



Appeal Decision

Site visit made on 2 May 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Appeal Ref: APP/A1910/W/21/3279608

Land at 28 Hall Park, Berkhamsted HP4 2NU

- 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 S Chandarana against the decision of Dacorum Borough Council.
 - The application Ref 21/00701/FUL, dated 19 February 2021, was refused by notice dated 30 June 2021.
 - The development proposed is a detached dwellinghouse and associated parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site is located within the 12.6km zone of influence of the Chiltern Beechwood Special Area of Conservation (SAC) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 - as amended (the Habitat Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC. It is necessary to consider this matter as a main issue.
3. A Unilateral Undertaking (UU) has been submitted which was completed following the submission of the appeal. It includes an obligation relating to the payment of a financial contribution towards a strategic access management monitoring (SAMM) strategy and a suitable alternative natural greenspace (SANG) strategy. The Council has had the opportunity to comment on the UU. I will return to this matter later in this decision letter.
4. Although I have not been provided with full details of the previous planning applications for residential development proposals on the site, I have had regard to the information provided in so far as it relates to the development subject of this appeal.

Main Issues

5. The main issues are the effect of the development on;
 - the character and appearance of the area;
 - European sites designated under the Habitat Regulations; and
 - the living conditions of the occupiers of number 30A Hall Park (number 30A), with particular regard to outlook.

Reasons

Character and appearance

6. The roughly rectangular appeal site currently comprises part of the garden of number 28 Hall Park (number 28). It is within the BCA1: Hall Park area, as defined within the Decorum Borough Local Plan 1991-2011 - Area Based Policies - supplementary planning guidance document dated 2004 (the SPG). The site is located between 2 detached low-rise dwellings (numbers 28 and 30A). There is a variety in the design, detailing, and external materials of houses within the area. Despite an increased density of residential development within the area over time, the area retains a high-quality, spacious, and verdant character and appearance.
7. The design detailing of the proposed dwelling is of a high quality, and it would be of a height not dissimilar to some others within Hall Park. Furthermore, it would be sited so as to conform to the prevailing building line. Notwithstanding these considerations, from public viewpoints within Hall Park, the proposed dwelling would have a slender front façade that would contrast appreciably with the broader front elevations nearby, at Nos 28 and 30A. Moreover, it would sit within a plot that would be much narrower than those either side and along the length of Hall Park. Consequently, the dwelling's more compact scale together with the plot's slender proportions would give rise to a development with an unacceptably cramped appearance, that would fail to preserve the distinctive qualities of the streetscape in which it would be located or, relate well to the scale of adjoining houses.
8. I do not disagree that there is scope for innovation and variation in new development within the area. Notwithstanding the proposed provision of a new boundary hedgerow between the appeal site and number 28, and, a cycle and pedestrian access between the hedgerow and the side of the dwelling, the house would occupy the majority of the width of the plot. In this respect, it would not be dissimilar to other development within the area, where; many houses and outbuildings occupy the majority of the width of the plots they are sited within; there are frequently relatively small separation distances between buildings; and in at least one case, where the buildings extend right up to one of the side boundaries. Despite these similarities between the appeal scheme and other dwellings in the locality, they would not overcome the harm I have found in respect of the proposal's scale and plot size.
9. My attention has been drawn to a number of examples of houses that have been built on smaller than typical sized plots within the area. However, none are as narrow as the appeal site, and as such they are not directly comparable with the development proposals subject of this appeal.
10. For the reasons given above, the proposed development would be harmful to the character and appearance of the area. Consequently, and in this respect, it would fail to comply with the requirements of policies CS11 and CS12 of the Decorum Borough Council Core Strategy 2006-2031 dated 2013 (the Core Strategy). These policies require development to respect general character; to preserve attractive streetscapes; and to respect adjoining properties in terms of layout and scale. It would also conflict with the policy approach identified within the SPG for the consideration of development proposals within the BCA1: Hall Park area, which seeks to ensure that the defined character of the area is maintained.

European sites

11. The site is within the 12.6km zone of influence of the Ashridge Commons and Woods site of special scientific interest, which also forms part of the Chiltern Beechwood Special Area of Conservation (SAC). The SAC supports a range of habitats including; beech forest woodlands; semi-natural dry grassland and scrubland on calcareous substrates; and stag beetles, that qualify under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The conservation objectives of the SAC are to ensure that; its integrity is maintained or restored as appropriate; and, that it contributes to achieving the favourable conservation status of its qualifying features.
12. The Council and Natural England have indicated that new housing within the zone of influence of the SAC, can be expected to result in an increase in recreational pressure within it, through; damage; contamination; fire; and in other ways which may include harvesting and activities associated with site management. Although future occupants of the proposed dwelling may never visit the SAC, the evidence indicates that there is a reasonable likelihood that they may do so for recreational purposes.
13. In these circumstances, the Habitats Regulations require that an Appropriate Assessment is carried out in relation to the likely significant effects of the proposal on the integrity of the SAC. I have sought further evidence on this matter, and Natural England has been consulted as part of the appeal.
14. Due to the increased recreational pressures which would result from the occupation of an additional dwelling on the site, and without mitigation, the proposed development, alone and in combination with other developments, would be likely to have an adverse effect on the features of interest of the SAC.
15. The Council have indicated that they have worked in collaboration with partner Councils and closely with Natural England, and approved a mitigation strategy. The objectives of the mitigation strategy are to; deflect visitors away from the SAC by the provision of alternative sites; better manage visitor distribution and numbers within the SAC; and to reduce the impacts of recreation within the site by both protecting sensitive features and influencing visitors to change their damaging behaviours.
16. To seek to overcome the adverse effects resulting from qualifying developments, the mitigation strategy includes a requirement for an identified financial contribution to be made towards the SAMM strategy - which would be used to support access management and engagement works within the SAC. It also indicates that qualifying development must contribute towards either a new bespoke SANG or contribute towards strategic SANG projects elsewhere - to enable the provision of alternative recreational spaces remote from the SAC.
17. As competent authority, I need to be certain that the proposal would not cause adverse effects on the integrity of the SAC. Although Natural England has not raised concern with regard to the submitted UU, they have nonetheless advised that further information is required to determine the significance of the proposal's impacts and the scope for mitigation.
18. The signed and completed UU includes commitments to make SAMM and SANG payments, at the levels identified within the mitigation strategy, to the Council.

19. The Council has identified 2 sites that could be upgraded to SANG's and indicated that it has no objection to the use of Council-owned land as a SANG solution. However, details of the Council's SANG capacity have not been provided. Nor have I been advised which proposed SANG the contribution would be used to support, or how and when the contribution would be spent.
20. From the evidence before me, and although it appears that appropriate mitigation may be possible, I cannot be certain that the payment of the financial contributions set out within the UU would be an adequate means of mitigating the adverse effects of the proposed development. As such I cannot rule out adverse effects on the integrity of the SAC.
21. For the reasons above, there is insufficient evidence to provide the certainty needed to rule out adverse effects on the integrity of the SAC and I must take a precautionary approach. Consequently, the proposal would conflict with policy CS26 of the Core Strategy where it requires that the green infrastructure network be protected, extended and enhanced, and that new development conserve and restore habitats and species. It would also conflict with the Habitat Regulations.
22. Policy CS25 of the core strategy seeks to ensure that development help to conserve and enhance the Boroughs natural and historic landscape. As such, it is not determinative in this main issue.

Living conditions

23. Compared with the prevailing sizable and relatively long rear gardens within the area, number 30A has a significantly smaller and shallower rear garden, which is largely surrounded by tall and solid boundary treatments. Notwithstanding this, the rear garden has a reasonable width and size, and it is elevated above neighbouring properties to the south. Occupiers of the house and users of the rear garden are therefore able to benefit from a good level of outlook and light within the property.
24. The proposed dwelling, which would be mainly 2-storey in height, would be constructed on or immediately adjacent to much of the common boundary between the appeal site and number 30A. However, the proposed dwelling would be constructed on lower ground than that of either the house or garden at 30A. As a result, from within the house and rear garden of this existing property, only the upper sections of the side wall; the roof - which gently slopes up and away from the shared boundary; and the chimney stack, would be visible above the tall close boarded fence along the common boundary. Furthermore, the massing of those parts of the dwelling that would be visible from these vantages, would be visually broken up by the proposed variation in the ridge height of the dwelling and uses of both anthracite and quartz grey cladding, such that it would not be intrusive or oppressive.
25. Due to being visible, the outlook available from within the house and rear garden of number 30A would undoubtedly be altered by the construction of the proposed development. However, for the reasons given above, occupiers of number 30A, would retain a good outlook within their house and garden following any implementation of the development proposals.
26. For the reason given above, the proposed development would not have a materially harmful effect on the living conditions of the occupiers of number

30A Hall Park, with particular regard to outlook. Consequently, and in respect of this main issue, it would comply with Policy CS12 of the Core Strategy which amongst other things seeks to ensure the quality of design and to avoid visual intrusion to the surrounding properties. It would also comply with the parts of appendix 3 of the Dacorum Borough Council Dacorum Borough Local Plan 1991-2011 dated 2004, which require private open space to be provided within which satisfactory levels of sunlight and daylight would be maintained.

Other Matters

27. The Council has indicated that they do not have a five-year supply of deliverable housing sites. In such circumstances, it is appropriate to consider whether the provisions of paragraph 11. d) of the Framework should be applied. 11. d) sets out that permission should be granted for proposals that constitute sustainable development unless certain circumstances apply. One such circumstance, at 11. d) i. is where the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 of the Framework confirms that the policies referred to within 11. d) i) include habitat sites, which would include SAC's. Even if 11d. ii) would not apply in this case, given that I cannot rule out adverse effects on the integrity of the SAC as a result of the development, then the presumption given by paragraph 11.d) would not be triggered in this case.
28. In terms of benefits, the proposal would provide an additional dwelling in a location well served by services and facilities, which would contribute towards the Council's housing supply. It would include measures to secure energy efficiency and minimise carbon dioxide emissions, and to improve the biodiversity value of the site. That secure storage for 2 bicycles would be provided is also a benefit. It would also deliver economic benefits both during construction and post occupation, as well as social benefits. However, given the small scale of the development, the weight that can be attributed to these benefits is limited.
29. That there would be no unacceptable loss of privacy for occupiers of neighbouring properties is a neutral consideration.
30. Even if the case officer was initially supportive of the development proposals, and the decision was finely balanced, the evidence indicates that on further consideration of the scheme, the Council deemed the development to be unacceptable. I have found no reason to disagree with this conclusion.
31. Overall, I have found that the development would be harmful to the character and appearance of the area, and that it would harm the integrity of the SAC. Whilst I have also found that it would not cause material harm to the living conditions of the occupiers of number 30A, the Habitat Regulations confirm that I cannot approve a proposal where likely significant effects cannot be ruled out. This matter is of overriding concern and provides a clear reason for refusing the development proposed.
32. The proposal conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination that outweigh the identified harm and associated development plan conflict.

Conclusion

33. For the reasons given above, I conclude that the appeal should be dismissed.

V Simpson

INSPECTOR