

Appeal Decision

Site visit made on 1 February 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2022

Appeal Ref: APP/K0425/W/21/3278583

Woodland at Fieldhead Gardens, Bourne End SL8 5RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by MMDM Developments Limited against the decision of Buckinghamshire Council.
 - The application Ref 20/08029/OUT, dated 12 November 2020, was refused by notice dated 15 January 2021.
 - The development proposed is revised outline application for erection of 3 no. detached dormer bungalows and ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is made in outline with all matters reserved. The quantum of development is clear from the description, and all evidence relating to matters of detail reserved for future approval have been treated indicatively.
3. The appellant submitted new evidence with the appeal relating to arboriculture and ecology. Inspectors dealing with other appeals at the site accepted new evidence of a similar nature because they deemed that other interested parties and the Council were afforded opportunities to comment through standard appeal procedures. There is no reasoning why I should take a different approach and the new evidence has been accepted accordingly.

Application for Costs

4. An application for costs was made by MMDM Developments Limited against Buckinghamshire Council. The application is the subject of a separate decision.

Main Issues

5. The main issues are the effect of the proposal on:
 - (a) the character and appearance of the area; and
 - (b) biodiversity and protected species

Reasons

Character and Appearance

6. The site comprises dense woodland and together with the presence of other green infrastructure nearby makes a significant contribution to the leafy character and appearance of the area.

7. The site's contribution is reflected in the protections afforded to it by a woodland tree preservation order and designation as green space within the development plan.
8. The Tree Protection Plan¹ clearly shows that there are a significant number of trees to be removed throughout the site and along the southern boundary. Whilst the Outline Landscape Proposal Plan² identifies new trees to be planted and existing trees to be retained, including those on the southern boundary using a red hatched area.
9. Even in the context of the Outline Landscape Proposal Plan, the Tree Protection Plan is clear that there would remain a substantial thinning of the woodland, cumulatively both along the southern boundary and throughout the entirety of the site. This is despite some of the more mature trees being identified for retention.
10. In this context, whilst acknowledging that the proposal is submitted in outline, the limited size of the site in conjunction with the quantum of development would likely restrict alternative layout options.
11. Even at reserved matters, it is likely that a substantial number of trees would need to be removed and this would erode the density of the existing woodland. This would cause it to fragment, harming the site's contribution to the leafy character and appearance of the area.
12. The appellant contends that due to similarities between the proposal in this case and the proposal subject to the first appeal³, and differences with the second appeal⁴, I should consider the proposal's effects on character and appearance favourably.
13. The first appeal decision was quashed. The case was subsequently redetermined under the second appeal decision. Both appeal decisions reached somewhat different conclusions as to the effect of the proposal on the character and appearance of the area.
14. The first appeal dealt with a proposal where more trees on the southern boundary would be retained and the decision concluded overall that this would not harm character and appearance, whereas the second appeal dealt with a proposal where more trees on the southern boundary would be removed and the decision concluded overall that this would harm character and appearance.
15. However, the number of trees being removed on the southern boundary is not a definitive issue in my mind. It is also clear that the second appeal decision was critical of the loss of trees and thinning out of the woodland generally and was not constrained to the southern boundary of the site.
16. Indeed, the second appeal decision sets out that the various intended tree removals, when considered cumulatively, would have a stark visual effect. It went on to confirm that the removal would lead to the erosion of the site's wooded character and to the fragmentation of designated green space.

¹ 347-002V4

² 347-003V5

³ APP/K0425/W/18/3217205 – decision dated 29 May 2019

⁴ APP/K0425/W/18/3217205 – decision dated 27 April 2020

17. Importantly, it sets out that the first appeal decision underplayed the cumulative value offered by the trees intended to be removed and went on to disagree with findings that the removal of trees would not erode the site's woodland character or that it would not lead to the fragmentation of green space.
18. The second appeal decision's procedural matter⁵ clearly refers to superseded plans submitted under the first appeal decision. Consequently, the second appeal decision and its critiques of the first appeal decision therein would have been made cognisant of the differences between the schemes.
19. Altogether the second appeal decision provides a critique of the first appeal decision, not restricted to the southern boundary of the site. It acts as a competing material consideration, which generally aligns with the thrust of my own assessment in that harm is derived from the loss of trees more broadly.
20. This gives me sufficient comfort that it would be reasonable to conclude against the first appeal decision insofar as it dealt with the fragmentation of the woodland; where I am clear that it is a consideration that should not be restricted to trees along the southern boundary of the site.
21. The second appeal decision did not critique the drainage conclusion of the first appeal decision. Consequently, unlike character and appearance, it does not provide a competing material consideration with which to reach a different conclusion and the Council's approach in this regard is logical.
22. It is acknowledged that the proposal would bring some benefits relating to woodland management, including the removal of some lower quality trees, trimming of existing trees and some additional planting, among other things.
23. However, the collective contribution and cohesive nature of the existing woodland means it is greater than the sum of its parts and harm derived from fragmentation would carry significantly more weight.
24. Notwithstanding my findings on fragmentation, the appellant is seeking to retain an appreciable number of trees that would coexist in close proximity to the dwellings proposed. Somewhat inevitably this would create living conditions whereby future occupiers experience shading, among other things.
25. Consequently, given the nature of a woodland setting in conjunction with the quantum of development and size of the site, there is likely to be at least some form of future development pressure on the retained trees and the Landscape Management and Maintenance Plan⁶ seeks to provide mitigation for this pressure.
26. It sets out a programme of management objectives and future works, but it is not readily apparent that such mitigation would resolve issues such as overshadowing or otherwise appease future occupiers and protect against development pressures.
27. This position is consistent with the first and second appeal decision at the site, where a Landscape Management and Maintenance Plan appears to have been available in the latter case.

⁵ Paragraph 6

⁶ 347/LMP/ 001

28. Consequently, the weight of other material considerations persuades me that the particular scale and coverage of the tree canopy envisaged to be retained and the potential to influence day to day living is substantial.
29. It is not clear that the relevant appeal decisions identified in the Quaife Woodlands report share a comparable intensity of use within the same densely wooded context.
30. For example, in the Bentley Lodge case, there is not a comparison demonstrating the density of canopy would generate similar amounts of leaf litter or that a single dwelling with lesser number of occupants would create similar development pressures compared to three dwellings as in this case. Consequently, I give such evidence limited weight.
31. It is not clear how the use of planning conditions would introduce measures significantly more effective than those already set out in the Landscape Management and Maintenance Plan and therefore I have given the potential use of planning conditions limited weight in terms of mitigation.
32. It is noted that the first appeal decision at the site did not find any evidence preventing dwellings coming forward due to root protection area constraints. Furthermore, there is no persuasive evidence that anything has changed in this case since then, with the second appeal decision silent on the matter.
33. I acknowledge that there are multiple examples of homes in woodland throughout the UK and in other countries, and whilst it is important to note that the context of each site is different in terms of development pressures, I am open to the general principle that an engineering solution exists to avoid harmful effects on the root protection areas of the trees to be retained.
34. Altogether, whilst there may be engineering solutions available to deliver dwellings in close proximity to protected trees, there would still be harmful effects on the character and appearance of the area due to the fragmentation of the woodland and green space, and the continued risk of additional fragmentation from development pressures.
35. Consequently, the proposal would conflict with Policies CP1, CP9, CP10, DM34 and DM35 of the Wycombe District Local Plan 2019 and Policies DM11 and DM12 of the Delivery and Site Allocations Plan 2013.
36. The potential for continued harm derived from development pressures would exacerbate the initial harm derived from the fragmentation of the woodland. In conjunction, this would elevate the harm so that it carries very significant weight in the planning balance.

Biodiversity

37. The nature of the site, comprising dense woodland, is conducive to the potential for biodiversity, including protected species such as bats.
38. Consequently, it is important that biodiversity and protected species evidence is up to date and demonstrates among other things that the proposal would follow the mitigation hierarchy and that opportunities for enhancement have been explored.

39. It would appear that the evidence submitted by the appellant in this case is consistent with the evidence submitted and considered under the other appeals at the site, albeit it has been updated.
40. There is no indication that the policy considerations or site conditions have changed since the second appeal decision. Consequently, for all intents and purposes the evidence before me now and the evidence before the inspector under the second appeal decision and material considerations therein are broadly similar.
41. Therefore, I must concur that the climbing inspections and other methodologies are appropriate and robust and demonstrate roosting opportunities would not be unduly compromised by the proposal. Furthermore, that the mitigation and enhancement measures, which among other things include lighting controls, would maximise biodiversity opportunities.
42. Altogether, there is insufficient evidence to determine that the nature of the proposal, the site, underpinning policy, or any other material considerations have changed since the other appeal decisions at the site, where no harm was found in relation to biodiversity or protected species.
43. Accordingly, based on the evidence before me, I cannot reasonably depart from the previous appeal decisions at the site and conclude that there would be harm in this case.
44. Consequently, the proposal would not conflict with Policy DM34 of the Wycombe District Local Plan 2019 or Policies DM13 or DM14 of the Delivery and Site Allocations Plan 2013.
45. The appeal decisions at the site reasoned that Policy DM13 of the Delivery and Site Allocations Plan 2013 was not relevant, on the basis that the site was not a biodiversity action plan priority habitat.
46. From the evidence before me, it is clear that the policy deals with sites of international and national importance. Given the status of the site in relation to biodiversity action plan priority habitat, the policy would not be relevant.
47. However, it is also clear that the policy deals with species of international and national importance, which is a relevant matter in this case due to the potential presence of bats. It has been cited on this basis.
48. Consistent with the second appeal decision and my findings on biodiversity and protected species, any increase in biodiversity would be small, carrying limited weight without being determinative. Overall, the matter of biodiversity and protected species would be neutral in the planning balance.

Planning Balance

49. It is clear from my findings on the main issues, including an assessment of relevant benefits when coming to an overall conclusion on each of the main issues, that the proposal would have a harmful effect on the character and appearance of the area, and a neutral effect on biodiversity and protected species.

50. Consequently, the proposal would conflict with the development plan as a whole and the policies most important for determining the appeal in relation to the main issues are consistent with the Framework, which follows the findings of the second appeal decision at the site.
51. The appellant's position on five year housing land supply is noted. However, it is not necessary to make a direct finding on five year housing land supply if the appellant's worst case scenario⁷ is adopted for the purposes of assessing the proposal.
52. It is clear that an assessment undertaken on the basis of the appellant's worst case scenario, and where the Council's five year housing land supply was not protected, would trigger consideration of Paragraph 11 (d) of the Framework on the basis that policies relating to the provision of housing would be out of date.
53. There is no evidence that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Therefore, consideration needs to be given to whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
54. In this context, the proposal is for a relatively limited number of dwellings. Consequently, the benefits associated with addressing a shortfall in five year housing land supply and associated socio-economic benefits, such as those relating to construction, among other things, would also be limited.
55. Even if the shortfall in five year housing land supply was deemed substantial and capable of elevating the limited benefits to carrying moderate weight, the overall harm derived from the main issues would be significant.
56. Altogether, this means that the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development⁸ would not be engaged in favour of the proposal.
57. I note the other appeal decisions⁹ referenced by the appellant in arguing that limited forms of housing delivery have been given relatively more weight by other inspectors.
58. However, I do not have the full details of those other appeals including the underpinning contextual arguments. Consequently, it is not possible for me to determine whether the proposals under those appeals are sufficiently similar to be of relevance or that they should be given any more than limited weight.
59. The appellant argues that the benefit of additional dwellings is not a matter of degree. They have not elaborated on why they think that this is the case. It seems reasonable that the more dwellings delivered in response to a shortfall, the less of a shortfall would remain, and the greater the degree of benefit.

⁷ 3.71 five year housing land supply

⁸ applying the 'tilted balance'

⁹ APP/O5180/W/18/3206947 & APP/J0350/W/20/3248833

60. I am open to the possibility that the cumulative effects of delivering smaller sites could potentially attract greater weight if the evidence justified it. However, there is no analysis within the appellant's statement demonstrating that the cumulative delivery of smaller sites in this area would be significant.
61. Nor is there evidence demonstrating that the area is particularly reliant on the delivery of smaller sites and that there is under delivery in this particular context, or other such factors that would be capable of demonstrating that a limited number of dwellings should attract greater weight in the balance in this particular case.
62. Consequently, my finding that a limited number of dwellings would carry limited weight in this particular area remains and is consistent with the other appeal decisions at the site, which are directly related and capable of being relevant material considerations.

Other Matters

63. Regarding the relevant appeal¹⁰ it is clear that the reasoning was predicated on determining whether very modest development could potentially take place. It did not make a predetermination that very modest development could ultimately take place as a matter of principle. Consequently, it carries limited in weight in favour of the proposal.
64. I note that there may be many instances of common ground between the parties, including iterative improvements to the proposal's design. It may also be the case that various site designations do not preclude development in principle and that many urban greenfield sites are able to support housing. However, an assessment of the main issues and wider planning balance has determined that the proposal would not be acceptable in this case.
65. The permissive footpath is referenced in the first appeal decision at the site but does not form part of the appellant's statement of case under the appeal. Consequently, it is not clear what weight should be attributed to it for the purposes of the planning balance and has not been determinative.

Conclusion

66. For the reasons given above, a presumption in favour of sustainable development would not be engaged in favour of the proposal. Consequently, there are no material considerations indicating that a decision should be taken otherwise than in accordance with the development plan, where the proposal is in conflict on matters relating to character and appearance. As a result, the appeal is dismissed.

Liam Page

INSPECTOR

¹⁰ W.6158/80