



Appeal Decision

Site visit made on 2 May 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 June 2023

Appeal Ref: APP/Q3305/W/22/3308375

Ham House, Ham Hill Lane, Bowlish, Shepton Mallet, Somerset BA4 5JW

- 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 Mrs Julie Phibben and Mrs Lisa Shirley against the decision of Mendip District Council.
 - The application Ref 2021/2296/FUL, dated 1 October 2021, was refused by notice dated 20 July 2022.
 - The development proposed is formation of access onto A371 Wells Road including construction of bridge over River Sheppey, lowering of the kerb and removal of trees.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the character and appearance of the area, including on the Open Area of Local Significance (OALS) within which the site lies, and the Shepton Mallet Conservation Area (CA) and its setting.

Reasons

3. The proposal straddles the boundary of the CA. Much of the proposal is within the CA, but part of the bridge, and the proposed gate, would be just outside of it. The site and its surroundings include largely continuous stone walling along Wells Road, with tall and heavy tree and vegetation coverage behind. As such, relevant to this appeal, the significance of the CA and its setting is its attractive, semi-rural and sylvan appearance. This is also reflected in the OALS designation of the area.
4. The proposal would provide access to land beyond the wall and the River Sheppey, which is within the ownership of the appellants. Its aim is primarily to enable work to the trees within the land. This area is currently accessible from Ham House, but the steep slope of the land makes it difficult, if not impossible, for it to be accessed by vehicles.
5. The appellant states that only two trees would be removed as a result of the proposal, one of which is suffering from Ash dieback, as are others nearby. No existing or proposed survey has been provided to demonstrate this. However, the species, age and location of the trees means that the Council's Tree Officer considers that they would not warrant the protection of a Tree Preservation Order. Furthermore, the proposal would have visibility splays and a pull off area, such that the Highway Authority do not object to it.

6. However, notwithstanding the poor quality of the existing trees, the proposal would involve the creation of a permanent gap in the currently dense vegetation and wall fronting the roadside. As such, this gap would be visible from the A371 Wells Road and so would diminish the sylvan appearance of the area. The appellant refers to existing and future replacement planting. However, I have limited details of this, and in any case the proposed gap would remain, so any landscaping would not be sufficient to mitigate the harm caused by the proposal.
7. The site is within high-risk Flood Zone 3. In times of heavy rain, the existing wall provides a barrier that protects the highway and properties downstream against flooding. To provide the access, a section of this wall would be removed. To ensure that flood protection remains after removal of the wall, the Environment Agency (EA) requires that a flood gate is installed within the proposed entrance. The gate would remain shut, except when needed for access. Such a gate is now proposed, and the EA do not object to the proposal, subject to conditions.
8. I understand that the barrier would have the same height as the roadside wall. In terms of its materials, these would be metal, and it could be painted, or clad in timber. However, few elevational details of the barrier have been provided to me. Furthermore, it would inherently need to be a solid structure, without gaps, to prevent the ingress of water. As a result, although set back from the road, its design is likely to appear functional. I cannot therefore be satisfied that the design of the proposed gate would not further undermine the attractive qualities of the CA and its setting.
9. For the reasons given above, the proposal including the loss of trees and the proposed gate would result in harm, albeit less than substantial harm, to the character and appearance of the CA and its setting. It would similarly harm the OALS.
10. In accordance with the guidance in the National Planning Policy Framework (the Framework), I have weighed the public benefits of the proposal against this harm. Construction of the proposal would make a positive economic contribution to the area, but this would be limited because of the small size of the proposal.
11. The appellant states that the existing trees are causing damage to the highway and should be removed to avoid further effects on the road. However, I have little substantive evidence to demonstrate this, or that the proposal is essential to prevent further damage. As such, I give these public benefits only limited weight. As a result, they would not outweigh the less than substantial harm caused to the designated heritage asset and its setting.
12. For the reasons given above, the proposal would harm the character and appearance of the area, including the OALS, the CA as a whole and its setting. As such, it would be contrary to policies DP1 and DP2 of the Mendip District Local Plan 2006-2029 (MDLP), adopted December 2014. Amongst other things, these policies require that development should maintain local identity and distinctiveness and should not be permitted where they would harm an OALS. In the absence of overriding public benefits, the proposal would not meet Policy DP3, which requires preservation of heritage assets and their significance.

13. For the same reasons, the proposal would conflict with MDLP Policy DP7, which requires development to have a form and layout appropriate to the local context, as does the Supplementary Planning Document 'Design and Amenity of New Development, Policy DP7', adopted March 2022, with which the proposal would conflict. The proposal would also not accord with the aim of the Framework to conserve the historic environment, including its setting.

Other Matters

14. The Council describes the site as being within a Site of Special Scientific Interest Impact Risk Zone and a RAMSAR area. I have little information about whether the proposal would affect an area protected by the Conservation of Habitats Regulations 2017 as amended.
15. Had I found no harm in respect of the main issue, I would have sought further information on the relevance of these designations to the proposal. If necessary, as competent authority, I would have carried out a Habitats Regulations Assessment in respect of the potential effects of the proposal on these areas. However, as I have found against the appellant on other substantive grounds, I need not consider this further.

Planning Balance and Conclusion

16. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR