



Appeal Decision

Site visit made on 27 July 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2022

Appeal Ref: APP/D3125/W/21/3286147

Chillbrook Farm, Road from Cuckoo Lane to Barnard Gate, Barnard Gate, Witney OX29 6XD

- 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 Mike and Mrs Claire Henman against the decision of West Oxfordshire District Council.
 - The application Ref 20/02507/FUL, dated 18 September 2020, was refused by notice dated 4 May 2021.
 - The development proposed is creation of a vehicle and pedestrian access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application site (outlined in red) was amended during the determination of the planning application to outline the proposed vehicle access. The pedestrian access referred to in the banner heading was therefore no longer in the site, so it is not possible for it to be included in the appeal scheme. Using the wording found on the Decision Notice, which better reflects the scheme the Council determined, I have amended the description of development to omit reference to the pedestrian access. The development proposed is therefore for *creation of new vehicular access (utilising existing gated entrance into paddock) to serve new dwelling currently under construction*.
3. The appellant has submitted an amended plan in support of the appeal (Drawing No 20.190.08 Revision C), which did not form part of the original planning application. Having regard to the Wheatcroft principles (Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]), I am conscious that the appeal process should not be used as a means to progress alternatives to a scheme that has been refused. The only alteration to the plan relates to the materials of construction proposed for the access track and I am mindful that such matters could ultimately be agreed by planning condition and there were no third-party comments made in relation to the application. As such, I consider that no interested parties would be prejudiced if I considered the plan. I also observed during my site visit that some hard surfacing had been added to the access from the highway and the route of the proposed access track. However, my findings relate to the amended plan and revised description outlined above.
4. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). The main parties have had opportunity to consider the relevance of its revised content and I have had regard to any comments in my decision.

Main Issues

5. The main issues are:

- whether the proposed development would be suitably located having regard to the sequential, risk-based approach to flood risk set out in the development plan and national planning policies; and
- the effect of the proposed development on the character and appearance of the site and surrounding rural landscape.

Reasons

Location and Flood Risk

6. The existing access to the dwelling under construction and that serving the paddock between it and the highway are both situated within Flood Zone 3 (FZ3). Detailed analysis in the appellant's Flood Risk Assessment also indicates that all of the drain along the frontage of the paddock is also within FZ3, but a short section of land to either side of the drain would be at lower risk. This is where the pedestrian access over the drain would have been located.
7. The aim of local and national planning policy is to steer new development to areas with the lowest probability of flooding. I accept that the proposal could provide some betterment over the existing access track, as more of the existing access track is situated within FZ3, but a safer location is available.
8. Flooding of Barnard Gate in 2007 was exacerbated by the presence of vehicle crossings over the Chil Brook. However, in the case of this appeal, the proposed access would be over a drain leading to the Chil Brook. There is also no substantive evidence before me to demonstrate that it would not be possible for an engineered crossing to be designed and constructed to avoid increasing flood risk elsewhere, particularly if the existing crossing into the paddock were removed. Accordingly, it is likely that the proposed access, to serve the new dwelling under construction, could be sited in an area at lower risk from flooding.
9. For these reasons, the proposed development would not be suitably located having regard to the sequential, risk-based approach to flood risk set out in the development plan and national planning policies. Hence, the proposal would conflict with the relevant aims of Policies EH7 and OS2 of the West Oxfordshire Local Plan 2031 (LP) and paragraphs 161 and 162 of the Framework. On this basis, I have therefore not engaged the Exception Test.

Character and Appearance

10. The appeal site concerns part of a pasture field situated between buildings, including the appellants dwelling under construction, houses to the northwest and west and a vacant public house to the east. The main parties agree that the site and its surroundings are characteristic of the semi-enclosed rolling vale farmland landscape within Eynsham Vale Landscape Character Area (EVLCA), as described in the West Oxfordshire Landscape Assessment (WOLA). The site is also within the Wychwood Project Area, of which special attention and protection should be given to its landscape and biodiversity (LP Policy EH2).
11. There is nothing in the relevant policies of the development plan that suggests that need for the proposal has to be demonstrated. Nevertheless, the proposed

- vehicular access track to the dwelling under construction could not be located elsewhere in close association with it, in which case it requires a rural location.
12. Similarly, there are numerous accesses leading to properties from the roads in Barnard Gate, particularly around the close grouping of properties on either side of the main route to and from the A40. These vary in their extent but are domestic in form and their appearance generally incorporates planting around them and surfacing of either bound or loose hard materials. An access, per se, would not therefore necessarily be out of context in this location.
 13. The existing vehicular access from the highway would be widened, but it is unlikely that this would be so conspicuous that it would be harmful. The surface of the access splay from the highway to the existing gated entrance would also be altered, but there is no evidence before me suggest that this could not be constructed as the remainder of the access track, as described below.
 14. Beyond its access from the highway, for the most part the proposed vehicular track would be separated from that existing to the west by part of the paddock and/or existing landscaping, but at their northern end, the existing and proposed tracks would be either side of an existing hedge.
 15. While the completed access track would be likely, in the short term, to be apparent from its immediate surroundings, the use of a grass surface to the track would quickly establish as a natural finish to the route. There is no substantive evidence before me to suggest that this would fail to establish or the access track would not be functional in practice, particularly in light of the low incidence of traffic that would be likely in association with the dwelling. I also note that the link from the existing access to the dwelling under construction would be severed and interplanted.
 16. The proposed fencing alongside the access track would create an enclosed area of land to its western side. While this would be smaller in comparison to the fields and paddocks surrounding Barnard Gate, subdivision through fencing or planting is not uncommon within rural landscapes.
 17. The proposal, including the fence and enclosed area behind, is likely to be visible through the accesses adjacent and, to a certain extent, from the Public Right of Way 206/14 to the east, as this offers good visibility across the field. However, it would be unlikely to be so prominent that it would cause harm to site, its immediate surroundings or the EVLCA. In addition, the proposal would be more apparent from neighbouring properties but its appearance would likely soften over time, particularly with the proposed scheme of planting.
 18. Acceptance of the presence of an access track would not inhibit the Council from investigating an unlawful use of the enclosed area of land. It would also not hinder attempts by the Council to resist other proposals elsewhere based on the characteristics of a given location. I am also mindful that fences could be erected within the site, outside the scope of the appeal application, where they would accord with 'permitted development' rights¹. Planning conditions could also be imposed to protect from visual harm by ensuring that the access was only constructed as proposed and no lighting or domestic accoutrements were added in future.

¹ Article 3, Schedule 2, Part 2, Class A (gates, fences, walls etc) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

19. The proposal would differ significantly in appearance from the appeal scheme at Beaconsfield Farm², which was for a track of significantly greater length and constructed of concrete tramlines. It is not therefore comparable with the appeal scheme before me.
20. For the above reasons, I conclude that the proposed development would protect and therefore conserve the character and appearance of site and the surrounding rural landscape. Hence, it would accord with the relevant design and landscape character aims of LP Policies EH2 and OS2, and the Framework.

Conclusion

21. While I have not found harm in relation to the character and appearance of the site and surrounding rural landscape, I have identified conflict with the development plan and national policies regarding the sequential, risk-based approach to flood risk. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR

² Appeal Reference: APP/D3125/W/21/3281624 – Access Track, Land to north of Beaconsfield Farm, Great Tew, Oxfordshire OX7 4JR.