



Appeal Decision

Site visit made on 12 June 2023

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal Ref: APP/N0410/W/22/3295669

Land at Victoria Road, Chesham, Buckinghamshire HP5 3AF

- 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 Mr and Mrs Ghuman and Norman against the decision of Buckinghamshire Council.
 - The application Ref PL/21/2499/FA, dated 17 June 2021, was refused by notice dated 22 October 2021.
 - The development proposed is erection of a three bedroom detached dwelling.
 - This decision supersedes that issued on 2 September 2022. That decision on the appeal was quashed by order of the High Court
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Consent Order dated 8 November 2022 and issued by the High Court quashed the original appeal decision dated 2 September 2022. That decision was quashed on the basis that the impact of the development on the Chiltern Beechwoods Special Area of Conservation (SAC) had not been addressed. While the previous decisions are incapable of having any legal effect, where material I have had regard to the findings of the previous Inspector.

Main Issues

3. The main issues are the effect of the proposed development on:
 - The character and appearance of the area.
 - The Chiltern Beechwoods Special Area of Conservation.
 - The living conditions of future occupiers and existing occupiers with particular regard to 12 and 14 Upper Gladstone Road.
 - Highway Safety.

Reasons

Character and Appearance

4. This side of Victoria Road is mainly characterised by garages and parking spaces associated with the properties on Upper Gladstone Road. These are generally single storey secondary buildings with garage doors or open parking spaces. The open space and the garages' low height and subservient design results in a row of modest buildings or open land, secondary to the main

properties which makes a positive contribution to the character and appearance of the area in this respect. The appeal site occupies an area of open land to the rear of 12 and 14 Upper Gladstone Road that was previously their garden. The opposite side of Victoria Road has three storey blocks of flats, with generous spacing between the buildings, and the road provides a clear separation between these two distinct types of buildings.

5. Upper Gladstone Road is generally characterised by terraces of narrow dwellings, with long narrow rear gardens. This regular pattern of development and spacing results in an attractive sense of uniformity in this area.
6. The proposed development would introduce a detached dwelling to the appeal site. It would span the width of two existing plots. From Victoria Road it would appear as single storey with dormer windows in a roof above. Due to the slope of the land, to the rear the property would also have an additional floor at semi basement level.
7. The height and width of the proposed dwelling would relate poorly to the other buildings along this side of Victoria Road. It would be more dominant and evidently domestic in appearance with a main front door onto Victoria Road. Its plot would also be wider and shorter than the neighbouring curtilages. The length of the gardens at 12 and 14 Gladstone Road have already been subdivided. Nevertheless, the proposed dwelling would further inappropriately erode the pattern of development in this regard. Therefore, the resultant development would be harmfully at odds with the secondary character of this part of the street, and would result in a plot size which unacceptably erodes the uniformity in this area with the resultant development being visually jarring for these reasons.
8. The proposed development would therefore have a harmful effect on the character and appearance of the area. As such it would be contrary to Policies GC1 and H3 of the Chiltern Local Plan 1997 (including alterations 1 September 2011) Consolidated September 2007 and November 2011 (LP) and Policy CS20 of the Core Strategy for Chiltern District (2011) (CS). Together these require that new dwellings should be a high standard of design, and set criteria for this, as well as reflecting and respecting the character of the surrounding area and those features which contribute to local distinctiveness, amongst other things.

Chiltern Beechwoods Special Area of Conservation (SAC)

9. The SAC is a habitats site that has a high level of protection. It is designated due to its beech forests, semi-natural dry grasslands and scrub and stag beetle population. The appeal site falls within the Zone Of Influence (ZoI) of the SAC where evidence from the Council and Natural England detail that any increase in housing within this area results in significant recreational pressure on the SAC. Therefore, without any mitigation in place, in combination with other plans and projects there would be likely to be a significant effect on the interest features of the site from the proposed residential development.
10. The Conservation of Habitats and Species Regulations 2017 therefore require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination

with other plans or projects. As the competent authority, I am therefore required to undertake an AA.

11. I understand that the Council is working on a mitigation strategy which involves Strategic Access Management and Monitoring (SAMM), Suitable Alternative Natural Greenspace (SANG) and exploring a Gateway SANG. The SAMM strategy has been agreed and this requires a financial contribution from each new dwelling within the ZoI. However, sites for SANG have not yet come forward, with the first estimated to be in late Summer/early Autumn 2023. Both of these elements are required to mitigate the effects on the SAC.
12. I have also been provided with the Chiltern and South Bucks Local Plan 2036 Councils' Responses to the Inspectors' Matters Issues and Questions – Matter 1: Compliance with the Act and Regulations (2020). This refers to the creation of a SANG at Beaconsfield to mitigate effects on the Burnham Beeches Special Area of Conservation. However, this does not relate to mitigation for the Chiltern Beechwoods SAC and as such I have no evidence that it would provide effective mitigation for this appeal scheme.
13. It is put to me that a condition requiring a payment towards a SANG could be attached, however the Planning Practice Guidance (PPG) states that positively worded conditions requiring payment of money should not be used. Also the exceptional circumstances that would be needed to attach a negatively worded condition requiring a planning obligation, as required by the PPG, have not been demonstrated in this case. Furthermore, due to the lack of an agreed mitigation strategy I have no certainty that any contribution would provide effective mitigation. As such this appeal scheme would not provide any mitigation for the adverse effect on the interest features of the SAC.
14. The appeal is for a single dwelling and therefore there are alternative solutions, for example a dwelling outside the ZoI, which would have a lesser effect on the integrity of the site. Consequently, there would be a significant effect on the interest features of the site, and I cannot be certain that there would be no adverse effect on the integrity of the SAC.
15. There is uncertainty as to the timing for any mitigation strategy from the LPA. In the interests of fairness to all parties this decision should not be postponed indefinitely. As such this would not be an exceptional reason to delay the decision.
16. Consequently, there would be an adverse effect on the Chiltern Beechwoods Special Area of Conservation contrary to paragraph 180 of the National Planning Policy Framework (Framework).

Living Conditions

17. There is a change in levels between the appeal site and 12-14 Upper Gladstone Road, however the lower floor is proposed as a semi basement. Although the boundary wall would be closer to the existing dwellings, the proposed house would be around 17m from the rear elevations of 12-14 Upper Gladstone Road. Furthermore, from the rear of the Upper Gladstone Road properties the proposed dwelling would be seen in the context of the three storey buildings beyond. Taken together this would provide sufficient separation for the height of the dwelling proposed. The positioning of windows would also ensure that

there was no harmful overlooking. Therefore, the proposed development would not be overbearing.

18. Policy H12 of the LP requires new houses to have an adequate garden area, with a general standard of a minimum rear garden depth of 15m, except in certain circumstances including where garden lengths in the vicinity are more or less or adequate private amenity space exists in the application site. The proposed garden would be 7m in depth and the garden depths at 12 and 14 Upper Gladstone Road, as a result of the subdivision, are around 11m. The overall garden space available to the proposed dwelling would be around 56sqm.
19. A rectangular 56sqm garden would be a suitable size, shape and usability for the proposed 3 bedroom dwelling. Whilst its depth would be less than others in the vicinity, including those to the north, given its increased width compared to nearby gardens, I find that adequate private amenity space exists within the application site. The plots have already been subdivided and therefore there would be no change to the size of the garden areas at 12 and 14 Upper Gladstone Road. This matter relates to living conditions alone and therefore this does not alter the harm I identify to character and appearance regarding plot sizes set out above.
20. As such, the proposed development would result in acceptable living conditions for future occupiers and existing occupiers with particular regard to 12 and 14 Upper Gladstone Road. Therefore it would be in accordance with policies GC3 and H12 of the LP. Together these seek to ensure that adequate private amenity space exists within the application site, and provide a good standard of amenity for future occupiers and protect existing amenity.

Highway Safety

21. The development proposes two parking spaces, one in a garage and one parallel parking space to the front of the dwelling. Due to the tight manoeuvring required, even with the house set back, and the fact that this car would need to move if access to the garage were needed, the external space would not be particularly attractive to use, which could lead to overspill parking.
22. Any overspill parking would be limited to a single car, and there is no detailed evidence before me to suggest that parking stress in this area is so severe that this minimal increase in on-street parking could not be accommodated. Therefore, even if the space were not used, a single additional car parking on the road would not be harmful to highway safety or the free flow of traffic.
23. Therefore the proposed development would have an acceptable effect on highway safety. As such it would not conflict with the development plan Policies CS26 of the LP and TR2 of the CS which, amongst other things, require that development should provide satisfactory access onto the highway network and appropriate vehicle parking, as well as the Framework which seeks to avoid an unacceptable impact on highway safety and severe impacts on the road network. These were referred to in the Council's evidence, and the appellant has had the opportunity to respond. Nor to the advice in Buckinghamshire Council Local Transport Plan 4 (April 2016), the Buckinghamshire Council Highways Development Management Guidance document (July 2018) which echo the requirements of the policies above, amongst other things.

Planning Balance

24. The Council cannot demonstrate a 5 year supply of deliverable housing sites. Therefore paragraph 11(d) of the Framework is engaged. However it is clear from this decision that the application of policies relating to habitats sites (in this case, the SAC) provides a clear reason for refusing the development proposed, as set out in footnote 7. Furthermore, paragraph 182 of the Framework is clear that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. Consequently, the presumption in favour of sustainable development does not apply in this case.
25. Although I do not find harm with regard to the living conditions of future or neighbouring occupiers nor highway safety, these are neutral factors which do not weigh in favour of the proposed development. As such they do not outweigh the harm to the internationally important habitats site, nor the public and permanent harm to the character and appearance of the area.

Other Matters

26. During the appeal process, the ownership of the land has changed. The new owners have submitted evidence to this appeal. However, they state that they were not aware of the high court challenge at the time of purchase. Nevertheless, the ownership of the land is not a planning consideration which has any bearing on this decision.

Conclusion

27. The proposal would not accord with the development plan and there are no other considerations, including the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

H Miles

INSPECTOR