



Appeal Decision

Site visit made on 5 May 2022

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/T0355/W/21/3289134

Lynthorpe, Fireball Hill, Sunningdale, Ascot SL5 9PJ

- 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 & Mrs J Butler against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/01844, dated 11 June 2021, was refused by notice dated 1 October 2021.
 - The development proposed is 2 new replacement dwellings with garage following demolition of existing house and garage.
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Decision

1. The appeal is allowed and planning permission is granted for 2 new replacement dwellings with garage following demolition of existing house and garage at Lynthorpe, Fireball Hill, Sunningdale, Ascot SL5 9PJ in accordance with the terms of the application, Ref 21/01844, dated 11 June 2021, subject to the conditions in the Conditions Schedule below.

Main Issues

2. The main issues in this case are
 - a) the effect of the development on the character and appearance of the area;
 - b) whether it would have a likely significant effect, when considered alone or in combination with other plans and projects, on the Thames Basin Heaths Special Protection Area and
 - c) whether the scheme would be contrary to the initiatives to safeguard against climate change.

Reasons

Character and appearance

3. The appeal site is not within a conservation area. However, Fireball Hill and all or part of the nearby roads of Devenish Lane, Devenish Road and Sunning Avenue fall within character area 14H in the *Royal Borough of Windsor and Maidenhead Townscape Assessment*, which is one of the character areas described as 'Villas in a Woodland Setting'.
4. According to the Townscape Assessment, the key characteristics of such areas are, among other things, an extremely low-density residential development, comprising large villas with large footprints in a wide variety of styles and detailing reflective of Victorian to Edwardian periods, though with modern properties interspersed. They are accessed by an informal network of winding roads, and stand in extremely large, irregularly shaped curtilages. The plots are heavily treed, and the

- overall impression is of housing in a tranquil, private, rural context and a woodland setting.
5. Despite appearing to have influenced the evolution of some policies, the Townscape Assessment does not form part of the development plan. However, as an informative document it is of assistance as it appears to identify to some degree the key characteristics of such areas, with their pressures and opportunities.
 6. Moreover, Policy NP/DG1 in the *Ascot, Sunninghill & Sunningdale Neighbourhood Plan* states that, in order to protect local distinctiveness, development should respond positively to the local townscape, using the Townscape Assessment to inform the approach to be taken. In particular, in areas of 'Villas in a Woodland Setting' the sylvian leafy nature should be retained. Neighbourhood Plan Policies NP/DG2 and NP/H2 require housing to be of a similar footprint, separation, density, scale, and bulk to that prevalent in the area. Policy QP3 in the *Borough Local Plan* (adopted 2022) also seeks high quality townscapes and a protection of trees.
 7. Along Fireball Hill, the road itself has an informal character, being relatively narrow and winding with no pavements, limited forward visibility, and planting up to the carriageway edge. It serves a number of large, individually designed residential dwellings of a range of ages, that generally stand in sizeable, irregularly shaped plots within a landscape of established trees and mature planting. Many appear to have been recently redeveloped. On occasions this has involved increasing the number, and hence the density, of houses on a plot, and, from what I can glean from the submitted details, has also regularly led to a notably larger built footprint. Often these new properties have drawn on stylistic themes and detailing from Georgian or Victorian architecture, and, by retaining extensive boundary trees, have maintained some form of concealment and a sense of a woodland setting. Accordingly, while not identified as in particularly good condition or intact in relation to this townscape designation, in many ways character area 14H reflects the elements of the character and appearance that distinguish the 'Villas in a Woodland Setting' areas.
 8. The dwelling now on site is 2 storeys high with a sizeable footprint, and is positioned in the middle of a 0.5ha curtilage. The house is substantially concealed from the road by mixed and extensive mature landscaping and trees. Indeed, such planting bounds virtually the entire garden, giving it a sense of tranquillity, enclosure, and privacy. As a result, the site sits positively within this designation.
 9. The scheme proposes a pair of new dwellings to replace the existing house. Their front elevations would be 2-storeys to eaves, with rooms in the crown roofs served by dormer windows. Because of the slope in the land, the basement would also be apparent in the rear elevation, meaning the dwellings would be 3 storeys to eaves when looking from that direction. In front of each would be a detached triple garage and an area of hardstanding.
 10. The design of the proposed buildings would allude to a Georgian style, and dormer windows identifying accommodation in the roof are common features in the vicinity. Such a design approach would therefore be sympathetic to what is prevalent in houses elsewhere on Fireball Hill, irrespective as to when those other dwellings were built. Consequently, I find it would reflect the character and appearance of the area. Whilst concern has been raised about the excessive proportion of the principal elevations that would be given over to windows, I am not satisfied that this is inappropriate or discordant.
 11. Similarly, the scale of each house would broadly accord with those of properties nearby. Whilst the space between the 2 proposed dwellings would not be great, in

the context of the plots it would still be enough to maintain visual separation and distinction. Moreover, as a number of properties in the area have 1½ storey wings projecting forward of the front elevation, it is not always possible to perceive from the road the general separation between dwellings and their boundaries. As a result, I cannot find that the arrangement before me is out-of-keeping.

