



Appeal Decision

Site visit made on 11 July 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/Q3115/W/22/3313822

The Paddock, Preston Crowmarsh, Wallingford OX10 6SL

- 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 Stuart Scott-Ely against the decision of South Oxfordshire District Council.
 - The application Ref P21/S2698/FUL, dated 29 June 2021, was refused by notice dated 1 December 2022.
 - The development proposed is erection of replacement dwelling following demolition of existing annex with separate residential use and swimming pool.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address from the District Council's Decision Notice, which is more concise than that used in the application form. The appellants have used this address in the appeal form, so I am satisfied that no parties would be prejudiced by my using this address.
3. Since the determination of the appeal application, an updated version of the Neighbourhood Plan, the Benson Neighbourhood Plan Review (BNPR), has been adopted, being made in March 2023. The main parties were able to comment on this change and I have therefore determined the appeal with the newly adopted policies in mind.
4. During the appeal, it transpired that the appellants' entry into the Great Crested Newt District Licence for the proposal had not taken effect, because they had withdrawn from the scheme. As a result, the District Council now considers that an additional reason for refusal applies, relating to the effect of the proposal on newts. The appellants have been able to comment on this and so it is a matter I must consider.

Main Issues

5. The main issues are the effect of the proposal on:
 - protected species, namely Great Crested Newts (newts), and
 - the character and appearance of the area.

Reasons

Great Crested Newts

6. The site consists of a dwelling, The Paddock, and associated outbuildings on the edge of the village of Preston Crowmarsh and close to the River Thames. The proposal seeks to replace an existing annex and swimming pool building, which is attached to The Paddock, with a dwelling. This would be sited away from the annex, on land that was previously agricultural but now has lawful use as garden.
7. The site of the proposal contained a pond until recently. I understand that the pond was man-made, lined with rubber, stocked with fish and had artificial water filtration. Even so, an updated Ecology Survey submitted with a previous planning application¹ confirmed that newts may have been present within the pond. The appellants' habitat suitability index found a predicted newt occupancy equivalent to 55%, so they were more likely to be present than not. Newts are protected under the Conservation of Habitats and Species Regulations 2017 as amended (the Regulations).
8. The pond has now been filled in. However, newts spend most of their lives on land, living for up to 14 years without access to breeding habitats such as ponds. As a result, despite the removal of the pond, its recent existence at the site means that newts may well be present on or around the site of the proposal.
9. I am told that no newts were seen when the pond was drained and removed, but I have little substantive evidence to confirm this, or to demonstrate that newts are not present on the site. Given the reasonable likelihood of their presence, in the absence of further survey information, the precautionary principle applies. Therefore, I cannot conclude that the proposal would not risk harming the habitat of newts.
10. As such, the proposal would risk committing an offence against the Regulations, thus requiring a licence. Natural England is the licensing authority and has granted a general newt District Licence (DL) to the District Council. The appellants entered into an agreement for the proposal to be authorised under that DL, but subsequently withdrew. As such, the measures and conditions which formed part of the DL are not before me. In the absence of full information, planning permission could not safely be granted, even with a planning condition as suggested by the appellants.
11. Furthermore, without authorisation from the DL, I must be satisfied that a derogation licence would be likely to be granted for the proposal by Natural England. Having regard to the relevant tests in the Regulations, I have insufficient evidence that there is no satisfactory alternative to the proposal, or that there are imperative reasons of overriding public interest, or of the ability to secure favourable conservation status of the species impacted. I cannot therefore be satisfied that a licence would be granted.
12. For these reasons, the proposal would have an unjustified harmful effect on protected species, namely newts. It would therefore conflict with Policy ENV2(3) of the South Oxfordshire Local Plan (SOLP), adopted December 2020,

¹ LPA reference P20/S3953/FUL at Appendix ECO2 to the LPA's Ecologist's Statement

which requires that direct or indirect loss, deterioration, or harm to legally protected species will only be permitted in circumstances that do not apply here. It would also conflict with the similar requirements of the National Planning Policy Framework (the Framework).

Character and Appearance

13. The proposal would be for a dwelling of contemporary design to replace the annex, on land now lawfully garden². A Certificate of Lawfulness³ was granted in 2016 confirming that the annex has lawful use as a permanent independent dwelling. Regardless of whether the site constitutes previously developed land, as suggested by the appellants, the District Council does not object to the principle of replacing the annex with a dwelling. Nor does it allege conflict with SOLP policies H16 or H18, which relate to infill or replacement dwellings respectively.
14. The parties dispute whether the site is within the settlement of Preston Crowmarsh. As found by a recent appeal decision in respect of another site nearby⁴, its location beyond the boundary now identified by the BNPR does not necessarily mean that it is not within the settlement. From the evidence before me, the site is also outside of the Important Local Gap (ILG) identified by BNPR Policy NP27, which seeks to maintain the separate identity of the settlements of Preston Crowmarsh and Howbery Park (amongst others).
15. The BNPR Landscape Character Assessment refers to the cluster of buildings at the site and states that recent changes are making it more dominant in the landscape. Even so, development locally is loose knit and the site itself consists largely of open green land, adjacent to fields. I therefore consider that it has more affinity with the countryside and so is outside of Preston Crowmarsh settlement.
16. There is sporadic development along the village side of the River Thames hereabouts. However, although single storey in height, the scale of the proposal would result in additional built form of appreciable size encroaching into largely unbuilt-up countryside. As a separate building, the proposal would also be likely to add to the extent of domestic activity and paraphernalia on the site, compared to that from the annex which is currently concentrated around The Paddock.
17. The proposal would also bring built development slightly closer to Howbery Park, thus moderately reducing the distinctiveness of the site as separate from Howbery Park. For these reasons, it would harmfully consolidate and urbanise the attractive appearance of the site, eroding its rural surroundings.
18. The proposal would be seen from the River Thames, from where views of it would be obtainable, for instance by those in boats. The proposal would also be seen by walkers using the adjacent Thames Path, within the North Wessex Downs Area of Outstanding Natural Beauty. Although the boathouse under construction would restrict some views, the proposal would still be visible through gaps in vegetation, especially in winter when foliage is reduced. Its visual impact would be greater than the existing annex because of the closer proximity of the proposal to the river.

² Confirmed by Certificate of Lawfulness LPA reference P10/W0901/LD

³ LPA reference P16/S1630/LDE

⁴ PINS reference APP/Q3115/W/22/3299034

19. For these reasons, the proposal would harm the character and appearance of the area. As such, it would conflict with SOLP Policies STRAT1 (ix) and ENV1, which seek to protect the countryside and rural areas, including the waterscape of the River Thames. By adding to the dominance of the existing cluster of development, the proposal would not comply with BNPR Policies NP7 or NP28, or SOLP Policy DES2 of the SOLP, which require that development responds to and preserves positive features of the local landscape character.
20. It follows that the proposal would not be consistent with policies for the management of the countryside or respect the context of the site. As such, it would also conflict with SOLP Policy DES1 and BNPR policy NP1. For the reasons I have already given, it would also conflict with BNPR Policy NP27 and its aim to maintain open rural space between settlements. These policies would be consistent with the aim of the Framework to recognise the intrinsic character and beauty of the countryside, with which the proposal would also conflict, and so paragraph 11 of the Framework is not engaged.
21. BNPR policy NP5 identifies a Riverside Buffer area, within which proposals should protect the physical and visual aspects of the character, quality and appearance of its landscape. However, although on its edge, the proposal would be outside of the Buffer. I therefore see no conflict between the proposal and this policy.

Other Considerations

22. A Certificate of Lawful Development⁵ (the 2019 Certificate) has confirmed that the erection of two outbuildings, on land within the garden, would be lawful (the fallback). Amongst other things, this would involve the erection of a very large multi-sports/playroom and equipment store.
23. Although slightly further from Howbery Park and the ILG, it would result in greater consolidation of built-up development within the countryside and the Riverside Buffer. Its footprint, size and scale would be significantly larger than the proposal, and its position would be closer to the Thames and so more visible. Consequently, it would result in more significant harm to the character and appearance of the area than the proposal.
24. The District Council and others believe that the fallback is a strategic gambit and question whether the appellants would realistically build it, should this appeal fail. However, case law⁶ has confirmed that the fallback does not have to be probable or likely and that the possibility of erection of the fallback would suffice. In the circumstances, including the existence of the 2019 Certificate, I have little reason to doubt that the fallback represents a realistic option for the appellants.
25. As part of any grant of permission for the proposal, I see no reason why permitted development rights within the application site could not be removed by condition, to prevent implementation of the fallback and of any further development on the site of the annex without an application for planning permission. Unlike an earlier planning application for a similar proposal, the dwelling proposed now would have no garage or outbuildings. However, future

⁵ LPA reference P19/S3056/LDP

⁶ Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314

applications for such structures may not necessarily be forthcoming. In any case, these would be for the District Council to determine.

26. As such, the proposal would represent a material benefit over and above the fallback in respect of the character and appearance of the area. However, it would be further from the site of the pond and the potential habitats for newts. It would therefore be likely to have less impact upon them. As such, the fallback would be preferable to the proposal in terms of its effects on newts, and so does not overcome my concerns on the first main issue.

Other Matters

27. The proposal would provide a modern, self-build home, built to high environmental standards. Its construction would contribute to the local economy. Nevertheless, as a replacement dwelling, these benefits would be limited and so I give them little weight. The Parish Council and others have expressed concern about the planning history and evolution of the site. However, I have considered the proposal before me on its own merits.
28. The site is close to the Grade II Listed Battle Barns and to the Preston Crowmarsh Conservation Area (CA). The parties do not dispute that the proposal would have no adverse effect on the character or appearance of the CA or its setting, or the special architectural or historic interest of the listed building or its setting. I see no reason to disagree, but this does not alter my conclusions on the main issues.

Planning Balance and Conclusion

29. 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