



Appeal Decision

Site visit made on 9 August 2021

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 September 2021

Appeal Ref: APP/W0340/W/20/3258901

Old Farmhouse, Newbury Road, Hermitage, Thatcham RG18 9TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by T A Fisher against the decision of West Berkshire Council.
 - The application Ref 19/02993/OUTMAJ, dated 29 November 2019, was refused by notice dated 15 July 2020.
 - The application sought outline planning permission for demolition of farmyard buildings, retention of The Old Farmhouse and the erection of up to 21 new dwellings, improved vehicular access off Newbury Road, car parking, public open space and landscaping; matters to be considered - access without complying with a condition attached to planning permission Ref 17/03290/OUTMAJ, dated 20 November 2018.
 - The condition in dispute is No 4 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 16027/SK201 Rev B; Site Access Boundary Wall 16027/SK205 Rev A; Site Access Plan JNY8620 - 17D; Site Survey 16027/SS.01 Rev B. The reserved matters shall be in accordance with the Parameter Plan 16027/SK202 Rev E (subject to any variation to the precise location of the pedestrian and cycle access to the adjacent housing site HER001 approved pursuant to Condition 16).*
 - The reason given for the condition is: *For the avoidance of doubt and in the interest of proper planning.*
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Decision

1. The appeal is allowed and outline planning permission is granted for demolition of farmyard buildings, retention of The Old Farmhouse and the erection of up to 21 new dwellings, improved vehicular access off Newbury Road, car parking, public open space and landscaping; matters to be considered – access, at Old Farmhouse, Newbury Road, Hermitage, Thatcham RG18 9TB in accordance with the application Ref 19/02993/OUTMAJ dated 29 November 2019, without compliance with condition number 4 previously imposed on planning permission Ref 17/03290/OUTMAJ dated 20 November 2018 and subject to the conditions set out in Schedule 1 of this decision.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:

- The effects of the proposed development on neighbouring residents
- Whether sufficient open space would be provided of a suitable quality
- The effects on biodiversity.

Reasons

4. The proposal seeks to replace the approved 'Parameter Plan' with a revised version which would alter the configuration of the 'Built Development Envelope' and the open space which consists of 'Public Open Space', 'Local Area of Play', 'Ecological Mitigation Area' and 'Landscape Buffer'. The proposal would also alter the road layout within the site.

The Effects on Neighbours

5. The approved Parameter Plan (PP) contains the provision for open land along the eastern side of the site, adjacent to its boundary with houses on Lipscomb Close. This is designated on the PP in the form of a buffer strip and open space. This would include the play area and also the existing pond within the appeal site. The proposal would remove an area of the built envelope from the north of the site, closest to the Old Farmhouse, and seek its relocation within the south east of the site. This would have the effect of reducing the open area in the south east and enlarging it in the north of the site, adjacent to the retained pond.
6. The Council are concerned that the revised proposal would bring the new houses too close to the existing houses on Lipscomb Close. The Council refer to the appellant's illustrative layout within their submissions. Before I proceed to set out my reasoning on this issue, I emphasise the point that the submitted illustrative drawings are for illustration only and I do not treat them as a firm part of the proposal. The proposal is in Outline form only and all other matters of detail (save for access) are reserved for future consideration. Therefore, I give very little weight to the contents of the illustrative layout.
7. The proposed parameter plan would still contain the provision of open land between the boundary of the existing houses on Lipscomb Close and the proposed Built Development Envelope. Notwithstanding the illustrative nature of the submitted drawings, the appellant sets out that the layout shown therein would satisfy the Council's normal separation requirements.
8. I was able to observe the houses on Lipscomb Close, from within the site and from Lipscomb Close. No 31 has its rear elevation at an angle facing towards the appeal site and its rear garden has a boundary with the site. At present there is a good degree of screening along the boundary here, some within the appeal site and some within the garden. No 33 Lipscomb Close would generally face towards a much wider area of open land and No 25 Lipscomb Close is set side-on to the appeal site. The proposed plan shows open land, outside the built envelope, between the existing gardens and the built envelope. Although this indicates a reduction compared to the approved plan, I consider that it would still represent a good degree of separation between the existing houses and the newly proposed built envelope. In addition, it should be born in mind that the built envelope does not necessarily represent the nearest position of a building and could represent the edge of a garden in this instance. The layout of the proposed housing would be for future approval and if the Council had a reasonable basis for doing so, it could require a layout

which ensured that a house would be set away from the built envelope edge here and provided garden land. On the basis of my considerations of the proposal before me, I consider that the proposed Parameter Plan would contain sufficient safeguard so that the neighbours within Lipscomb Close would not be subjected to unreasonable overlooking and would not suffer any undue visual intrusion from the proposal.

The provision of Open Space

9. The appeal proposal would see a small increase in the overall provision of open space. However, the Council are critical of its disposition, accessibility and the fact that, in times of flooding, it would accommodate water. In relation to its position within the site, the proposed open space would be easily reached by residents of the scheme. The proposed play area would be more centrally located than on the previously approved plan. In this sense, I consider that it would be suitably located.
10. The appellant indicates that the new area of open space to the west of the pond, has arisen due to the desire to relocate houses that would have been sited here, to the south east part of the site. This is because the area adjacent to the pond is more at risk from flooding and the south eastern part is less at risk. In relation to flooding of the new area of open space, the appellant states that it has been designed (or would be) to be lower than its existing level due to the need for a like-for-like compensation of infilling the existing Ha-Ha feature. The appellant states that it has not been designed as a drainage basin but that it may temporarily hold water in a flood event; they indicate that it would be likely to be free from flooding for 96.66% of the time.
11. I consider that the fact that some of the open space may hold or accommodate water during flood events would not necessarily be fatal to its use as open space and, as the appellant points out, is not uncommon. The fact that this is shown by the appellant to be in a very small proportion of the time means that it could still effectively provide open space for recreational use for the great majority of the time. In relation to other points about its accessibility, the proposed gradients of the land would be subject to future approval and the appellant has indicated that these would be consistent with its use as open space and to some extent reflect the existing changes in levels (although it is accepted that these would be altered).

Biodiversity

12. In relation to the width of the open land within the south east of the site, the Council considers that it would represent an unacceptable obstacle for the passage of wildlife, primarily great-crested newts, which are present within the area and pond. The appellant's submissions state that the strip of land at its narrowest would be about 8m in width and would lead to the pond. It is notable that the approved plan indicates a strip of land as Ecological Mitigation and then Public Open Space is shown whereas the proposed plan shows a similarly sized Ecological Mitigation strip and also an Ecological Mitigation Buffer. On the basis of the submitted evidence, I am satisfied that this would provide a sufficient area of land within which wildlife, including the newts, could reside and travel.

13. In relation to the pond, I see little difference between the likely disturbance from dogs entering the pond on the approved and proposed parameters plan. There is access to it from the open space in both schemes.
14. The Councils fear that part of the land could be the subject of a 'land-grab' by a home-owner and thus compromise its ecological value. With the proposed management plans in place I consider there to be little likelihood of this happening. In any event, it is a matter that can be resolved by other legal means and I attach little weight to this fear within the appeal. In relation to water run-off from the proposed housing development, the appellant confirms that the proposal has been conceived so that this would not be the case.

Conditions

15. I have had regard to the advice in the National Planning Policy Framework and the Planning Practice Guidance (PPG) in relation to the use of conditions. Firstly, the effect of a successful appeal in this case is that a new planning permission would be created. However, the PPG states "*... under s73 the LPA must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application*" and adds "*A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State who will also only consider the condition/s in question*". Therefore, whilst I have only considered the disputed condition in this appeal, as a new permission is to be created I shall consider the re-imposition of the conditions attached to the original consent. Within the context of this appeal, it has not been necessary to examine the justification for all of the other conditions and unless I have specific information that any are no longer relevant or have been discharged, I shall impose the conditions as previously included and will not undertake a detailed justification for each.
16. In relation to the standard time-limit conditions, Section 73(5) of the Act states, "*Planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which - (a) a development must be started; (b) an application for approval of reserved matters (within the meaning of section 92) must be made*" and this is confirmed in the PPG. Therefore, I shall make the necessary alterations to conditions 2 and 3.
17. In relation to condition 5, regarding the advance planting of the landscape buffer, the appellant has submitted information that confirms that the Council has approved details of a submission in this respect. I shall alter this condition accordingly. In relation to condition 8, the appellant states that an application has been made. However, I can see no confirmation that it has been approved within the submissions; in any event if I re-impose the condition in its original form and it transpires that the Council has approved a relevant submission, the Council and the appellant are easily able to resolve this.

Other Matters

18. The original permission was the subject of a Section 106 Agreement relating to numerous matters. There is much correspondence in relation to firstly, the need for a new/amended Obligation and secondly its form. It seems to have been accepted by the appellant that the original Agreement would not bind them if the appeal is allowed (notwithstanding some expressions of doubt), as

they have submitted a Unilateral Undertaking. The Unilateral Undertaking is intended to cover the same matters that the original Agreement did. The Council has submitted its comments on this, including how they consider that it would not be acceptable in its current form. I have compared the original S106 Agreement and the completed Unilateral Undertaking. The appellants have indicated that it is and always has been their intention that any new permission would be bound by the same form of obligations as was originally the case and the Undertaking is intended to replicate this. I have compared the Undertaking with the original Agreement and, noting the necessary alteration due to the unilateral form of the obligations, dates and plan/application references, I am satisfied that the Undertaking would have the same effects as the original Agreement and so I have taken it into account for this appeal.

Conclusions

19. For the above reasons, I find no conflict with the Council's stated policies, including Policy CS14 of the West Berkshire Core Strategy. For the reasons set out, the appeal is successful.

S T Wood

INSPECTOR

SCHEDULE 1, CONDITIONS

1. Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority before 21 November 2021.

3. The development to which this permission relates shall be begun before 21 November 2023 or before the expiration of two years from the date of approval of the last of the approved matters to be approved, whichever is the later.

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

- Site Location Plan 16027/SK201 Rev B
- Site Access Boundary Wall 16027/SK205 Rev A
- Site Access Plan JNY8620 - 17D
- Site Survey 16027/SS.01 Rev B

The reserved matters shall be in accordance with the Parameter Plan 19-J3035-PP Rev F (subject to any variation to the precise location of the pedestrian and cycle access to the adjacent housing site HER001 approved pursuant to Condition 16).

5. All planting within the landscape buffer (as defined by the Parameter Plan) shall be completed no less than six months in advance of any development taking place on the application site. The Advance Planting buffer shall be carried out in accordance with drawing titled "Planting detail – Buffer Zone" and numbered "01 revision A" approved by the Council under application reference 20/00406/COND1 and approved 13 May 2020.

6. The detailed layout of the site shall comply with the Local Planning Authority's standards in respect of road and footpath design and vehicle parking and turning provision. The road and footpath design shall be to a standard that is adoptable as public highway. This condition shall apply notwithstanding any indications to these matters which have been given in the current application.

7. No development shall take place until a detailed Environmental Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall:

(a) Apply to all land within the red line application site, and the full extent of the Landscape Buffer (as defined by the Parameter Plan).

(b) Be based on and informed by the Ecological Assessment prepared by Ecosa (Reference 2752-2.F2, Final Revision 2, dated 01/11/2017) (therein referred to as an Ecological Management Plan), and deliver the recommendations of this Assessment to ensure the appropriate protection and conservation of protected habitats and species.

(c) Include (but not necessarily be limited to) details of management, maintenance and long-term protection of the hard and soft landscaping, public open space, and ecological mitigation area.

(d) May incorporate any/all mitigation measures secured by other planning conditions attached to this permission.

8. No development shall take place until an updated Ecological Appraisal been submitted to and approved in writing by the Local Planning Authority, together with any additional surveys recommended by the updated Ecological Appraisal. The updated surveys shall be used to inform the mitigation measures for this development.

9. Any works which affect bats or great crested newts, or result in loss or deterioration of their habitats (including the demolition of the existing farmyard buildings) shall not in any circumstances commence unless the Local Planning Authority has been provided with either:

(a) A licence issued by Natural England pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activities to go ahead; or

(b) A statement in writing from Natural England to the effect that it does not consider that the specified activity will require a licence.

10. No development (including demolition) shall take place until a bat mitigation scheme has been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing, suitable mitigation shall include (but not necessarily be limited to) sensitive demolition methods and timings, the provision of long-term replacement roosts and bat boxes, a sensitive lighting scheme, construction of a dedicated roost void, and inclusion of new roost features such as bat access tiles and bat boxes incorporated into the development. The scheme shall include details of implementation timings. Thereafter, the development shall not take place except in accordance with the approved mitigation scheme.

11. No development shall take place until details of a reptile translocation exercise have been submitted to and approved in writing by the Local Planning Authority. The reptile populations shall be translocated to the Ecological Mitigation Area, as defined by the approved Parameter Plan. The submission shall include details of implementation timings. Thereafter, the development shall not take place without the reptile translocation exercise taking place in accordance with the approved scheme.

12. No development shall take place until a great crested newt mitigation scheme has been submitted to and approved in writing by the Local Planning Authority. The mitigation scheme shall include (but not necessarily limited to) translocation of the areas of suitable terrestrial habitat, and translocation of the species, to the Ecological Mitigation Area, as defined by the approved Parameter Plan. The submission shall include details of implementation timings. Thereafter, the development shall not take place except in accordance with the approved scheme.

13. Alongside or before the first reserved matters application, details of sustainable drainage measures to manage surface water shall be submitted to the Local Planning Authority for approval. These details shall:

(a) Incorporate the implementation of Sustainable Drainage methods (SuDS) in accordance with the Non-Statutory Technical Standards for SuDS (March 2015), the SuDS Manual C753 (2015) and West Berkshire Council local standards;

(b) Include and be informed by a ground investigation survey which establishes the soil characteristics, infiltration rate and groundwater levels. Any soakage testing should be undertaken in accordance with BRE365 methodology;

(c) Include construction drawings, cross-sections and specifications of all proposed SuDS measures within the site;

(d) Include run-off calculations, discharge rates, infiltration and storage capacity calculations for the proposed SuDS measures based on a 1 in 100 year storm +40% for climate change;

(e) Include pre-treatment methods to prevent any pollution or silt entering SuDS features or causing any contamination to the soil or groundwater;

(f) Ensure any permeable paved areas are designed and constructed in accordance with manufacturers guidelines;

(g) Ensure any permeable areas are constructed on a permeable sub-base material such as Type 3 or reduced fines Type 1 material as appropriate;

(h) Include details of how the SuDS measures will be maintained and managed after completion. These details shall be provided as part of a handover pack for subsequent purchasers and owners of the property/premises.

No development shall take place until the above details have been approved in writing by the Local Planning Authority, and thereafter the development shall not be undertaken without incorporating the approved measures.

14. No development shall take place until a mitigation strategy to ensure that the proposed dwellings are protected from flooding up to the 1 in 100 year (including climate change) flood event has been submitted to and approved in writing by the Local Planning Authority. No development shall take place without incorporating the approved mitigation strategy, and any ongoing management or maintenance shall be undertaken as approved thereafter.

15. No dwelling shall be first occupied until either:

(a) Private fire hydrant(s), or other suitable emergency water supplies, have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority (in consultation with Royal Berkshire Fire and Rescue Service); or

(b) Royal Berkshire Fire and Rescue Service confirm that such provision is not required (for example, because the main water supply for the development is sufficient) and confirmation of the same has been given in writing by the Local Planning Authority pursuant to this condition.

16. No development shall take place until detailed plans of the pedestrian and cycle accesses onto Lipscomb Close and to the adjacent housing site HER001 have been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the details shall provide for a three metres wide footway/cycleway in both locations. The footways/cycleways shall be provided before first occupation of the 15th dwelling in accordance with the approved details.

17. No development shall take place until details of vehicle access, parking, and turning spaces for every dwelling have been submitted to and approved in writing

by the Local Planning Authority. Thereafter, no dwelling hereby permitted shall be occupied until the vehicle access, parking, and turning spaces associated to that dwelling have been surfaced, marked out and provided in accordance with the approved details. The access, parking, and turning spaces shall thereafter be kept available for parking (of private motor cars and/or light goods vehicles) at all times.

18. No development shall take place until a lighting strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- (a) Identify those areas on the site that are particularly sensitive for bats and that are likely to cause disturbance;
- (b) Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or the above species;
- (c) Include an isolux diagram of the proposed lighting;
- (d) Ensure all lighting levels are designed within the limitations of Environmental Lighting Zone 1, as described by the Institute of Lighting Engineers.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy.

19. No development, demolition or other site works shall take place until a written scheme of investigation for a programme of building recording has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not take place unless the programme of building recording is undertaken and/or incorporated in accordance with the approved details.

20. No development, demolition or other site works shall take place until a written scheme of investigation for a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not take place unless the programme of archaeological work is undertaken and/or incorporated in accordance with the approved details.

21. No development (including demolition) shall take place until an assessment has been carried out to determine whether any harmful materials (including asbestos) are present, and to determine the steps that will be taken to remove or treat such harmful materials so as to prevent to the contamination of the site. No development shall take place until a scheme of remedial works has been submitted to and approved in writing by the Local Planning Authority. Thereafter, development shall not take place except in accordance with the approved details.

22. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:

- (a) Parking of vehicles of site operatives and visitors;
- (b) Loading and unloading of plant and materials;
- (c) Storage of plant and materials used in constructing the development;
- (d) Erection and maintenance of security hoarding including decorative displays and facilities for public viewing;

- (e) Temporary access arrangements to the site, and any temporary hard-standing;
- (f) Wheel washing facilities;
- (g) Measures to control the emission of dust and dirt during construction;

Thereafter the demolition and construction works shall incorporate and be undertaken in accordance with the approved statement.

23. No development shall take place until a tree protection scheme has been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The details shall include a plan showing the location of protective fencing, and shall specify the type of protective fencing, all in accordance with BS5837:2012. Notice of commencement of development shall be given to the Local Planning Authority at least 2 working days before any development takes place. The scheme shall be retained and maintained for the full duration of building/engineering operations, or until such time as agreed in writing with the Local Planning Authority. No activities or storage of materials whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

24. No development shall take place until an arboricultural method statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall include details of the implementation, supervision and monitoring of all temporary tree protection and any special construction works within any defined tree protection area.

25. No demolition or construction works shall take place outside the following hours:

7:30am to 6:00pm Mondays to Fridays;

8:30am to 1:00pm Saturdays;

No work shall be carried out at any time on Sundays or Bank Holidays.

26. No demolition or vegetation clearance shall take place during the bird nesting season (March to August inclusive) unless a suitably qualified ecologist undertakes checks for the presence of breeding birds immediately prior to demolition/clearance, and any active nests shall be left with a suitable buffer until nesting ends.

27. No dwelling shall be first occupied until the access to Newbury Road has been provided, and the boundary wall constructed, in accordance with the approved plans.

28. No vehicular access to the highway (Newbury Road) hereby permitted shall be brought into use until visibility splays of 2.4 metres by 59 metres have been provided at the new access. The visibility splays shall, thereafter, be kept free of all obstructions to visibility above a height of 0.6 metres above carriageway level.

29. No dwelling shall be first occupied until the landscape buffer (as defined by the Parameter Plan) has been completed in accordance with the approved details (including the landscaping reserved matters).

30. Unless further monitoring and mitigation measures have been submitted to and approved in writing by the Local Planning Authority to demonstrate that gas

protection measures are not required (or alternative mitigation is appropriate), no dwelling shall be occupied until precautionary gas protection measures appropriate to 'characteristic situation 2' have been provided for that dwelling.

31. No dwelling shall be first occupied until external noise mitigation measures have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The details shall be informed by an appropriately detailed investigation to address the noise impacts from the White Horse Public House, and any other noise sources in the area. The details shall include a scheme of works for protecting occupants of the new dwellings from externally generated noise.

32. No dwelling shall be first occupied until a scheme for the provision of travel information packs for new residents has been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

33. No dwelling shall be occupied until cycle storage has been provided for that dwelling in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

34. New dropped kerbing and tactile paving crossings shall be provided before the first occupation of the 15th dwelling in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Where necessary these details shall ensure that any statutory undertaker's equipment or street furniture located in the position of the footway has been re-sited to provide an unobstructed footway. The new crossings shall be provided in the following location:

- Across Lipscomb Close between numbers 27 and 8 (Fallow Chase);
- Across the B4009 south of the Marlston Road.

35. No development shall take place until details of existing and proposed ground levels, and finished floor levels of the buildings, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

36. No development shall take place until details of how all spoil arising from the development will be used and/or disposed have been submitted to and approved in writing by the Local Planning Authority. These details shall:

- (a) Show where any spoil to remain on the site will be deposited;
- (b) Show the resultant ground levels for spoil deposited on the site (compared to existing ground levels);
- (c) Include measures to remove all spoil from the site (that is not to be deposited);
- (d) Include timescales for the depositing/removal of spoil.

All spoil arising from the development shall be used and/or disposed of in accordance with the approved details.