



Appeal Decision

Site visit made on 20 September 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH December 2022

Appeal Ref: APP/Y3940/W/22/3294871

Little Orchard, Bulls Lane, Box, Wiltshire SN13 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr and Mrs S Roach against Wiltshire Council.
 - The application Ref PL/2021/11275, dated 17 November 2021, sought approval of details pursuant to condition No 2 of a planning permission Ref 19/11784/OUT granted on 16 July 2020.
 - The development proposed is erection of two dwellings & garaging/parking together with access drive & alterations to existing to facilitate approval 19/11784/OUT.
 - The details for which approval is sought are: the scale of the development; the external appearance of the development; the landscaping of the site.
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Decision

1. The appeal is dismissed and approval of the reserved matters is refused, namely the scale of the development; the external appearance of the development; and the landscaping of the site; details submitted in pursuance of condition No 2 attached to planning permission Ref 19/11784/OUT dated 16 July 2020.

Preliminary Matters

2. An outline planning permission was granted on 16 July 2020 for the erection of 2 dwellings and garaging with parking and alterations to the existing house to facilitate the creation of a driveway at the site¹. Although indicative plans were provided to the Council at outline stage, it is clear from the outline planning permission that the matters of scale, appearance, and landscaping were reserved for future consideration. I have considered the appeal on this basis.
3. Condition No 4 of that permission requires the development to be carried out in accordance with the Location Plan & Site Layout Plan². The application to discharge the reserved matters condition was accompanied by a number of plans³. At the appeal stage, coloured versions of some of these plans were submitted⁴.
4. However, revised plans⁵ were previously submitted to the Council prior to the lodging of this appeal against the non-determination of the application by the

¹ 19/11784/OUT

² 1928/10B

³ 1928/20R, 1938/22AR, 1928/28R, 1928/25R, 1928/26R, 1928/29

⁴ 1928/25R, 1928/26R, 1928/28R

⁵ 1928/53, 1928/50R, 1928/51R, 1928/54R, 1928/55R

Council. As it appears that the Council's decision (had it been in a position to issue one) would have been made on the basis of the revised plans, I have considered the proposal on the basis of the revised plans. With respect to those original plans which have not been superseded by the revised plans, I have taken the original plans into account in my determination of this appeal.

5. A copy of a site sections drawing⁶ has been provided. Although this drawing was not referred to in the Council's outline planning permission, it contains relevant information relating to the reserved matters under consideration in this appeal. Additionally, a plan⁷ has been provided which illustrates a single-storey extension to Little Orchard and the pool room both being removed, which relate to necessary works to implement the proposed reserved matters. This drawing and the plan do not substantially alter the nature of the reserved matters proposal, and I am satisfied that the parties' interests, including that of local residents, would not be prejudiced by them being considered in this appeal. Therefore, I have considered these as part of this appeal.

Main Issues

6. The main issues in this appeal are:

- the effect of the proposal on protected species and habitats;
- the effect of the proposal on the character and appearance of the area; and
- the effect of the proposal on the settings of the Box Conservation Area and Pear Tree Cottage.

Reasons

Protected species and habitats

7. The Council's Senior Ecologist has confirmed that the site is located within one or more core sustenance zones for bats associated with the Bath & Bradford on Avon Bats Special Area for Conservation (SAC). Whilst at outline permission stage the Council were satisfied that the proposal, subject to conditions, would not result in adverse effects on the integrity of the SAC, it is necessary for me to ascertain whether the assessment carried out at outline matters stage is still sufficient to determine if adverse effects on the integrity of the SAC could be excluded. The fact that the observations of the Council's Senior Ecologist were submitted during the appeals process is immaterial, as this requirement would arise at reserved matters stage even in the absence of any specific observations from the Council.
8. The Bat Survey Report⁸ suggests that an updated building inspection and bat emergence survey should be carried out if works have not commenced by 1 July 2021. In this respect, the appellants have stated that works have already been undertaken to some of the existing buildings on site and that screening to the wood store and shelter on site has already been erected, and this is consistent with my observations. Additionally, I have had regard to the appellants' letter of 18 May 2020 to the Council where 11 precautionary measures were included, including checks being made to verify if there is any

⁶ 1928/12B

⁷ 1928/8A

⁸ Little Orchard, Box: Bat Survey Report (Avondale Ecology) (Revision: 1) (September 2019)

continued use of the wood store by bats, and directing any temporary or permanent lighting away from the wood store.

