



Appeal Decision

Site visit made on 23 June 2023

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Appeal Ref: APP/R0335/W/21/3268815

127 Fernbank Road, Ascot SL5 8JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Blackie (Kop Holdings Ltd) against the decision of Bracknell Forest Borough Council.
 - The application Ref 19/01072/OUT, dated 11 December 2019, was refused by notice dated 20 August 2020.
 - The development proposed is the demolition of the existing property and outbuildings and the erection of a three storey development of 9 apartments with basement parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the interests of clarity, the description of development in the banner heading given above is a slightly altered version of the wording appearing in the planning application form¹, which corrects an obvious typographical error.
3. The appeal relates to an application for outline permission with access, layout and scale for detailed consideration at this stage. I have considered the appeal on this basis, and I have treated submitted material touching on reserved matters as indicative and/or illustrative.
4. The Council's decision on the application that led to the appeal was made prior to the publication of the latest iteration of the National Planning Policy Framework (the Framework). Moreover, the deadline for appeal statements and final comments was also prior to the publication of the Framework. Consequently, I sought the views of the Council and appellant on the implications of the latest version of the Framework, and will take these into account in my assessment of the appeal's planning merits.

Main Issues

5. The main issues in this case are:
 - Firstly, the effect of the proposed development on the Thames Basin Heaths Special Protection Area (SPA);

¹ Which is "demolition of the existing property and outbuildings and the erect a three storey development of 9 apartments with basement parking"

- Secondly, whether the appeal scheme would constitute inappropriate development in the Green Belt for the purposes of national and local planning policy;
- Thirdly, whether the proposed development would achieve a safe and suitable access to the site for all users;
- Fourthly, the effect of the proposed development on the significance of Ascot Place a Grade II* Registered Historic Park and Garden, including its effect on protected trees;
- Fifthly, whether the site is suitable for its proposed use taking account of any risks arising from contamination;
- And finally, if the appeal scheme would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm resulting from the proposal would be clearly outweighed by other considerations.

Reasons

Site, surroundings and proposed development

6. Situated within the boundary of Ascot Place a Grade II* Registered Park and Garden and within the Green Belt, the appeal site is located to the rear of a row of dwellings facing Fernbank Road, from which it takes its access. The appeal site includes a two-storey detached dwelling, a number of outbuildings, and a considerable amount of cars and related paraphernalia, machinery and other materials, and hosts a number of mature trees in and around its periphery which are subject to a Tree Preservation Order² (TPO). Current lawful use³ of the appeal site includes the residential use of the bungalow, the storage and repairs of classic/hobby cars, the use of land and outbuildings as a builders' yard including the storage of materials, and the storage, parking, repair and maintenance of light goods vehicles. Buildings facing Fernbank Road in the environs of the appeal site, are mainly of a two-storey scale with Quadrella Gardens, a more recently constructed block of dwellings adjacent to the appeal site's access featuring a two and a half storey central element due to the inclusion of dormers and gables.
7. The appeal scheme would entail the demolition of the existing buildings at the site to facilitate the residential use described in the banner heading above. The proposed building would be close to the south-western corner of the appeal site adjacent to the rear boundaries of semi-detached properties facing Fernbank Road, and consist of 9 apartments arranged over three storeys, with car parking provided via a ramped access at a basement level, with some surface parking adjacent to the site access.
8. According to the Listing Description for Ascot Place, its south drive was extended in the 19th Century to form the Coach Road, and it is within this latter element that the appeal site sits, close to the end of that historic route, which has since been blocked by the 20th Century housing fronting Fernbank Road. The Landscape Character Assessment for the area, referred to by the appellant and others, identifies a strong wooded character which gives a sense of

² Tree Preservation Order 1340 – Land at Fernbank Road, Bracknell SL5 8JT - 2020

³ Per the Lawful Development Certificate Council reference: 02/01107/LDC

enclosure and obscures urban edges, with long straight roads following the route of rides through the former Royal Forest of Windsor that provide a cultural record of the past and sense of history. Mature trees at the appeal site are part of the wider belts that flank the Coach Road, and their presence not only yields an understanding of the historic function of the route, but also contributes to the wider landscape character of the park. These are aspects of Ascot Place's significance that are of relevance to the proposals subject to this appeal.