12. The scheme would result in one more dwelling on this site than at present. They would also be taller than what is there now and would, together, have a greater footprint and mass. However, each new house would still sit on a large, irregularly shaped plot, and so comprise a low-density scheme that reflected the current pattern of development across the character area. Although a greater proportion of the plot would be occupied with built development, to my mind a significant amount would remain as soft landscaping. Therefore, while the proposal would result in some reduction in green space on the site, this would not be unacceptable.
13. The trees and shrubs at the property now are not subject to any protection under tree preservation orders. However, they make an important contribution to the site's and the area's rural woodland setting, and form a dense belt of planting around most of the boundaries of the plot. As the new houses would be in the centre, the significant trees could be suitably protected during the construction phase. Moreover, any direct effect on them, whether above ground or below, would be limited, and need not give rise to pressures for pruning or removal at a later date. Overall, on the evidence before me I have no basis to consider the long-term retention of significant trees would be in question as a result of the development, and so it would not alter the sylvian leafy nature of the site.
14. When compared to the position of the existing house, the new dwellings would be set roughly a similar distance back from Fireball Hill. Views of the houses and their garages from the road would be mainly restricted to through the shared access point in the corner. From the remainder of the frontage the development would be substantially concealed behind the thick belt of mixed planting that is there now and is to be retained. A condition could prevent the formation of a second access through this planting at a later date so as to mean this screening would not be lost for this reason.
15. Taking these points together, I consider the development would accord with the character and appearance of the immediate area around the site, would not conflict harmfully with the characteristics of the 'Villas in a Woodland Setting' given in the Townscape Assessment, and would not be at odds with the designation of Fireball Hill within that character area.
16. In coming to this view I have had regard to the numerous decisions, both by the Local Planning Authority and the Inspectorate, that have been brought to my attention. I am very much aware though that, given the nature of the concerns, each case is dependent upon the specific circumstances of the site in question and the development proposed. For the reasons given I have expressed why, in this location and having regard to its context, what is before me would not be harmful.
17. Accordingly, I conclude that the development would respect the character and appearance of Fireball Hill and I have no reason to find the scheme would compromise the trees around the site. As such, it would not be contrary to the designation of the area as one of 'Villas in a Woodland Setting'. Therefore, it would not conflict in this regard with Neighbourhood Plan Policies NP/DG1, NP/DG2 and NP/H2 or Policy QP3 in the *Borough Local Plan* which have been discussed above, or with Neighbourhood Plan Policies NP/EN2 and NP/EN3 and *Borough Local Plan*

Policy NR3, which seek to safeguard trees and resist an unacceptable loss of green space.

Likely effect on the Special Protection Area

18. Under the *Conservation of Habitats and Species Regulations 2017* (the Regulations), any proposals that may affect a designated habitat site should be considered with the aim of maintaining or restoring, at favourable conservation status, its natural habitats and species. Before deciding to give permission for a plan or project that is likely to have a significant effect on a habitat site, the decision-maker must make an appropriate assessment of the implications for that site in view of its conservation objectives. The plan or project can then only be permitted after having ascertained there would be no adverse effect on the habitat site's integrity.
19. The site is within 5km of the Thames Basin Heaths Special Protection Area (the SPA), which is one such designated habitat site. As an area of lowland heath, it supports an internationally important bird population that includes the nightjar, the Dartford warbler, and the woodlark, and so I consider it to offer irreplaceable habitats. I understand that this is a popular place to walk and exercise, yet such activities can result in a pressure that causes harm to habitat and birdlife through trampling, erosion, general plant destruction and so on. Therefore, by increasing the number of residents who may choose to use the SPA for recreation, the development could adversely impact on the SPA's integrity through greater disturbance and damage.
20. I appreciate that only one extra dwelling is proposed. However, under the Regulations the impact must be considered both alone and in combination with other plans and projects. Therefore, whilst the impact of the residents in this single additional house, by themselves, may be slight, when taken with other similar proposals around the SPA there could be a cumulative harm arising.
21. Mitigation is offered by the appellants in the form of a Unilateral Undertaking, which proposes to make proportionate payments towards the management and maintenance of the SPA and towards promoting alternative green spaces elsewhere for recreation.
22. The Council said it, in turn, needed to make commitments to the appellants about how it was going to spend the money, and so a Unilateral Undertaking was inappropriate. However, the reasons for which the money is given are clear enough, especially when read in conjunction with various documents on the matter prepared by the Council. Therefore, even with no binding commitment as to how it would be used, I have no reason to consider the Council would not act with probity and in anything other than a responsible and transparent manner, and am confident it would spend the money solely for the purposes it was given. As such, in principle the Unilateral Undertaking is a suitable method to secure mitigation.
23. Beyond this no concerns have been raised about the Undertaking, and I have no reason to find it would not deliver sufficient monies for purposes that would allow the likely significant effects arising from the scheme to be mitigated.
24. I therefore conclude that, when considered in combination with other plans and projects, the development would adversely affect the integrity of the SPA, but this would be suitably mitigated by the measures secured under the submitted Unilateral Undertaking. As such, the proposal would not be likely to affect the integrity of the SPA, so would not conflict with the Regulations or the *National Planning Policy Framework*, or with *Borough Local Plan* Policy NR4, which seeks to protect the SPA from adverse effects on its integrity.

Climate Change Impacts

25. In the *Borough Local Plan* Policy SP2 requires developments to show how they incorporate certain measures to adapt to and mitigate climate change. These measures though are qualified, containing clauses such as '*wherever possible*' and '*where appropriate*'. It appears that this policy is supported by the Council's *Position Statement on Sustainability and Energy Efficient Design* (the PPS) This was adopted in 2021 but is not part of the development plan or an adopted supplementary planning document and has not been subject to any external examination or consultation. Therefore, the weight I can afford it is limited. Under '*Guidance and Requirements*' the PPS gives a further 7 measures that are needed to address this impact. One applies to major development and so is not applicable, but the Council contends it has not been shown that there would be compliance with all the remaining measures. The PPS also states a need for a contribution to a Carbon Offset Fund, which will be applicable to residential schemes to mitigate carbon emissions in connection with transport and waste.
26. In a recent appeal decision at 5-7 MSL House in Sunninghill (the MSL House decision) the Inspector was '*open to the possibility that a degree of compliance with Policy SP2 could potentially be secured by condition* [but it was] *not clear that a condition would secure comprehensive compliance*'. The measures given in the policy and in the PPS are not expressly highlighted as being presently incorporated in the appeal scheme. However, having regard to the qualified wording of the measures in Policy SP2, the nature of the measures in the PPS and the form of the scheme before me, it is reasonable to assume they could be addressed satisfactorily by means of a pre-commencement condition, without materially affecting the nature or form of the proposal.
27. I share the view expressed in the MSL House decision that to secure Carbon Offset Fund payments could not be appropriately done by condition, but would require a legal agreement. However, I have little to show that such a fund now exists, as the PPS describes what the Council '*will*' do. It has also not been sufficiently demonstrated how or when it would be used to make the development acceptable in planning terms. Accordingly, mindful of the weight that can be afforded to the PPS, I find that the evidence in front of me does not offer justification for seeking or securing this payment, or for resisting the scheme in its absence.
28. As such, whilst I acknowledge the MSL House decision, on what is submitted I conclude I am not in a position to find that the Carbon Offset Fund would be necessary or would deliver outcomes that would make the scheme acceptable, but, if a suitable condition is imposed, the measures in the policy and the PPS could be satisfactorily addressed. Accordingly, I conclude that the scheme would incorporate measures to adapt to and mitigate climate change, and so would not conflict with *Borough Local Plan* Policy SP2.

Other Matters

29. I have no basis to consider the residents of either plot would not enjoy satisfactory living conditions with regard to light levels. The distances involved, the orientation of the dwellings and the boundary planting all mean there would be no unreasonable loss of privacy in neighbouring houses and their gardens. Moreover, if a condition was to require all side windows to have obscured glazing and fixed shut below a certain height, neither house proposed would detract unduly from the privacy of the other. With this in mind, the suggested condition to require the provision of balcony screens is unnecessary.

30. On the evidence before me I am not satisfied the scheme would necessarily harm bats. The Council has suggested a condition requiring a licence to be first obtained from the statutory nature conservation organisation. If that is necessary under other legislation then I see no reason for such a condition to be imposed, and if it is not required then again I find the condition to be unnecessary. Similarly, given the obligations that exist under other legislation concerning tree clearance in the nesting season, I consider that, in this instance, no purpose is served by imposing such constraints by a condition.

Conditions

31. For the avoidance of doubt a condition should be imposed confirming the approved plans. Having regard to the character and appearance of the area, details should be agreed of ground levels, materials, external surfacing, tree protection, landscaping, and external lighting, while access should be limited to the single access point shown. With these controls in place I see no reason though why a front boundary treatment should also be agreed. In the interests of highway safety access and on-site parking should be provided.
32. Mindful of biodiversity, controls should be put in place over construction method and biodiversity enhancements, while this is a further reason to control external lighting. To protect living conditions, any side windows shall at all times be obscured, with any openable element being at least 1.7m above floor level, and this would mean a condition preventing further windows was unnecessary. Finally, a condition is also required to secure the climate change measures identified.
33. Of these conditions, the ones concerning slab levels and climate change could affect how the development is implemented from the outset, so the details need to be forthcoming before development commences. The tree protection works similarly need to be agreed before commencement so as to reduce the likelihood of damage from the development.

Conclusion

34. Accordingly, I conclude that the appeal is allowed.

JP Sargent

INSPECTOR

Conditions schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise modified under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 20-J3407-LP; 20-J3407-100; 20-J3407-101; 20-J3407-102; 20-J3407-103; 20-J3407-104; 20-J3407-105; 20-J3407-106; 20-J3407-107 & 20-J3407-108.
- 3) Notwithstanding what is contained in the approved plans, no development shall commence until details of the finished levels, above ordnance datum, of the ground floors and basement floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 4) No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority of measures to respond to the 4 criteria (referenced a-d) in Policy SP2 of the *Borough Local Plan* and the 7 criteria in the section headed '*Guidance and Requirements*' contained in the Council's *Position Statement on Sustainability and Energy Efficient Design* dated March 2021, together with a timetable for the implementation/provision of those measures. The development shall then be undertaken in accordance with those approved details and timetable.
- 5) No development shall commence until details have been submitted to, and approved in writing by the Local Planning Authority of
 - a) all existing trees and hedgerows on the land,
 - b) all existing trees and hedgerows to be retained
 - c) measures for protecting throughout the course of development the trees and hedgerows to be retained and
 - d) a timetable for the implementation of those measures.The development shall then be undertaken in accordance with the approved protection measures and timetable. .
- 6) No development above slab level shall take place until details of hard landscaping and external surfacing, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. These elements shall then be provided in accordance with the approved details and timetable, and thereafter retained.
- 7) No development above slab level shall take place until soft landscaping details have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding, or turfing in the approved landscaping details shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants that, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) No development above slab level shall take place until details have been submitted to and approved in writing by the Local Planning Authority of the external materials to be used on the buildings hereby approved. The buildings shall then be constructed using the approved materials only.

- 9) No development above slab level shall take place until details have been submitted to and approved in writing by the Local Planning Authority of biodiversity enhancements, to include integral bird and bat boxes (in addition to those provided as part of any bat licence agreement), tiles or bricks on the new buildings and native and wildlife friendly landscaping (including replacement trees, pollen-rich and fruit-bearing planting, and gaps at the bases of fences to allow hedgehogs to pass through the gardens), together with a timetable for their implementation. The biodiversity enhancements shall thereafter be installed as approved and in accordance with the approved timetable, and thereafter retained.
- 10) Any deep excavation shall either not be left open overnight or shall have an escape ramp in the form of a scaffold plank placed at a shallow angle to allow any trapped wildlife to exit the excavation.
- 11) Neither dwelling shall be occupied until the on-site car parking and manoeuvring provision serving it has been laid out within the site in accordance with the approved drawings and that space, including the garaging, shall thereafter be kept available at all times for the parking and manoeuvring of vehicles.
- 12) Neither dwelling shall be occupied until the access arrangements have been provided in accordance with the approved drawings.
- 13) Vehicular access to the site shall solely be from the access on the approved drawings and from no other point.
- 14) Any windows on the side elevations of the dwellings hereby approved shall, at all times, be fitted with obscured glazing, and no part of any windows on the side elevations that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 15) No external lighting shall be installed on the site unless details of its location, height, luminance, glare, and light spillage have first been submitted to and approved in writing by the Local Planning Authority. The external lighting shall thereafter be installed and used in accordance with the approved details only.