9. Nevertheless, on the information before me it is unclear exactly when the works started and whilst the appellants have mentioned that bats have not been found on site since then, and works have not been undertaken to the buildings which were identified in the Bat Survey Report as potentially hosting bat roosts, as the survey results in the Bat Survey Report are now out-of-date I do not have up-to-date information before me from a qualified ecologist with respect to how bats might be using the site, whether any species are present, and the status of any roosts (including any in trees).
10. Hence, I cannot be certain that the existing measures in place would be effective in not disturbing any bat roosts on site, and thereby avoiding or mitigating any adverse effects on the SAC. In such circumstances, given the high level of legal protection given to species protected under the Habitats Regulations, I must take a precautionary approach which requires that the reserved matters cannot be approved in the absence of evidence demonstrating that there would be no adverse effects, or that mitigation measures would be effective.
11. Although biodiversity is not a specific reserved matter, the effect of the proposal in this respect is linked to the reserved matters, particularly the landscaping of the site. In this regard, no technical information (including a Biodiversity Metric spreadsheet) has been provided to accurately quantify the impact of the proposal with respect to biodiversity. However, the plans indicate that the existing planting is to be retained where practicable, and the proposal incorporates a reduction in hard paving and the introduction of soft landscaping across the site. Therefore, whilst the evidence before me is not conclusive, on a balance of probabilities and as a matter of fact and degree I consider that the proposal would likely result in a net gain for biodiversity.
12. Thus, in relation to biodiversity, no conflict would arise with Core Policy 50 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy) which provides that, amongst other things, all development should seek opportunities to enhance biodiversity.
13. No conflict would arise with Policy CE7 of the Cotswolds Area of Outstanding Natural Beauty Management Plan 2018-2023 which provides that, amongst other things, proposals that are likely to impact on the biodiversity of the Cotswolds AONB should provide a significant net-gain in biodiversity, or with paragraph 174 d) of the National Planning Policy Framework (the Framework) which provides that, amongst other things, planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. This does not however alter my findings above, with respect to protected species.
14. I therefore find that it has not been demonstrated that the proposal would have an acceptable effect on protected species. It would conflict with Core Policy 50 of the Core Strategy which provides that, amongst other things, all development proposals shall incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development. In relation to protected species, it would also conflict with the Framework and The Conservation of Habitats and Species

Regulations 2017 (as amended) which, amongst other things, collectively seek to conserve and enhance the natural environment.

Character and appearance

15. The appeal site comprises Little Orchard and an area of land surrounding that property, in Box, an attractive village containing numerous buildings of historic and architectural interest.
16. Little Orchard and the nearby properties on Bargates broadly exhibit similar positive design qualities, with these properties often having a coherent and uncomplicated architectural identity with legible detailing, including appropriately-aligned windows, as do many of the nearby properties on London Road. Pear Tree Cottage adjoins the site and this building is one of a number of properties nearby which exhibit a strong visual appeal due to their historic construction.
17. In contrast to this, whilst the scale of the proposed 2 dwellings would be appropriate in their context, as would the proposed landscaping arrangements and the materials proposed for the windows and the roofs, each dwelling would contain an overly-varied assortment of window sizes, and the positioning of these windows would result in each dwelling having a rather unbalanced appearance.
18. Moreover, although each dwelling would share a projecting 2-storey element, the marked differences in window placement and overall shape between the versions of these on each property would mean that the 2 dwellings would appear uncoordinated when viewed together. Although the 2 dwellings would be set-back from the street frontage, with intervening buildings between them and Bulls Lane and Quarry Hill, they would be in view from several nearby properties, including Little Orchard, Pear Tree Cottage, and some of the properties along Bargates. Hence, the resulting over-complicated design aesthetic of the proposed 2 dwellings and their lack of adequate assimilation in their context, which comprises more legibly-designed properties (as described above), would be evident.
19. I therefore find that the proposal would have an unacceptable and harmful effect on the character and appearance of the area. It would conflict with Core Policy 57 of the Core Strategy which provides that, amongst other things, development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. The proposal would also conflict with paragraph 130 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Settings of the Box Conservation Area and Pear Tree Cottage

20. The appeal site is located outside of the Box Conservation Area (conservation area), but as it is located close to its boundary, which encompasses Bulls Lane and the grounds of Pear Tree Cottage, it is within its setting. The significance of the conservation area as a whole derives in part from its abundance of historic properties which often incorporate attractive stone work, and the presence of historic stone walls within it. The setting, including the appeal site, contributes

to the significance of the conservation area by providing a gradual transition between the period architecture within the conservation area and the generally more modern properties on Bargates.

21. Although views from Bulls Lane would be limited due to the presence of Little Orchard, a portion of House 2 would be in view from Bulls Lane, and the proposed dwellings would also be within view from Pear Tree Cottage (particularly from the upper windows in the north elevation of Pear Tree Cottage) which is within the conservation area. As such, the harm that the proposal would cause to the character and appearance of the area, identified on the second main issue above, would undermine the contribution which the setting makes to the presence of period architecture within the conservation area.
22. It follows that the significance of the conservation area would be harmed by the proposed development within its setting. Although the harm that would be caused to the significance of the conservation area as a designated heritage asset would be localised and accordingly would be less than substantial, this harm must be weighed against the public benefits of the proposal, which are considered below.
23. Although there would be a wood store building, an access way, a wall, and planting in-between the proposed dwellings and Pear Tree Cottage, as the appeal site directly adjoins the grounds of Pear Tree Cottage (a Grade II listed building), the site is within its setting. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s66(1) that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
24. I observed that the significance of Pear Tree Cottage derives in part from the historic period of its construction and its materials, including ashlar stone and its stone tiled roof. The setting, including the site, contributes to the significance of Pear Tree Cottage by the presence of buildings (including Little Orchard) which complement Pear Tree Cottage in aesthetic terms.
25. I have found on the second main issue, above, that the proposed dwellings would have an unbalanced and over-complicated appearance and although the dwellings would be separated from Pear Tree Cottage by a wood store building, an access way, a wall, and planting, Pear Tree Cottage would be within view in conjunction with the proposed dwellings from several viewpoints within the site. Even though modern buildings are situated near to Pear Tree Cottage, its positive architectural and historic qualities are clearly evident from within the appeal site, meaning that the harmful effects of the proposal, identified above, would persist.
26. Hence, the visual experience of Pear Tree Cottage when viewed within its setting would be negatively affected by the proposal, thereby compromising the contribution that the setting makes to the significance of Pear Tree Cottage. Whilst the harm to the setting of Pear Tree Cottage would be less than substantial, this harm is of considerable importance and weight. This harm must be weighed against the public benefits of the proposal.

27. The proposal would provide 2 new dwellings, and in doing so would provide work for construction professionals and other benefits in terms of the future occupiers of the dwellings contributing to the economic and social life of the local area. I recognise the considerable importance of the conservation area and Pear Tree Cottage as designated heritage assets, and in accordance with the Framework, in considering the impact of the proposal on the significance of the designated heritage assets, I have given great weight to their preservation. Collectively, considering the quantum of development involved, I give moderate weight to all the public benefits of the proposal. Thus, those benefits do not, either individually or cumulatively, amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area and the significance of Pear Tree Cottage.
28. I therefore find that the proposal would harm the setting of the conservation area and would harm, and therefore fail to preserve, the setting of Pear Tree Cottage. As such, the proposal would conflict with Core Policies 57 and 58 of the Core Strategy which collectively provide that, amongst other things, development should protect, conserve and where possible enhance the historic environment. The proposal would also conflict with chapter 16 of the Framework which seeks to conserve and enhance the historic environment.

Other Matters

29. For the avoidance of doubt, the conduct of the Council during the processing of the reserved matters application, including any concerns relating to how the application was dealt with, are not matters that I can assess in the context of an appeal.
30. The proposal would have a limited visual impact on the wider landscape. Accordingly, the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty would be conserved and no conflict would arise with the relevant policies of the Cotswolds Area of Outstanding Natural Beauty Management Plan 2018-2023 and paragraph 176 of the Framework in this regard. I also note that Box Parish Council has not objected to the proposal. However, these are neutral factors, which do not weigh in favour of the proposal.
31. As planning permission has been granted at outline stage, with the reserved matters only under consideration in this appeal, the various economic, social, and environmental benefits that would arise upon implementing the scheme do not weigh in favour of the reserved matters proposal before me. Accordingly, my findings on the main issues remain unchanged.
32. Had my findings in relation to the main issues been more favourable, it would have been necessary to address representations on the other issues raised by the occupiers of 18 Bargates in more detail. However, as I am dismissing the appeal for other reasons, I make no further comments on these matters.

Conclusion

33. For the reasons given above, having considered all relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR