



Appeal Decision

Site Visit made on 17 November 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/Q3115/W/21/3275211

**Mulberry House, Peppard Hill, Peppard Common, Henley-on-Thames
RG9 5ES**

- 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 Mrs Vanita Kang against the decision of South Oxfordshire District Council.
 - The application Ref P20/S2276/FUL, dated 29 June 2020, was refused by notice dated 11 March 2021.
 - The development proposed is Demolition of the existing dwelling house and outbuildings and the erection of 6 dwellings with associated landscaping, tree works and parking provision.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework has been published since the appeal was lodged. The main parties to this appeal have had the opportunity to comment upon any relevance of this to the outcome of the appeal. The references to 'the Framework' made within my decision are to this revised version.
3. The Council advised in its appeal documents that the reference to Policy EP11 of the South Oxfordshire Local Plan 2011-2035 (adopted November 2020) (hereafter "LP") within its fifth reason for refusal is an error and LP Policy ENV11 is the intended relevant policy. It is clear from the evidence that both parties consider LP Policy ENV11 in respect of this reason for refusal. I am, therefore, satisfied that no parties are prejudiced by this error, and I consider LP Policy ENV11 accordingly.
4. The appellant's final comments included information referred to by the appellant as a written response from their ecologist of a further bat survey carried out in October 2021. This information was not submitted as part of the appellant's evidence for the appeal. With reference to the Procedural Guide for Planning Appeals in England, October 2021, and in particular Annexe B and Annexe D, this is late evidence. No justification has been provided that would cause me to exceptionally accept this late evidence. Consequently, I have not had regard to it in determining this appeal.

Main Issues

5. The main issues are (i) whether or not the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to external amenity space; (ii) the effect of the proposed development on protected trees; (iii) the character and appearance of the area; (iv) biodiversity, with particular regard to bats; and (v) the risk of land contamination.

Reasons

Living conditions

6. There is no dispute that the appeal proposal would provide private external amenity spaces for all of the proposed dwellings that would meet or exceed adopted minimum size requirements. However, the quality of the proposed rear garden areas of plots 1, 2 and 3 is of concern to the Council. All of these spaces would be north facing and would each be partly under the cover of the canopy spread of protected trees. Parts of these garden areas would also be subject to some overshadowing from the dwellings themselves, due to the orientation of the built form in relation to the path of the sun.
7. It is a material consideration that there is extant permission¹ (the approved scheme) for a development of five dwellings at the appeal site, which includes the provision of rear garden areas in this position. The proposed dwellings in this appeal would be in similar proximity to the retained trees as those approved. However, the approved scheme has two dwellings in this part of the site, whereas the appeal proposal seeks a terrace of three in this position.
8. Consequently, the rear gardens proposed under the appeal scheme are smaller than those previously approved. The approved scheme is not therefore directly comparable to the proposed scheme in relation to this matter. However, in the case of plots 1 and 3, because of the overall size of these proposed rear gardens, and their somewhat triangular shape, splayed outwards from the side of the dwellings, it appears to me that there would be sufficient garden space available that would be free from the canopy cover, and which would not be overshadowed by the dwellings, such as would provide satisfactory usable external space for the future occupiers of those dwellings.
9. Nevertheless, the plot 2 dwelling would be positioned with its rear garden tightly enclosed by close boarded fencing, of some 1.8 metres in height, the sections of fencing along its shared boundaries with plots 1 and 3 would also have trellis atop, further increasing the enclosure. Approximately half of this external space would be under the canopy of a protected tree, identified in the evidence as T16. This arrangement, when combined with the north facing aspect of this space and the overshadowing of it that would be experienced from the position of the dwellings in relation to the path of the sun, would result in significantly low levels of natural light within this rear garden area. There would likely be future pressure to lop, top or even remove T16 in order to prevent nuisance or because of the unduly gloomy nature of this space.
10. Further, I saw that leaf litter reached the northern elevation of the existing dwelling. Given the position of the proposed plot 2 dwelling in relation to the existing building's footprint, I consider this to be a good indication of the likely

¹ Council reference: P17/S1322/FUL

spread of leaf litter across the majority of the proposed garden area of plot 2. This matter would further compromise the useability and attractiveness of this space. Overall, I consider that the proposal would result in a gloomy and unattractive external amenity space, despite the verdant nature of the wider surroundings.

11. I do not consider that the protected tree referred to as T14, which is indicated to be retained, would have any demonstrable harmful effect on the garden area of plot 2 due to its position west of that garden area and size of its canopy.
12. No concern has been raised with regard to the quality of the external space provision proposed in relation to plots 4, 5 and 6. From the evidence provided and what I have seen, I have no reason to consider otherwise.
13. Although I have found that the proposed external amenity spaces for plots 1,3, 4, 5 and 6 would be satisfactory, I conclude that the proposal would not provide satisfactory living conditions for future occupiers of plot 2, with particular regard to external amenity space. Thus, it would conflict with LP Policy DES5 which seeks the provision of outdoor amenity spaces that are not compromised by shading from buildings or shading, leaf litter and anxiety of established significant trees and hedges that would lead to future pressure to prune or remove these landscape features. The proposal would also conflict with Paragraph 130 of the Framework which seeks, amongst other matters, that decisions ensure that developments create places with a high standard of amenity for future users.

Trees

14. The site forms part of a wider parcel of land that is the subject of a group Tree Preservation Order (TPO)². The appeal proposal would result in the direct loss of 4 trees and one group to facilitate the proposal, and the anticipated removal of 11 other trees due to poor health and condition. In this regard the appeal proposal is the same as the approved scheme and no objection is raised regarding the loss of these trees. The trees to be retained at the site in combination with the wider protected group make a significant positive contribution to the character and appearance of the area.
15. Whilst the application documents include two arboricultural method statements, it is clear that the statement dated 2019 relates to the approved scheme layout and has been provided for reference purposes, in particular because it contains the tree survey details which are pertinent to the arboricultural method statement dated 2020 that supports the appeal proposal. I do not consider this matter weighs against the appeal proposal.
16. Nevertheless, given my findings above in relation to living conditions, I consider that it is highly likely that the proposal would result in future pressure to lop, top or even remove T16. Whilst this tree would continue to be subject to protection under the TPO, it would be difficult to resist an application to undertake work to, or to remove it, particularly if an application was proposed in the interests of resident safety or damage to property. Although such an application would be considered on its own merits, LP Policy DES5 seeks to avoid this scenario from arising in the first place by requiring the provision of

² Number 02/2010 Rotherfield Peppard Area

outdoor amenity spaces that are not compromised by shading, leaf litter or anxiety of established significant trees. The proposal would not achieve this.

17. T16 is visible from the street and contributes positively to the character and appearance of the area. Any loss of work detrimental to the appearance of this tree would further diminish the public amenity value of the overall protected group, with consequent adverse impact on the character and appearance of the area.
18. The proposal includes the provision of a Liquidambar tree to be planted as part of the proposed landscaping scheme. Although no specific details have been submitted in respect of the 'structured tree pit requirements', the approved scheme's landscaping plans also include the provision of this tree. The Council imposed a condition on that permission in respect of the method of planting the Liquidambar tree and I see no reason why this matter could not be dealt with in the same way, were I to allow this appeal.
19. With regard to the absence of proposed planting along most of the northern boundaries of Plots 1-3. Although the appeal scheme would subdivide this section of the site boundary to serve three dwellings instead of two, I do not consider that the concern raised, regarding insufficient long term screening or softening of this boundary, to be justified given the details of the approved scheme are the same for this section of the site's boundary.
20. Notwithstanding my conclusions in respect of the tree pit details and the proposed rear boundary treatment of plots 1-3, overall, I conclude that the proposed development would have an unacceptable effect on the amenity value of the protected Sycamore tree, T16, and thus the wider protected group. As such, it would not comply in this regard with LP Policies DES1, DES2 and ENV1 and the Council's Design Guide, Part 3, Trees and Landscape Technical Documents 2016 which together and amongst other matters seek to protect trees and landscape character. The proposal would also conflict with Paragraph 174 (b) of the Framework in this regard.

Character and appearance

21. The principle of development is not in dispute, and I acknowledge the details of the extant approved scheme. It is clear that the overall layout and general design principles of the appeal scheme are very similar to the approved scheme. Nevertheless, the introduction of a sixth dwelling to the site has some obvious implications with regard to the amount of built form and hard surfacing that is proposed when compared to the approved scheme. Built form would be brought nearer to the site's frontage and parking and turning areas would be increased in size. These changes would be accompanied by a reduction in the level of planting proposed.
22. Whilst the proposed planting would remain the same as that of the approved scheme along most of the site's boundaries, there would be less soft landscaping in the central part of the site around plots 1-3 and the frontages of plots 4-6 would not be of sufficient depth to provide any meaningful planting. Consequently, the development would be dominated by hard surfaces and substantial built form. These matters, in combination with the reduced depth and mix of planting along the site's frontage with Peppard Hill and the likely pressure for future removal of T16, would result in a development that lacks sufficient visual setting space. The sylvan character of this part of the street

scene would be significantly compromised. This would be to the detriment of design quality and to the character and appearance of the area.

23. Although I accept that the proposed frontage treatment would be more visually attractive than a close boarded fence in this location, I do not consider that this matter carries sufficient weight to alter my assessment of the effect of the proposed development when taken as a whole. Further, while the proposed layout may be a more efficient use of land than the approved scheme and would deliver a mix of dwelling types sought by the Council, it would be so by negatively affecting the quality of the environment.
24. The Council makes reference to the proximity of the site to the Chilterns Area of Outstanding Natural Beauty (AONB). However, no specific harm to that designated area resulting from the proposal has been identified. I am satisfied, because of the position of the site in relation to the AONB, that the appeal scheme would not result in any adverse effect on the character or appearance of the AONB.
25. Overall, I conclude that the proposal would unacceptably harm the character and appearance of the area. It would conflict with LP Policies DES1, DES2 and ENV1 and Paragraph 134 of the Framework, which seek to ensure all new developments are of a good design and respond to local character.