The effect of the proposal on the SPA

9. The SPA covers heathland habitats of international importance insofar as they support populations of nightjars, woodlarks and Dartford warblers. These habitats are susceptible to recreational pressure emerging from households in their environs, including the effects of walkers causing disturbance to ground nesting bird species, such as those mentioned above; the damage caused by erosion as a result of recreational visits; and the deleterious effect of dog fouling. The appeal site is some 4.5 KM from the boundary of the SPA, and within the zone identified in saved Policy NRM6 of the South East Plan – Regional Spatial Strategy for the South East (the South East Plan) wherein residential development is to include measures to ensure that the integrity of the SPA is protected.
10. Against this background, I am required to undertake an appropriate assessment of the proposed development pursuant to the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). In this case, the appeal scheme would lead to an increase in population close to the SPA with the concomitant that its future occupants would be likely to seek recreation within that protected site, which in combination with other developments in the area would materially increase the risk of disturbance to the habitats of the aforementioned bird species. This leads me to the inescapable conclusion that the increase in recreational pressure arising as a result of the appeal scheme would, alone or in combination with other plans and projects, be likely to lead to significant adverse effects to the integrity of the SPA's habitats.
11. The Council's Thames Basin Heaths Special Protection Area Supplementary Planning Document (the SPD) outlines the strategic access management and monitoring measures which are available to mitigate adverse effects to the SPA, which could be secured by means of planning obligations pursuant to s106 of the Town and Country Planning Act 1990 (as amended). Whilst the appellant has indicated that they would be willing to enter into a legal agreement to provide mitigation for the proposed development's adverse effects to the SPA, no such obligation has been provided as part of the appeal process in line with the timescale for submission of such documents outlined in the Planning Inspectorate's Procedural Guide: Planning Appeals - England. Moreover, the Government's Planning Practice Guidance⁴ (PPG) sets out that planning conditions which aim to limit development that can take place until a planning obligation has been entered into are unlikely to be appropriate in the majority of cases. Although the PPG advises that there are some exceptions to this general principle, such as particularly complex development schemes, no evidence has been presented to indicate that the appeal scheme would fall into

⁴ 'Use of Planning Conditions' Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019

such a category. Accordingly, there is no legally enforceable mechanism before me in this appeal that would secure the mitigation measures necessary to address its adverse effects to the SPA.

12. I therefore conclude on this main issue that the proposed development would be likely to have a significant adverse effect on the integrity of the Thames Basin Heaths SPA, and for these reasons would conflict with Policy NRM6 of the South East Plan, Policy CS14 of the Core Strategy, Policy EN3 of the Local Plan, the Framework, and the SPD. Taken together, and amongst other things, the policies and guidance seek to ensure that sites of biodiversity value are protected and enhanced, and that any avoidance and/or mitigation measures for identified adverse effects are demonstrated and secured prior to the approval of development. This is a matter that weighs very heavily against the proposed development.

Whether inappropriate development

13. The Framework (at paragraph 149) establishes that in the majority of cases the construction of new buildings is to be regarded as 'inappropriate development' in the Green Belt. However, some exceptions are given in the Framework (at paragraph 149) to this general restriction, including the limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development. It is common ground between the Council and appellant in this case that the appeal site constitutes previously developed land for the purposes of the Framework.
14. The PPG⁵ advises that openness is capable of having both spatial and visual aspects. In addition, and amongst other matters, the duration of a development, and the degree of activity likely to be generated are matters that may need to be taken into account in assessing the effect of a proposal on openness.
15. The proposed development would entail the demolition of the existing house and outbuildings on the site, which, according to the appellant's submissions have a combined floorspace of some 427.9m², and a total volume of some 1683.5m³. Although the scale of the proposed development is a matter for detailed consideration at this stage, no estimates of its proposed volume have been supplied. However, the Council estimates, on the basis of the appellant's submitted material, that the proposed building would lead to an addition of some 1,000m² of floorspace when compared to the buildings currently present on-site. This increase in floorspace, taken together with the amount of floors proposed (including the basement parking) leads me to the view that the proposed building would also be likely to result in a marked increase in volume when compared to the buildings currently present at the site.
16. Unlike the current disposition of buildings at the site, the appeal scheme would locate most of its built form to one corner of the site, and would remove the paraphernalia associated with other extant uses. Nevertheless, the proposed building would be considerably taller than any of the elements currently present at the site, including any stored materials, given that the maximum height at which they could be stacked at is 4.8m. Moreover, unlike the stored materials relating to the extant use of the appeal site, the proposed building

⁵ 'Green Belt' Paragraph: 001 Reference ID: 64-001-20190722 Revision date: 22 07 2019

would be a substantial and permanent structure. Furthermore, due to its height and location close to the rear boundary with the dwellings facing Fernbank Road, the proposed building would be more widely visible than existing structures and objects present at the site. Consequently, due to the permanent nature of the proposed development and its overall visual and spatial implications, it would not result in an equivalent or improved state of openness when compared to the existing use of the site, but would rather lead to a marked reduction of openness in these terms.

17. Turning to the degree of activity likely to be generated by the proposal, the appellant prays in aid of the “unrestricted” access to the site and the lawfulness of vehicles using it in connection to its extant uses, particularly for the storage, parking, repair and maintenance of light goods vehicles, the builders’ yard activities and the residential traffic associated with the existing dwelling at the site. Nevertheless, I have been supplied with no estimates of trip generation relating to the existing uses and how they may compare to the proposed use which could also include the movement of light goods vehicles undertaking deliveries, and I am not therefore persuaded by the appellant’s view that the appeal scheme would result in a “very significant reduction in traffic generation”. Accordingly, it has not been demonstrated that this aspect of the proposed development would lead to an improvement to the openness of the site.
18. Taking these considerations together leads me to the conclusion on this main issue that the appeal scheme would have a greater impact on the openness of the site than the existing development and would therefore constitute inappropriate development for the purposes of the Framework.

Access

19. The access to the appeal site is narrow and located between the boundaries of residential buildings to each side of it that face Fernbank Road. Based on my on-site observations and the Manual for Streets extracts supplied by the Council it is clear that the width of the access would preclude two-way vehicular movement. Emerging visibility to the right from the access is substantially restricted by the wide trunk of a protected oak and telegraph poles present on the street. There are no restrictions on kerbside parking adjacent to the access, meaning that vehicles parked in those areas could further restrict emerging visibility. At the time of my afternoon site visit, I saw a great deal of children and families using the footway adjacent to the access in their journey from school. My observations in these regards, whilst only a snapshot, nevertheless accord with comments made by the Council and interested parties in relation to the use of the footway.
20. Although the proposed development benefits from what the appellant refers to as “unrestricted” access, as outlined above, no substantive assessment of the trip generation associated with the extant and proposed uses has been supplied. In any event, the intensification of residential use that the proposal would bring about would be likely to attract a diverse range of households to the site given the size of the units proposed and their potential to accommodate families with children. Moreover, larger vehicles such as those involved in deliveries to the site would form part of the overall pattern of trips generated by the proposal. That the access would also be used by pedestrians and/or cyclists is anticipated by the appellant, who considers that the appeal

site's location means that it is "genuinely possible" that future occupiers of the proposed development would not be reliant on the use of private cars.

21. However, due to its narrowness, the access road would not comfortably accommodate simultaneous use by pedestrian and automotive traffic, or a combination of cars/light goods vehicles and bicycles. Neither would it be welcoming to those using push chairs, or people using wheelchairs or other means to assist with restricted mobility. In addition, the curve and gradient of the entrance to the proposed subterranean parking area would offer only a restricted view of the access meaning that cars emerging from there would be unaware whether others, either vehicles or pedestrians, were entering the site from Fernbank Road. A lack of dedicated turning facilities in the proposed layout would also mean that larger vehicles, such as those conducting deliveries, or associated with the emergency services, would in all likelihood have to exit the appeal site in reverse gear. These considerations lead me to the view that the narrowness of the access, taken together with its length would give rise to conflicts not only between two way vehicular movements associated with the proposed use, but also between the vehicular and non-vehicular users of the access. The potential for such conflicts to lead to reversing manoeuvres toward the Fernbank Road entrance, with its associated risks relating to the sub-optimal emerging visibility that I have mentioned above, is also relevant to my overall assessment in these regards.
22. Accordingly, these considerations lead me to the conclusion on this main issue that the proposed development would fail to achieve a safe and suitable access to the site for all users. For these reasons, the proposed development would conflict with Policy CS23 of the Core Strategy, Policy M6 of the Local Plan and the Framework insofar as, taken together, and amongst other things, they seek to ensure that developments allow for safe cycle and pedestrian routes; achieve a safe and suitable access to sites for all users, and that safety of travel is increased.

The effect of the proposal on the significance of heritage assets and protected trees

23. Although there are structures and paraphernalia present at the appeal site, they are of a limited scale and thus generally nestle into the tree belts associated with Coach Road. As a result, the existing structures and paraphernalia do not compete with the tree belts in views available from outside the site. In contrast, the three-storey scale of the proposed building taken together with its massing and siting in the midst of the tree belt, would result in a prominent structure which would erode the understanding of the historic function of the Coach Road as one of the long rides through Windsor Forest to the detriment of Ascot Place's significance. Although Cuadrella Gardens is mentioned as a precedent for the proposed scale of the development its siting both outside of the Registered Park and Garden and the associated tree belt are matters that clearly distinguish it from the appeal proposal.
24. The appellant considers that the proposed development would reinstate the historic Coach Road through the removal of the existing buildings and paraphernalia at the appeal site. Nevertheless, this would occur as part of the wider proposal, involving a building of a scale and siting that would erode an understanding of the Coach Road and its relationship to the wider heritage asset. Moreover, as landscaping is a reserved matter in this case, the appeal

proposal is lacking in detail on what the reinstatement of the historic route might entail, and as a result this limits the weight that can be accorded to this matter. For these reasons, the imposition of a condition on any permission pursuant to this appeal, which would require landscaping proposals to be submitted, would not successfully address the lack of substantive detail on this issue at this stage.

25. The appellant's Tree Protection Plan shows that parts of the proposed ramped access for the subterranean car park would be within the root protection areas of an oak (T7) identified as high quality tree in the appellant's submitted Arboricultural Assessment and Method Statement (the Assessment), and a sweet chestnut (T19), identified as a tree of moderate quality. Both trees contribute strongly to the visual amenity of the area and, in terms of their position within the belt of trees adjacent to the Coach Road, to the significance of Ascot Place. The construction of the basement and its related access are not referred to in the Assessment, which describes the development proposal it relates to as the development of "four new dwellings" (at page 1).
26. Consequently, it is not clear from the Assessment that the implications of the construction of this ramped access in close proximity to the protected trees and the change in levels associated with it have been taken into account, as T7 and T19 are identified as only being affected by the installation or upgrading of surfacing in their root protection areas, rather than by the installation of new structures (per paragraph 1.4 and Table 2 of the Assessment). Due to these omissions, the submitted Assessment and Tree Protection Plan fall short of demonstrating that harm would be avoided to these trees as a result of the proposed development. Deleterious impacts to these trees would be of harm to the visual amenity of the area, and would erode the contribution the site makes to the significance of Ascot Place, and accordingly weighs against the appeal scheme in these terms.
27. The front (south east) elevation of the proposed building would be close to two of the protected trees on the site, the T7 oak and a sweet chestnut (T5), identified as a tree of moderate quality in the Assessment. However, as appearance is not for detailed consideration at this stage, the potential relationship of windows to living spaces is not before me in this appeal. For these reasons, it is not possible to be definitive at this stage as to whether T5 and T7 would cause adverse shading or outlook impacts to the future occupants of the proposed development sufficient to lead to post-development pressure to conduct works to those trees. This does not therefore weigh against the proposal in terms of the detailed matters for consideration at this stage.
28. Nevertheless, for the reasons set out above, the proposed development would cause harm to the significance of Ascot Place. It would therefore conflict with Policies CS1 and CS7 of the Core Strategy and Policies EN1 and EN12 of the Local Plan, insofar as, taken together and amongst other things they seek to ensure: that historic features of acknowledged importance (including Registered Parks and Gardens) are protected and enhanced; that development respects the historic environment; and that important trees are retained. I return to the implications of this finding in the overall planning balance below.

Land Contamination

29. Existing uses of the appeal site have the potential to lead to land contamination. The Framework is clear (at paragraphs 183 to 184) that planning decisions should ensure that sites are suitable for their proposed uses taking into account any risks arising from contamination, and that responsibility for securing a safe development rests with the developer and/or landowner. Whilst no reports have been submitted relating to land contamination by the appellant, I consider that this is a matter that could be subject to conditions were the appeal to be allowed, and note that some suggested wording for such has been supplied by the Council on a “without prejudice” basis in its appeal statement. These considerations lead me to the conclusion on this main issue that, subject to conditions, the site could be suitable for the proposed use taking into account any risks arising from contamination. For these reasons, the proposed development would not conflict with Policy EN25 of the Local Plan insofar as it seeks to ensure that the amenities of occupiers of buildings would not be adversely affected by environmental pollution. I return to the potential implications of remediation of the site below.

Other Considerations

30. The Framework establishes (at paragraphs 147 to 148) that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial harm is to be given to any harm to the Green Belt, and ‘very special circumstances’ will not exist unless this harm is *clearly outweighed* by other considerations. This is a high hurdle for a proposal to overcome. The appellant has suggested a number of other considerations, which they consider to weigh in favour of the proposal, I cover these below where they have not been substantively addressed in the main issues set out above. In approaching this balancing exercise, I have taken into account the appellant’s reflections on appeal decisions⁶ and a Court judgement⁷ that they consider to be relevant, albeit that copies of those documents have not been supplied.
31. The Framework also anticipates that once a finding of harm to the significance of a heritage asset is reached that the magnitude of that harm should be assessed. In the current case, the proposed development, due to its localised effects in a wider landscape would clearly cause less than substantial harm, nevertheless such harm falls to be weighed against the public benefits of a proposal (per paragraph 202 of the Framework). Great weight should be given to an asset’s conservation, irrespective of whether potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
32. The proposed development would lead to a small, but nonetheless marked, net increase in homes, with dwellings of a size which the appellant considers would meet local needs in an accessible location. Whilst substantive evidence relating to needs and supply of housing has not been provided, it is clear that the Framework anticipates that planning will support the Government’s objective of significantly boosting the supply of homes (at paragraph 60). Accordingly, I consider this matter a public benefit, which carries moderate weight in favour of the proposal.

⁶ APP/Y3615/W/16/3151098 and APP/G5180/W/18/3206569

⁷ *Brown v London Borough of Ealing and Queens Park Rangers Holding Ltd* [2017] EWHC 467 (Admin)

33. The appeal scheme would use previously developed land, and remediate its contamination and the 'damage' caused by extant uses, in a way that seeks to optimize the use of the site according to the appellant. Moreover, the use of previously developed land in Flood Zone 1 could reduce pressure to build on greenfield sites, and/or on land more prone to flooding that could yield a similar quantity of development elsewhere. The cessation of the existing use of the site could also yield benefits in terms of improvement to the residential amenity of occupants of dwellings in its surroundings. Again, these matters are public benefits which carry moderate weight in favour of the proposal in environmental and social terms.
34. The appeal scheme seeks to re-instate elements of the Coach Road. However, submissions are lacking in substantive detail as to how this is likely to be achieved, and landscaping is not a matter for detailed consideration in this appeal. As a consequence, based on the information before me in this appeal, I attach only limited weight to this anticipated public benefit.
35. The proposal would be liable to make Community Infrastructure Levy payments. However, as such payments are proportional to the type and scale of development to be delivered, and relate to the provision of infrastructure to be used by its future occupants, this is a matter that has only a neutral effect on the planning balance.

Planning Balance and Conclusion

36. Accordingly, it is evident that none of the other considerations cited by the appellant, taken either individually or cumulatively, are of a sufficient weight to tip the balance clearly in favour of the proposed development when set against the substantial weight given to its Green Belt harms. Very special circumstances have not therefore been demonstrated and it follows that the proposed development conflicts with Policy GB1 of the Local Plan and the Framework insofar as, taken together and amongst other things, they seek to ensure that urban sprawl is prevented by keeping land permanently open.
37. Moreover, none of the public benefits of the proposal would tip the balance in its favour when set against the great weight attached to the less than substantial harm it would cause to the significance of Ascot Place. It would therefore conflict with the Framework in these terms insofar as it seeks to ensure that heritage assets are conserved in a manner appropriate to their significance.
38. In addition, the Framework establishes (at paragraph 180) that if significant harm to biodiversity cannot be adequately mitigated, as is the case in the current appeal in respect of the proposed development's implications for the SPA, then planning permission should be refused. None of the considerations advanced in favour of the proposal would justify deviation from this clear statement of national policy.

39. Furthermore, no material considerations advanced in favour of the proposal justify a decision otherwise than in accordance with the development plan, with which in terms of the above-cited policies the appeal scheme would clearly conflict. Consequently, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR