



Appeal Decision

Site visit made on 24 July 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/A3655/W/22/3305947

Tulip Trees Church Road, St. Johns, Woking GU21 7QN

- 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 C Howard against the decision of Woking Borough Council.
 - The application Ref PLAN/2021/1348, dated 17 December 2021, was refused by notice dated 2 March 2022.
 - The development proposed is described as the subdivision of plot and erection of a detached dwelling and associated parking, access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development was changed during the application process from 'a new two storey Passivhaus dwelling of exceptional quality incorporating five bedrooms with ensuites, living room, dining room, kitchen, conservatory, integrated garage, associated ancillary accommodation, new access and landscape & biodiversity enhancements.' This was agreed by the main parties to more accurately reflect that which is proposed.
3. Amended plans, an Arboricultural Impact Assessment and Method Statement (AIAMS), and Preliminary Ecological Appraisal (PEA) were submitted with the appeal. Although an appeal should not be used to evolve a proposal, in this case the amendments would reduce the amount of development proposed and have been submitted to overcome the Council's concerns relating to impact on trees, and protected species and habitats. To my mind these submissions do not fundamentally change the development, and all parties were made aware of them at an early stage of the appeal process with opportunity to respond. Therefore, I am content that no parties would be unfairly disadvantaged by my acceptance of these documents.

Background and Main Issues

4. The Council consider the submitted AIAMS and amended plans to adequately demonstrate that the proposal would not have a detrimental impact on the trees within the site and so no longer contest this issue.
5. Therefore, the main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

- the effect it has upon the openness of the Green Belt;
- the effect of the proposal on protected species and habitats including the Thames Basin Heaths Special Protection Area (SPA);
- the effect of the proposal on the character and appearance of the area; and
- if the development is inappropriate whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstance necessary to justify the development.

Reasons

6. Tulip Trees is a detached, 2 storey dwelling located within a substantial plot of land next to the railway, on all other sides it is surrounded by woodland. There are a few other residential properties scattered throughout the woodland. The appeal site is broadly half of the land attributed to Tulip Trees and laid to grass with a series of mature trees scattered throughout. The boundaries adjoining the woodland are populated with mature trees and hedges. The boundary with the railway is similarly populated, although not so densely as to prevent glimpsed views from passing trains. There is a largely open aspect towards Tulip Trees.

Whether the proposal would be inappropriate development in the Green Belt

7. Paragraph 149 of the Framework states that the construction of a new building is inappropriate in the Green Belt but sets out 7 exceptions to this. Policy CS6 of the Woking Core Strategy (CSP) refers directly to the tests in the Framework when considering inappropriate development in the Green Belt. As does Policy DM13 of the Woking Development Management Policies Development Plan Document (DMP) which provides amplification of some of the Paragraph 149 exceptions. The main parties agree the proposal does not fall under any of the Paragraph 149 exceptions, and there is nothing before me to conclude otherwise.
8. Accordingly, the proposal would constitute inappropriate development. As set out in paragraph 147 of the Framework inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

9. Openness is an essential characteristic of the Green Belt, as set out in Paragraph 137 of the Framework. It is acknowledged that due to the surrounding woodland the proposed new building would be largely screened from public view, and that glimpses from the railway or Tulip Trees could be reduced by improved boundary planting.
10. However, openness has a spatial as well as visual aspect. The proposal would introduce a new building, along with an access and hard landscaping into an area which currently is not built on. The solid nature and permanence of the proposal would create a physical mass which would encroach into the open space a considerable distance beyond the nearest existing development, Tulip Trees.

11. Consequently, when compared with the existing situation the proposal would spatially, and to a lesser extent visually, fail to preserve the openness of the appeal site, and accordingly the Green Belt it is part of. Thus, it would fail to comply with Paragraph 137 of the Framework, and CSP Policy CS6 and DMP Policy DM13 as far as they require compliance with the Framework.

Protected species and habitats

12. The appeal site is within the zone of influence for the SPA and the surrounding woodland is a Site of Nature Conservation Interest (SNCI) and designated priority habitat. In relation to protected species, the appellants' PEA confirms the presence of reptiles on the site and that it also provides a suitable habitat for amphibians, bats, and badgers.
13. The PEA recommends a full reptile population assessment to formulate a suitable mitigation strategy. It does provide a potential mitigation strategy but specifies that a more cautionary approach may be required should rarer reptiles be found. Without the population assessment there is a lack of clarity in terms of the types of reptiles, their population on site, and how they may be impacted by the development. Therefore, it has not been clearly evidenced that the proposed mitigation strategy would avoid harm, disturbance, or other negative effects to reptiles. Due to the level of disruption and permanent change to the site the proposal would require, I am also unconvinced the population assessment could be conditioned with sufficient certainty that no harm would be caused.
14. It is acknowledged that the PEA sets out suitable mitigation for other protected species and the SNCI. However, this does not negate the potential effect the proposal could have on reptiles. It is also noted that the presence of protected species is not necessarily prohibitive to development. Nevertheless, their presence on site may require alteration or re-design to such an extent as to constitute a different scheme than that which is before me, and without proper assessment of the reptile population this cannot be ascertained.
15. Turning to the SPA, it qualifies for such protection as it supports populations of internationally rare bird species, which are susceptible to predation and disturbance. The additional dwelling proposed would contribute to an increased population in combination with other plans, projects, and developments in the area. Given the proximity of the development, it is likely that its contribution to the increase in population could lead to an increase in visitor and recreational pressure within the SPA. Given the susceptibility and vulnerability of the qualifying features of the SPA to such a use, it cannot be concluded that the development would not adversely affect the integrity of the protected sites in combination with other projects.
16. The Council have, however, a strategy in place whereby contributions to the provision of a Suitable Alternative Natural Greenspace are encompassed within the Community Infrastructure Levy, and to ensure the Strategic Access Management and Monitoring (SAMM) of the SPA a separate financial contribution is sought via planning obligation.
17. The appellants have stated they would contribute to the SAMM. It would be preferable that this was secured prior to a decision being made. Nonetheless, in this instance as both the main parties agree on the contribution amount, and it is an imbedded strategy used by the Council a negatively worded condition

could be used to secure such an obligation. The proposal could therefore comply with CSP Policy CS8 and Policy NRM6 of the South East Plan 2009, insofar as they seek to avoid or mitigate any potential adverse effects on the SPA.

18. In conclusion, the proposal fails to adequately evidence a lack of harmful impact on reptiles, and this cannot be overcome by the mitigation proposed against harm to the SPA and SNC, as protected habitats, and other protected species. The proposal would, therefore, fail to comply with CSP Policy CS7 and the Framework as far as they seek to conserve and protect existing biodiversity, protected species and habitats.

Character and appearance

19. The land attributed to Tulip Trees is substantial and its division would create 2 plots which would be commensurate in size to other properties within the woodland. The proposal is for a singular family home and the development would be consolidated in one location within the site. Accordingly, its layout would be consistent in scale and form to other properties within the surrounding woodland and would not replicate the more suburban proportions found in the wider area.
20. The properties within the woodland do not have a strongly uniform design, but instead broadly represent the vernacular of the period they were constructed. The form and style of the proposal is commensurate with modern design standards. It would, therefore, represent a contemporary vernacular so would not be out of character.
21. A key character of the proposal is the retention of existing trees and an increase in additional planting throughout the site. This would retain its verdant and semi-wooded appearance.
22. The proposal would constitute a singular property with its own identity which would respect the woodland setting of its surroundings. Its design would not detract from the overall character and appearance of the area, which is of sporadic, individually built buildings scattered through a reasonably dense woodland, to such an extent as to be considered harmful. The proposal would therefore comply with CSP Policy CS21, the guidance within the Woking Design Supplementary Planning Document, and the Framework insofar as they seek to ensure new buildings respect the character of the area.

Other considerations

23. The Framework seeks to boost the supply of homes and make more efficient use of land in accessible locations. The proposal would provide 1 new home in a reasonably accessible location. Along with the associated economic and social benefits, this contribution to the windfall element of the Council's 5-year housing land supply attracts modest weight based on the number of houses involved.
24. The appellants have drawn my attention to paragraph 80 of the Framework, which addresses isolated homes in the countryside, with specific regard to the exceptional quality of design required by criterion e). Quality of design is expanded on in Paragraph 134 of the Framework which states, amongst other things, that significant weight should be given to outstanding or innovative designs which promote high levels of sustainability.

25. Excluding the lack of independent assessment of the quality of design, the appellants' design and access statement describes the proposed dwelling as following a simple barn aesthetic and provides numerous examples of similarly designed properties. This shows that the proposed design is not particularly outstanding or uncommon for a modern building, particularly in more rural settings.
26. It is acknowledged, however, that adherence to Passivhaus standards, can improve the operational energy requirements of the property. Nevertheless, considering the emphasis of the Framework on using natural resources prudently, minimising waste and pollution, and moving to a low carbon economy, it is no longer exceptionally innovative for new dwellings to be designed to such high environmental standards. Again, this is evidenced by the appellants within appendix 14 of their statement of case which shows no less than 7 Passivhaus dwellings in the area.
27. For these reasons, only limited weight is afforded to the proposed design. A further limited benefit would be the potential net biodiversity gain the proposal could provide.
28. The appellants have also drawn my attention to the Green Belt boundary review, undertaken in 2014, as required by CSP Policy CS6. The appeal site formed part of assessed Parcel 30 which was not included within the parcels the review considered appropriate to re-draw the Green Belt boundary around for new development. However, it was included within the parcels highlighted as potentially appropriate to remove from the Green Belt for other reasons, should the Council consider it warranted. Nevertheless, there is nothing before me to show that the Green Belt boundary has been redrawn to exclude Parcel 30 nor whether the recommendations within the review are being carried forward into policy. Therefore, I do not find this provides evidence that the appeal site will be removed from the Green Belt imminently and so only attribute very limited weight to this.
29. I am mindful of the appellants' personal circumstances and accordingly also attach limited weight to the personal benefit the proposed dwelling could provide in terms of accommodation suitability.
30. The Council has identified a lack of harm in relation to the living conditions of nearby and future residents, drainage, flood risk, accommodation standards, parking, and high safety. By definition, a lack of harm is a neutral factor and so cannot weigh for or against the proposal. This would also be the case in relation to the lack of harm identified in the main issues relating to character and appearance, and protected species and habitats, notwithstanding reptiles.
31. The appellants consider that the Council did not act positively and proactively when dealing with the application. This is an administrative matter and would not impact the planning merits of this case.
32. I have also considered the Council's inclusion of DMP Policy DM3 as erroneous because it relates to facilities for outdoor sport and outdoor recreation, and not new residential development. As such it has not been determinative in my decision.

Conclusion

33. Very special circumstances need to clearly outweigh the substantial weight given to any harm to the Green Belt, and any other harm resulting from the proposal. I do not find, therefore, that the totality of harm to the Green Belt, by reason of inappropriateness and harm to openness, and the harm identified relating to reptiles is clearly outweighed by the other considerations set out above. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would not therefore comply with the Framework and would conflict with CSP Policies CS6 and CS7, and DMP Policies DM3 and DM13.
34. Returning to the SPA, clause 63(1) of the Conservation of Habitats and Species Regulations 2017 states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. An appropriate assessment is not, therefore, necessary where there is no intention to grant permission. As I am dismissing the appeal for other reasons, I am not required to pursue this matter further.
35. Regarding the personal circumstances of the appellants, in making this decision I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nevertheless, it does not follow from the PSED that the appeal should succeed.
36. Consequently, for the reasons set out above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR