
Appeal Decision

Site visit made on 23 February 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/A1910/W/21/3274531

Land adjacent to No.8 Red Lion Lane, Bridens Camp, Hemel Hempstead, HP2 6EY

- 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 G Halsey on behalf of The Gaddesden Trust against the decision of Dacorum Borough Council.
 - The application Ref 20/02711/FUL, dated 28 August 2020, was refused by notice dated 9 November 2020.
 - The development proposed is the erection of nine dwellings and upgrading existing access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An amended layout and elevations were submitted after the Council's decision. These amendments would provide a splay for pedestrian visibility, the deletion of windows, use of blind windows, obscure glazing and enlarged gardens. These have not been the subject of public consultation and some of the changes would mean that third parties could be prejudiced. However, as I consider latter these changes do not lead me to a different decision.
3. A signed planning obligation has been submitted which would provide £646,800 for affordable housing off-site and the creation of a new permissive path with a natural surface linking two bridleways in the vicinity of the appeal site. I have given this consideration in my decision.
4. On 14 March 2022, Natural England highlighted the recreational pressures on The Chilterns Beechwoods Special Area of Conservation (SAC). A 12.6km zone of influence is established for new residential development, which would include this site. This is considered latterly.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including the Chilterns Area of Outstanding Natural Beauty;
 - the effect of the proposal on biodiversity;

- the effect of the proposal on highway safety and;
- the living conditions of the intended occupants in terms of privacy and outdoor space.

Reasons

The effect on character and appearance including the AONB

6. Bridens Camp is a dispersed hamlet within the countryside and the Chilterns Area of Outstanding Natural Beauty (AONB). The submitted Design and Access Statement suggests the nearest village is Great Gaddesden, which is approximately 1.5km away. Red Lion Lane provides the route through the hamlet.
7. The appeal site is adjacent to Red Lion Lane, with a frontage consisting of an incomplete low hedge and several shrubs/trees. The submitted topographical survey shows the site is approximately 1m above the road and there are views over and through the gaps in the hedge. The other side of the lane has tall broadleaved trees which in parts overhang to form a canopy above. These trees are part of a wider swath of woodland, which is well illustrated in the ariel photograph in the submitted Design and Access Statement.
8. To the side of the appeal site is a signposted bridleway, segregated by a low height hedge, above which the appeal site is visible. The site itself is largely open with some vegetation towards the rear boundary.
9. To the side of the site is the Crown and Sceptre pub and four small cottages. There is also a scatter of houses along Red Lion Lane, but they are distinct from the appeal site separated from it by trees and shrubs.
10. The AONB is characterised by blocks of broadleaved woodland, interspersed by agricultural land with a mix of undulating slopes leading to small plateaux. The vicinity of the appeal site typifies these characteristics, with woodland and a mix of slopes towards the south which are particularly evident in the open views from the adjacent bridleway just after the appeal site. Within this part of the AONB there are few buildings, which allows the countryside to predominate.
11. The proposal would form a line of houses along most of the Red Lion Lane frontage and continue tangentially along the first half of the bridleway frontage. This would create a substantial line of buildings close to and along the two prominent sides of the site. Both these frontages have hedges, but the proposed dwellings being 2 storey and closely sited would be visible at these viewpoints.
12. The proposal would fundamentally change the site's character from undeveloped countryside to an extensive row of houses, with only one significant gap, a garden, in between the plots. The extent of development would be perceived as urban in form and out of keeping with a rural area. In addition, the development would also attract attention away from the tree canopy opposite and undermine its countryside backdrop. These impacts would be very evident from the adjacent Red Lion Lane and bridleway.
13. The block plan indicates that there would be very restricted space in between the houses particularly after a physical boundary has been formed and space

left for access to the rear. There would be very limited scope for conspicuous landscaping in between the plots to soften the length of development. Indeed, the landscape strategy plan shows that the only planting between the houses would be new hedges along a proposed footpath between two buildings, however such hedges would be against the gable walls of the two dwellings whereby restricted space and shadowing would impair growth. The houses would also be close to the bridleway and lane leaving minimal space for screening or even softening from those viewpoints too.

14. Whilst there are existing houses in the vicinity on Red Lion Lane, they are not in such an extended group as this proposal occupying both the lane and bridleway frontages, and they tend to be softened by landscaping. The proposal would alter the site and surroundings from countryside to a predominance of buildings, out of scale with this hamlet. They would spoil its contribution to the AONB. The proposal would also detract from the adjacent woodland, which is a feature of the AONB.
15. The submitted LVIA notes that the site is not prominent from distant vantage points. I concur, but there is nonetheless the above impact at close views. The LVIA also mentions the use of vernacular architecture and the Design and Access Statement explains the intention is to replicate the simplicity of the estate workers cottages. However irrespective of the particular elevational design, the presence and extent of the proposed dwellings would be intrusive.
16. It is suggested that the site as 'former private garden' constitutes previously developed land. The glossary of the National Planning Policy Framework (the Framework) provides a definition of previously developed land. The latter part of this definition excludes 'land that was previously developed but where the remains of the permanent structure or fixed surface have blended into the landscape'. The site appeared to me on my site visit to be part of the countryside and any previous use has ceased; I have not been provided with any persuasive documentary evidence that it should be considered otherwise, and I note the submitted Design and Access Statement states: 'the site itself is a brownfield site that is covered in rough grass, scrub and a number of trees'. I note the reference to the 2017 Court of Appeal case¹ for Dartford, but that site is not comparable to this appeal site. Accordingly, based on the submissions and my observations, I do not find that it is previously developed land as defined in the glossary.
17. I therefore conclude that the proposal would harm the character and appearance of the area and harm the AONB. I find that this would be significant harm due to the proximity of the development to public views, the nature of those views, the context of the views and the views being publicly accessible on a road and bridleway.
18. The Core Strategy Policy CS7 considers rural areas. It only allows for small scale development on previously developed land, if there is no significant impact on the character and appearance of the countryside. I have found that the proposal is not previously developed land and also would be harmful, so would be contrary to the policy.
19. Policy CS25 requires all development will help conserve and enhance the natural landscape. Policy CS24 requires that the special qualities of the AONB

¹ *Dartford Borough Council v. Secretary of State for Communities and Local Government* [2017] P.T.S.R 737

are conserved. There are also cross references to the Chilterns Conservation Board's Management Plan and the Chilterns Buildings Design Guide. The former has a policy DP2 which seeks development is appropriate to local landscapes and enhances natural beauty. The latter analyses settlement form and landscape types and also promotes landscaping in new development. The proposal would be contrary to the above policies and guidance.

20. Paragraph 174 of the Framework states decisions should recognise the intrinsic character and beauty of the countryside. Paragraph 176 requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. The proposal would also be contrary to these national policies.

Biodiversity

21. The site is largely scrub which has been cleared but there is some vegetation on the frontages and to the south/west of the site. Surveys were undertaken for bats and reptiles: the resulting ecological report suggests that it is not used for bat roosting but does offer foraging. The site is between open agricultural fields and woodland which will help the movement of species. Indeed appendix 2 of the report lists the recorded bat movements across the site and shows significant activity. The appendix also shows no reptiles were found but the report does note their potential within the vegetation on the southern boundary.
22. The proposal would lead to hard surfaces over most of the site and a loss of vegetative cover for the wildlife. Additionally, there would be disturbance by vehicles and people. Moreover, the ecological report is cautionary about the impact of external lighting on the bats. The houses and their domestic curtilages would inevitably be likely to generate significant light spillage across the site boundaries. No dark corridor has been identified and would be unlikely given the expanse of development. Given the above, I therefore find that the proposal would impair the movement of wildlife.
23. In addition, the proposal would entail tree and shrub clearance which would be likely to reduce the foraging and shelter for bats. Whilst replacement is suggested in future details, it would take some time to establish during which time the ecosystem would be under pressure.
24. Moreover, the submitted layout shows that little space would be available for landscaping and purposeful biodiversity mitigation. I note some measures are indicated as part of a future submission of an ecological management plan, but these have not been detailed and I find it very unlikely that they would be sufficient to compensate for the loss of greenspace and vegetation as well as disturbance during construction and the domestic use.
25. I therefore conclude that based on the submitted evidence, including the lack of precise and detailed mitigation measures, the proposal has the potential to harm protected species and would lead to the loss of biodiversity. As the impact relates to protected species that harm would be significant.
26. Policy CS26 requires that development will contribute towards the conservation and restoration of species. Paragraph 180 of the Framework has the aim of improving biodiversity. The proposal would be in conflict with these policies.

27. The site lies within the zone of influence of The Chiltern Beechwoods Special Area of Conservation. This includes woodland habitat which is notable for its biodiversity value. New housing would increase visitors using the Beechwoods for recreation which would threaten the ecology. An appropriate assessment under the Conservation of Habitats and Species Regulations 2017, would be necessary if I was favourably minded.

Highway safety

28. The 9 dwellings would use an existing access to Red Lion Lane. This also serves the pub and the 4 cottages. The submitted Transport Statement quantifies the existing splay to the north as 8m long and the proposal would improve it to 40m. This would be short of the requirement in Manual for Streets of 53.5m.
29. It is evident that the Red Lion Lane is lightly trafficked and I note the speed survey results. The presence of a visible housing development and the pub also encourage a reduction in speeds. I also note an accident record free of recent collisions. However, this visibility would be below standard and has the potential to cause accidents. The proposed 9 dwellings would add movements well above existing levels.
30. However, there would be improvement in vehicular visibility, which would benefit the existing four houses and the pub although its vehicular activity will tend to be at off peak times.
31. I note the revised submissions to improve pedestrian measures, although this would not overcome the above vehicular visibility.
32. Taken as a whole I find that the proposal would lead to a slightly adverse impact on highway safety.
33. Policy CS12 requires a safe and satisfactory means of access for all uses. Paragraph 110 of the Framework requires that safe and suitable access to a site is achieved for all users. Paragraph 111 states development should only be prevented or refused if there would be an unacceptable impact on highway safety, or the residual impacts on the road network would be severe. The proposal would be in conflict with the above policies but only minimally so.

Living conditions

34. One of the reasons for refusal refers to the potential for overlooking between the first floor windows of the side elevations of the new houses.
35. The floor plans indicate that these would involve bathroom and bedroom windows, which due to the nature of these rooms would not be fundamental to the living conditions of the occupants. Moreover, the affected bedroom windows would be secondary and therefore would have a limited role as an outlook.
36. The appellant has provided annotated plans on how these windows could be addressed, by blocking up and obscure glazing. These are very minor incidental changes which would not prejudice any neighbouring landowners or materially affect the appearance of the dwellings. Obscure glazing, limited opening and blocking up could be required by conditions, meeting the tests in paragraph 56 of the Framework, and I therefore find that in terms of privacy the proposal would be acceptable.

37. Another reason for refusal refers to the garden depth across 3 plots which is suggested would be inadequate for children's play. Appendix 3 of the Local Plan states: 'private gardens should normally be positioned to the rear of the dwelling and have an average minimum depth of 11.5 metres. However, I find that the gardens would be a reasonable size and shape, which would be capable of accommodating toddlers play and sitting out, as well as hanging out washing. Moreover, the adjacent bridleway would offer informal recreational opportunities, which would be attractive for a range of activities. The submitted obligation shows a new permissive path which would link to another bridleway offering a wider opportunity. Indeed, the appendix 3 does make allowances for 'development backing onto or in close proximity, to open land, public open space or other amenity land'.
38. The appellant does provide a revised layout showing enlarged gardens at the expense of car parking, but in any event, I do not find that the depth of the gardens would be harmful.
39. I therefore conclude that the proposal would provide satisfactory living conditions for the occupants. Policy CS12 requires development to avoid visual intrusion, loss of privacy and respect amenity space. The proposal would not be in conflict with this policy and the appendix 3.

Other matters

40. There is reference to the potential funding from the development for projects by the Gaddesden Estate. However, no projects are specified within this proposal and so cannot be given material weight.

Planning Balance

41. I note the appeal² decision in Berkhamsted which makes reference to the housing land supply situation as at December 2020, but in any event it is clear from the submissions that the Council cannot show a 5 year Housing Land Supply, the supply being 2.8 years or 3.2 depending on the buffer used. The site is within and harmful to the AONB, so paragraph 11(d) of the Framework is not triggered under footnote 7.
42. A unilateral agreement has been signed which offers funding for affordable housing elsewhere. The case officer's delegated report indicates the Council's formula suggests this would be likely to equate to 3 dwellings, which would help towards the need. The proposal would also deliver 9 dwellings which would be a boost to housing supply, as well as providing new homes and an economic benefit in construction albeit only short term. The permissive footpath would also be a benefit. The new residents would help support the pub but otherwise support for local services would be likely to be very limited or car dependent.
43. The proposal would significantly harm the character and appearance of the area. The site is within the AONB, and paragraph 176 of the Framework requires that great weight is given to conserving and enhancing the landscape and scenic beauty. I have found significant harm to the AONB and the character and appearance of the area. Such harm together with the significant biodiversity impact would outweigh the above benefits. I have noted the

² APP/A1910/W/19/3243939

submitted High Court decision³, which provides explanation of the Framework's approach to the AONB. However, that does not lead me to a different decision. The highway impact would only be slightly adverse and not material in the balance.

44. On overall balance I therefore find that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. An appropriate assessment under the Conservation of Habitats and Species Regulations 2017 is not therefore required.

Conclusion

45. I therefore conclude that the appeal should be dismissed.

John Longmuir

INSPECTOR

³ *R (on the application of Monkhill Ltd) v Secretary of State and Waverley Borough Council* [2021] EWCA CIV74