. The proposed development would be contrary to the Framework where it aims to ensure developments are sympathetic to local character, recognising the beauty of the countryside and of trees and woodland as well as protecting the integrity of SPAs. I give this conflict significant weight.
42. The Council accept that they do not have an up-to-date 5 year housing land supply. Notwithstanding this, the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The SPA is an example of such an area/asset and the proposal is contrary to the relevant policies of the Framework in regard to these.
43. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

Conclusion

44. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR