



Appeal Decision

Site visit made on 24 May 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday 17 June 2022

Appeal Ref: APP/G3110/W/22/3291863

Heather House B&B, 192 Iffley Road, Oxford OX4 1SD

- 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 Sian Evans (company No192 Oxford Limited) against the decision of Oxford City Council.
 - The application Ref 21/02219/FUL, dated 9 August 2021, was refused by notice dated 15 October 2021.
 - The development proposed is for the demolition of existing outbuilding and erection of new garden room to create 2 no. additional guest bedrooms.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's second reason for refusal was with respect to the impact of the proposed building on protected trees. The appellant has provided a Tree Survey Report, Impact Appraisal and Tree Protection Details in order to address this reason for refusal. I acknowledge that the Council did not have the information with the original planning application, but the documents were submitted with the appeal submission in a timely manner. I am, therefore, satisfied that no party, including the Council who have viewed the additional information, would be prejudiced by my assessing the scheme with regard to it.

Main Issues

3. Following the determination of the planning application, the Oxfordshire Badger Group submitted a representation to the Council. The representation outlined that badger setts were present under the existing building and within the adjoining gardens. This representation was submitted as evidence with the appeal as well as being highlighted in the Council's Statement of Case. Although the Council did not refer to ecology and biodiversity in their reasons for refusal, it is my duty to consider all relevant issues before me.
4. Therefore, in light of the above, the main issues in this appeal are the effect of the proposed development on: -
 - Ecology and Biodiversity
 - Neighbour's living conditions, with regard to noise and disturbance: - and
 - Protected trees

Reasons

Ecology and Biodiversity

5. As indicated, a representation received by the Oxfordshire Badger Group states that they found an active badger sett present under the existing building to be demolished. Where there is a reasonable likelihood of a protected species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted.
6. Based on the evidence submitted by Oxfordshire Badger Group, which is a registered charity for the protection of badgers, I am of the view that there is a reasonable likelihood of a protected species being present. The appellant is aware of the correspondence from the third party, however, no ecological survey has been submitted. Whilst ecological surveys can be carried out under conditions attached to a planning permission, this should only be carried out in exceptional circumstances. There is no evidence before me to suggest that there are exceptional circumstances in this instance.
7. Accordingly, in the absence of an ecological assessment of the appeal site, it is not possible to ascertain the effect the proposed development would have on protected species, in particular badgers. Therefore, the proposal would fail to comply with paragraph 180 of the National Planning Policy Framework, which states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Neighbours living conditions

8. The proposed outbuilding would facilitate 2 bedrooms as part of the B & B use in the main property. The block plan indicates that the proposed outbuilding would be situated at the rear of the garden space, within close proximity to a number of residential properties. The closest residential properties are 51 and 53 Stratford Street to the rear, and 194 Iffley Road to the side. The private gardens of Stratford Street are situated at a lower level, as well as being shorter in length when compared to the gardens on Iffley Road.
9. I have had regard to the orientation of the outbuilding, the number of rooms and the fact that the building would be insulated. However, I am mindful of the fact that the site is in a busy urban area, and the rear gardens of the residential properties provide a secluded, quiet space for their occupants. The proposed outbuilding would give rise to an increased level of noise and disturbance associated with the running of the business and the through flow of customers. Its siting close to the neighbours private garden spaces, coupled with the volume of multiple voices, movements and activities associated with the two rooms, would inevitably cause unacceptable disturbances to the occupiers of nearby residential properties. I am also conscious of the fact that movements to and from the rooms could occur at more unsociable times in the early morning and late into the evening. At these times, noise and disturbances from the use would exacerbate the impact on neighbour's living conditions.
10. I acknowledge that the owners of the B & B would consider it in their own interests to be good neighbours and have management rules in place to try and

achieve this aim. However, the outbuilding would be distant from the main property, closer to the neighbouring gardens and properties on Stratford Street. As such, in this instance, I am of the view that it would be difficult for the appellant to successfully enforce the management rules on the outbuilding, and limit the impacts of noise and disturbance on neighbour's living conditions.

11. The appellant has indicated that the proposal can be compared providing additional bedrooms in a detached garden building. Although I appreciate that residential annexes of similar size exist with the locality, in my view the use of the building would not be comparable. The outbuilding being used as B & B accommodation would result in more regular movements and noise, than one would expect from a residential annex.
12. For these reasons, and having considered all matters raised, I conclude that the proposed development would cause material harm to the living conditions of the occupiers of neighbouring residential properties, with regard to increased levels of noise and disturbance. Policies RE7 and V5 of the Oxford Local Plan 2020 (LP) set out, amongst other things, that planning permission will only be granted for development and tourist sites that would not result in an unacceptable level of noise and disturbance to nearby residents.

Protected Trees

13. There are several mature trees located within close proximity of the proposed building, which are protected by virtue of their location in the St. Clement's and Iffley Road Conservation Area (Conservation Area). Iffley Road is characterised by the variety of building types, materials, architectural detailing, and its leafy setting. There are visual gaps between the properties on Iffley Road, which allow for glimpses through to the gardens at the rear of the terrace. Therefore, the mature trees within the gardens of the terrace add value to the verdant character and appearance of the site and Conservation Area.
14. The appellant has submitted a Tree Survey Report, Impact Appraisal and Tree Protection Details with the appeal. The tree survey identified 4 trees, one in the appeal site and three in the adjacent gardens. Two of the trees identified would be outside the foundations of the new outbuilding. The proposed building would be within RPA of T1 (Lawson Cypress) however, it has recently been damaged, and the condition of the tree, and its amenity value, is poor. The footprint of the proposed building would encroach upon a small proportion of the RPA of T2 (Horse Chestnut), but it would be outside the spread of the tree's canopy.
15. Having regard to the Tree Survey Report, Impact Appraisal and Tree Protection Details, I am satisfied that sufficient information has been provided to determine the impact on the protected trees. It demonstrates that any pruning or cutting back would not come from pressure associated with the proposed development. Furthermore, groundworks for the building within the RPA would be carried out using special foundations, to ensure minimal root disturbance would occur to the roots of T2 (Horse Chestnut). As such, the proposal would comply with Policy G7 of the LP, which seeks to protect existing green infrastructure features, such as trees, where this would have a significant adverse impact upon public amenity.
16. The Council also cite Policy G1 of the LP. This policy seeks to protect Green Infrastructure Network, which the appeal site lies just outside of. Consequently, I do not find that the proposal would conflict with Policy G1 of the LP.

17. The Council has not indicated that the proposed development would result in any harm to the Conservation Area. Nevertheless, I have had regard to the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, when making my decision. As the proposed development would not result in the loss or significant works to any of the protected trees, the proposed development would preserve the character and appearance of the Conservation Area, a designated heritage asset.

Planning Balance and Conclusion

18. In light of the above, it is clear that to allow the proposed outbuilding, would be to disregard paragraph 180 of the Framework, which seeks to protect ecology and biodiversity from significant harm by development. Also, policies of the development plan which seek to ensure the living conditions of neighbours are protected from unacceptable development. I therefore give significant weight to the conflict of the proposed development with paragraph 180 of the Framework and Policies RE7 and V5 of the LP.
19. I appreciate that the additional guest rooms would help to meet some unmet demand and in turn support the local visitor economy. The contribution of the additional accommodation is a benefit, and the proposal would result in economic and social benefits, through the construction of the building and the additional support visitors would give to the site as a B & B, as well as services and facilities in the area. However, these benefits would be limited, commensurate with the provision of only two additional rooms of accommodation. As such, these benefits do not outweigh the harm I have identified above.
20. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

M. P. Howell

INSPECTOR