26. *Biodiversity*

27. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. However, the securing of biodiversity surveys by condition, in exceptional circumstances, is permitted.
28. The bat survey information submitted with the application and appeal is out of date. The surveys were carried out in 2013 and 2018 in support of the approved scheme. These surveys identified historic evidence of bat activity in the roof structure of this property. The 2018 emergence and pre-dawn surveys did not identify any bats exiting or entering the dwelling or other structures on the site, but foraging activity and passes over the site from a variety of bats were recorded.
29. Given the findings of the surveys, I cannot rule out the possibility that bats might be present in the dwelling and might be affected by its demolition. Development of the site also has the potential to affect foraging and or commuting routes. However, it is clear that under the approved scheme, demolition of this building, the removal of a number of trees from the site and redevelopment, could be undertaken without a further survey being carried out. Such work is required to be undertaken in accordance with the recommendations set out in the 2018 survey. I note that the 2018 survey refers to the development proposal being for 6 dwellings and 'Figure 1' referred to in its recommendations section shows a site layout for a development of 6 dwellings. This offers reassurance that the recommendations were based on the quantum of development and layout proposed under the appeal scheme and would therefore likely remain appropriate.

30. Nevertheless, given the potential for a further significant passing of time before development of the site would commence, were the appeal to be allowed, and acknowledging that the use of buildings by bats for roosting can change over time, I am satisfied that this is a case where it would be acceptable, and necessary, to use a condition to provide an updated ecological survey for bats to be undertaken prior to commencement of development, including any demolition or felling of trees.
31. Consequently, I conclude that, subject to appropriate conditions, the proposal would not have an adverse effect on biodiversity. Thus, there would be no conflict with LP Policy ENV2 or Paragraph 180 of the Framework, which seek to conserve and enhance biodiversity.

Contamination

32. Although no substantive evidence has been provided by the Council in respect of alleged unauthorised car repair activities having taken place at the site, such activity has not been directly refuted by the appellant. The Council also considers that there is evidence of infilled ground at the site which raises further concern regarding potential contamination being present. These matters were not raised under the approved scheme, but that does not of itself give reassurance that contamination is not present. New information may have emerged in the intervening period between applications.
33. Taking a precautionary approach, based on the evidence provided, there is a reasonable possibility that the site could be contaminated. Any contaminants present could be disturbed during the construction of the proposed development. The appellant has indicated that they would accept the imposition of a pre-commencement condition requiring the investigation and remediation of any contamination, were the appeal to be allowed. I consider that this matter could be satisfactorily dealt with by such a condition and that this would be reasonable and necessary in the interests of the safety of construction workers and future users of the site.
34. Consequently, this matter does not weigh against the development and there is no conflict with LP Policy ENV11 or Paragraph 183 of the Framework.

Planning Balance

35. The parties are in dispute over whether the Council can demonstrate a five-year supply of deliverable housing sites. The appellant does not state what they consider the shortfall to be in terms of number of years of supply, but I am directed to an appeal decision where the Inspector found the supply to be around 4.8 years. The Council disagree with that assessment but offer no substantive evidence demonstrating why they consider it to be incorrect. If I were to agree with the appellant's assertion, then paragraph 11 d) of the Framework would be engaged and consideration must be had as to whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
36. The proposal would make a small contribution to the supply of housing by the delivery of six dwellings, utilising previously developed land in an accessible location. This would be an uplift of 5 dwellings when compared to the existing site situation or an uplift of 1 dwelling when compared to the approved

scheme. The proposal would boost the supply of housing as required by the Framework. The Framework recognises the important contribution that small and medium sized sites can contribute to meeting the housing requirement of an area. I afford these benefits modest weight commensurate with the quantum of development proposed.

37. The proposal would have economic benefits by way of the support for construction jobs during the build and indirect jobs at that stage in associated industries. There would be the support for the local economy by future occupiers. The limited social and economic benefits to the area resulting from the construction of six dwellings would be modest.
38. Other issues where no material harm has been identified would be neutral in the planning balance. However, the benefits of replacing the existing dwelling (or the approved scheme) with a more intensive development are reduced, due to the harm I have found to result from the design and layout of the scheme with regard to its effect on the character and appearance of the area, the living conditions of future occupiers and on protected trees. The Framework states that development that is not well designed should be refused. I attach significant weight to the harm and policy conflicts I have identified.
39. Therefore, even if the Council is unable to demonstrate a deliverable five-year housing land supply as suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the modest benefits when assessed against the policies in the Framework as a whole. The proposal would be contrary to the development plan and this conflict is not outweighed by other material considerations, including the provisions of the Framework.

Conclusion

40. For the reasons given above the appeal is dismissed.

S Tudhope

INSPECTOR

