



Appeal Decision

Site visit made on 27 September 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/A1910/W/22/3294476

Land to the rear of Chertford, 126 Cross Oak Road, Berkhamsted HP4 3NA

- 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 Oakleaf Development Limited against the decision of Dacorum Borough Council.
 - The application Ref 21/02639/FUL, dated 10 June 2021, was refused by notice dated 6 December 2021.
 - The development proposed is the erection of 2 no. detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. With the appeal the appellant submitted an amended site context plan¹ to correct inaccuracies in the equivalent plan² on which the Council made its decision. The amended plan would not materially alter the nature or description of the development. Having regard to the 'Wheatcroft Principles'³ it would not cause prejudice to any party. I have, therefore, taken the amended plan into account in determining the appeal.
3. During the appeal Natural England issued advice about the effect of residential development on the Chilterns Beechwoods Special Area of Conservation. The main parties were given an opportunity to comment in this regard. I have determined the appeal in light of comments received and deal with this consideration in the second 'main issue' below.
4. At the written request of the occupiers of these houses, my site visit included an assessment of the proposal from the front and rear gardens of Pentire, the rear garden and some rooms of Chertford and the rear garden of Winsford.

Main Issues

5. These are:
 - the effect of the proposal on the character and appearance of the area; and
 - its effect on the Chilterns Beechwoods Special Area of Conservation.

¹ Drawing number 03-02-001

² Drawing number 20/073-074/201 Rev A

³ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

Reasons

Character and appearance

6. The appeal site is at the end of the rising back garden of Charayana⁴ and rising land beyond the end of the back garden of Chertford that was formerly part of this property. These are large, detached houses with long rectangular shaped, mainly open, landscaped rear gardens. They are in a row of similar houses and gardens close to and along one side of Cross Oak Road in a residential suburb of Berkhamsted. This low density housing in large, spacious, verdant plots is locally distinctive. It is proposed to erect two houses, one each behind Charayana and Chertford.
7. However, the houses would be inserted into a pocket of open land in a backland position. Plot 1 would significantly reduce the length and area of the back garden and plot size of Charayana. Plot 2 would permanently reinforce the diminution in the size and shape of the back garden and plot of Chertford that has already occurred. The houses would be modest in footprint and size, centrally placed within small, broadly squarer shaped plots. Despite a staggered arrangement, they would appear cramped in relation to the site area and shape and interrupt and erode the integrity of the mainly intact corridor of open land behind this row of houses.
8. Even if some or all of the site level was lowered, the houses would still be in an elevated position. As such, although subservient in height and bulk to Charayana and Chertford there would be appreciable built form on the site where there is presently none. A significant part of both houses would be visible in upward views through the wide gap between Charayana and Chertford and angled across these back gardens. Despite the distance from the road the houses would be conspicuous and have a stark, incongruous presence against background trees. Some intervening trees would partially screen the house on plot 1 but not all year round and some are not in the appeal site so could be removed. The houses would also be unexpected in views from a public footpath along the rear boundary of the site and intrude into this largely undeveloped swathe of rear gardens that line both sides of it.
9. A dwelling at Brambleway House lies behind this row of houses but unlike the site, at one end not in the middle. It has limited visual presence in the Cross Oak Road streetscene due to a longer set back and relates more to a cluster of dwellings next to it in Marlin Copse. The proposal would, therefore, be manifestly out of keeping with the prevailing size, form, layout, pattern and sequence of residential development along the appeal site side and this part of Cross Oak Road and would be appreciated as such in public views.
10. Plot subdivision and tandem development behind a similar row of houses along the opposite side of Cross Oak Road has increased housing density within that discrete pocket of land. The ratio of building site coverage in the proposal would be less than at most of these infill plots and within the upper and lower range of density that exists generally in the area. However, these dwellings are sited further back from the road and nestle into a hollow of land behind the frontage houses with a more pronounced belt of front garden or roadside trees and hedgerow. They are not unduly conspicuous or incongruous in the streetscene, with no meaningful visual or spatial relationship to the appeal site.

⁴ Shown as Dunclutha in the submitted plans

Many of these new dwellings are also more comparable in floorplan or size to their respective frontage dwellings and the generally longer original back gardens has allowed some semblance of parity in the resulting plot sizes. Other tandem development in the wider locality has no visual or spatial relationship to the appeal site, including the tighter grain of residential development behind the site in Crossways.

11. Taking all of the above into account, I find that the proposal would cause unacceptable harm to the character and appearance of the area. Consequently, it conflicts with Policy CS12(f) and (g) of the Dacorum Core Strategy 2013 (CS). This policy includes that development should integrate with streetscape character and respect adjoining properties in terms of layout, site coverage, scale, height and bulk. It would also fail to comply with relevant advice about the layout and design of residential areas contained in saved Appendix 3 of the Council's Local Plan 2004.

Chilterns Beechwoods Special Area of Conservation (SAC)

12. The appeal site is within a zone of influence of the SAC and its important habitat of Beech forests on neutral to rich soils, semi-natural dry grasslands and scrubland facies on calcareous substrates and dry grasslands and scrublands on chalk or lime. A significant individual or in-combination effect on this European habitats site would be likely to occur due to disturbance from increased population arising from residential development in an area where these inhabitants would be in such proximity to the SAC that they would be likely to visit it for recreational purposes.
13. The Council is working with Natural England (NE) to adopt a strategic mitigation strategy. This might include Strategic Access Management and Monitoring (SAMM) or Suitable Alternative Natural Greenspaces (SANG) with financial contributions or the provision of land secured by a planning obligation. Significant work remains to be done by the Council in this regard, including liaison with NE and other affected Councils, and timescales are uncertain. In the meantime NE advises that residential development requires individual habitats regulations assessment (HRA) and must demonstrate how adverse impacts on the integrity of the SAC would be avoided by appropriate mitigation.
14. I appreciate that this issue has emerged during the appeal process. Nevertheless, the appellant has not submitted an HRA, nor proposed any details of specific mitigation and there is no planning obligation before me.
15. I have considered whether a negatively worded planning condition could be imposed to limit the development that can take place until a suitable planning obligation or other agreement has been entered into to secure mitigation, including a SAMM payment, as suggested by the appellant. However, Planning Practice Guidance (PPG) sets out that this is unlikely to be appropriate in the majority of cases. In this case, I do not know precisely what mitigation measures a condition might lead to, including the scale of any SAMM payment. I therefore cannot be sure that future mitigation would be appropriate and relevant to the development to be permitted, reasonable and enforceable or therefore meet all of the tests set out in the Framework and relevant PPG advice.

16. In these circumstances, based on the limited or incomplete information before me, as the competent authority in this appeal I am unable to undertake an appropriate assessment, which would also necessitate consultation with NE. As a result, I cannot be certain that the proposal would not harm the nature conservation interest of the SAC. I therefore find that the proposal would adversely affect the integrity of the SAC. Consequently, it conflicts with CS Policy CS26 which seeks to protect designated habitats sites.

Other Matters

Other interested party comments

17. Planning conditions could restrict future enlargement of the proposed dwellings in size or number of bedrooms. That the proposal may rely on land that is not owned or controlled by the appellant, including for the proposed means of access and visibility splays, is a private matter between the respective parties. Even if the existing access does not have planning permission the Highway Authority did not object to the proposed means of access. The photographic and other evidence about surface water flood risk is limited or mainly anecdotal in nature and there is no objection from Thames Water or the Council.
18. I have been referred to the living conditions of the existing occupiers of nearby dwellings, including Charayana and Chertford, and to the living conditions of future occupiers of the proposed houses. However, these matters are not determinative in this case so would not affect my decision or the outcome of the appeal.

Planning Balance

19. While the extent of shortfall is not in evidence, there is agreement that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites. As a result, paragraph 11 d) of the Framework is engaged. However, in this appeal the application of policies in the Framework that protect areas of particular importance (habitats sites) provide a clear reason for refusing the development. Accordingly, by virtue of Framework paragraph 11 d) i) the presumption in favour of sustainable development does not apply in this case.
20. In terms of benefits, providing two houses of this size and type would make a modest contribution to housing supply and be aligned with objectives of the Framework to significantly boost the supply of homes and meet specific housing needs. Even if the extent of housing supply shortfall is acute, commensurate with the scale of the proposal the social, economic and environmental benefits associated with building and occupying the houses are factors which I consider carry moderate weight in favour of the proposal.
21. The site is in an area where residential development is accepted in principle and it is not in a conservation area. The houses would be high quality with appropriate external materials and provide suitable internal living accommodation. Subject to conditions, there would be satisfactory landscaping, biodiversity enhancement on the site, a suitable means of access, sufficient car and cycle parking, appropriate provision for surface water and foul drainage and for the storage and collection of refuse and recycling and no impact on the road network. The absence of harm in these regards and compliance with the Council's development plan or the Framework are neutral factors in my decision.

22. The Framework recognises that small windfall sites, efficient use of land and optimal density of development in urban areas can make an important contribution to meeting housing requirements. However, it also seeks to achieve well-designed places and conserve the natural environment. The proposal would not add to the overall quality of the area or be visually attractive in layout. It would not be sympathetic to local character or maintain a strong sense of place using the arrangement of spaces and building types to create distinctive places to live or visit. Nor would it conserve or protect a site of biodiversity value and interest in a manner commensurate with its statutory status.
23. The proposal would conflict with the Council's relevant development plan policies in these respects. These are consistent with aims of the Framework to balance meeting housing needs with these other objectives of sustainable development. These are important factors against the proposal and accordingly I give substantial weight to each of them.
24. The adverse impacts of the proposal would, therefore, outweigh the limited benefits.

Conclusion

25. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
26. Therefore, for the reasons given above the appeal does not succeed.

Robin Buchanan

INSPECTOR