



Appeal Decision

Site visit made on 19 October 2023

by Jonathan Manning BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Appeal Ref: APP/C1760/W/22/3313146

Land Adjacent Woodpeckers, Cupernham Lane, Romsey, Hampshire, S051 8NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Stratland Estates Limited against the decision of Test Valley Borough Council.
- The application Ref 22/02109/VARS, dated 17 August 2022, was refused by notice dated 11 November 2022.
- The application sought planning permission for erection of 9 dwellings, with access, landscaping, and associated works, without complying with a condition attached to planning permission Ref 20/01045/FULLS, dated 18 June 2021.
- The condition in dispute is No 17 which states that the development shall not be carried out except in complete accordance with the details shown on the submitted plans.
- The reason given for the condition is for the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for variation of condition 17 of 20/01045/FULLS (Erection of 9 dwellings, with access, landscaping, and associated works) to allow for changes to the approved plans for plots 5 and 6 at Land Adjacent Woodpeckers, Romsey, S051 8NA in accordance with the terms of the application, Ref 22/02109/VARS, dated 17 August 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. The additions to plots 5 and 6 sought in the form of rear dormer windows and single storey rear extensions have already been constructed. I observed on my site visit that one dwelling is occupied and the other is ready to be occupied. The Council's reasons for refusal relate solely to the dormer windows and not the single storey rear extensions, which it considers to be acceptable.
3. The Council identified that the submitted plans do not match the dwellings on plots 5 and 6 as they have been constructed. To seek to rectify this the Appellant provided revised plans as part of this appeal. I consider the difference between the two, including the window positioning and size, to be minor and under the Wheatcroft principles their acceptance would not prejudice any party. The Council did not object to their acceptance. I have therefore determined the appeal in accordance with the following revised plans: Proposed Elevation Plots 5 and 6 (Ref: 2001_3021 Rev D), Proposed Site Plan (Ref: 2001_1002 Rev D) and Proposed Second Floor Plots 5 and 6 (Ref: 2001_2022 Rev B).

4. The Appellant has set out that as a fall-back position the dormer windows could be constructed under permitted development rights in any event. The Council is of the view that permitted development rights can only be exercised once the development has been completed in accordance with the approved plans, which is not the case here. The Appellant accepts that it sought to exercise such permitted development rights too early before benefiting from them, to achieve a more efficient construction of the dwellings. I appreciate the concerns of local residents in terms of the importance of following correct planning procedures. However, I must also consider the appeal on its specific merits and I have determined the appeal on this basis.
5. As a matter of fact and degree the two plots do not benefit from permitted development rights as they have not been constructed in accordance with the approved plans. The Appellant has set out that should the appeal be dismissed it would alter the dwellings to that originally permitted, so they would then benefit from permitted development rights and the dormer windows could then be reintroduced. Whilst I have some reservations about whether the Appellant would remove all of the additions to accord with the permitted plans only to then immediately reintroduce them once permitted development rights were gained, it is nonetheless a possibility as asserted by the Appellant. I am also mindful that even if the Appellant reverted the dwellings back to being in accordance with the approved plans, at any time in the future, the occupants would have the freedom under permitted development rights to introduce dormer windows such as those constructed or even substantially bigger, as has been shown to be possible by the Appellant in its appeal statement.
6. I acknowledge the frustrations expressed by local residents that permitted development rights were not removed when the Council allowed the original application. However, were the appeal to be dismissed there is no mechanism for retrospectively removing such rights.
7. Given all of this, I consider that there is a fall-back position that could realistically result in dormer windows being constructed under permitted development rights on the rear roof slopes of plots 5 and 6.

Main Issues

8. The main issues of the appeal are the effect of the proposal on: the living conditions of the occupants of Nos 24, 26, 28 and 30 Treviglio Close; and the character and appearance of the area.

Reasons

Living conditions

9. The constructed dormer windows on plots 5 and 6 face towards properties within Treviglio Close and are located in the region of 29 metres from the rear elevations of these properties. It was also evident that the appeal site sits on slightly higher ground.
10. During the site visit, I was provided access to the dwelling located on plot 6 of the appeal site and was able to stand in the constructed dormer window. Further, I was able to view the proposal from Nos 28 and 30 Treviglio Close. Whilst I did not visit Nos 24 or 26 Treviglio Close, I was able to observe that their relationship with plot 5 is very similar to that of plot 6 and Nos 28 and 30.

11. When looking out of the first-floor rear bedroom windows of the dwelling located on plot 6, clear views were available of the ground floor rear windows of properties in Treviglio Close and in the case of No 28 its conservatory. However and similarly, when plot 6 is viewed from the first-floor rear windows of No 28, I was also able to gain views into the single storey rear extension and its rear ground floor windows. It was therefore evident from both locations that there is a clear sense of mutual overlooking.
12. Whilst views are more elevated from the second-floor dormer windows, I am not of the view that this creates any significant material increase in actual overlooking to Treviglio Close from that which occurs from the first-floor rear windows of the dwellings on plots 5 and 6.
13. Further, I am also mindful that a separation distance of some 29 metres (27 to the rear conservatory of No 28) is well over the general rule of thumb of 20 metres in such residential areas referred to by both the Council and the Appellant. Whilst in this case, views are possible from second-floor level and the appeal site is located on higher ground, I consider the extra 9 metres (or 7 metres to the conservatory of No 28) is a reasonable extra distance to offset these variants.
14. I have reached these findings based on the screening currently provided within the ecological planting strip of land, which is currently minor. Whilst it is unclear from the appeal documents the extent to which further planting in the strip of land might occur, should this happen, it would further improve the situation. I am also mindful that the properties on the appeal site and those in Treviglio Close have only fairly recently been built and once any existing planting or future planting within their residential curtilages matures this would also help to filter views between the properties.
15. Notwithstanding that I have found the level of overlooking to be acceptable in its own right, I have also found, as discussed above, that a legitimate fall-back position exists that could feasibly result in the same amount or an even worse level of overlooking to properties in Treviglio Close, should larger dormers with bigger openings be built under permitted development rights.
16. The occupants of a neighbouring property known as Woodpeckers have also raised concerns about overlooking and a loss of privacy. Whilst some views would be possible from the dwelling located on plot 5 these would be oblique and not in my view unacceptable. Further, matters associated with the fall-back position are equally relevant here too.
17. On a related matter, concern has been raised that the proposal would overlook the communal landscaped amenity space between Nos 28 and 30 Treviglio Close. However, this area is readily visible from properties within Treviglio Close. Further, natural surveillance of communal amenity space can offer an increased sense of safety for its users. I do not therefore share such concerns.
18. Given all of the above, the proposal does not result in unacceptable overlooking to neighbouring properties in Treviglio Close and therefore complies with Policy LHW4 of the Test Valley Borough Revised Local Plan, 2016 (the LP).

Character and appearance

19. The Council's second reason for refusal relates to concerns that the dormer windows are not in keeping with the character and appearance of the host dwellings or the area.
20. I observed that dormer windows of this scale are not common features in the immediate area, including the new housing developments along Cupernham Lane. Further, I consider that the size and design of the dormer windows dominate the roofscape and detract from the character and appearance of both of the dwellings and the area.
21. The dormer windows are not largely evident from the front of the properties and along Cupernham Lane. However, they are evident from Treviglio Close both from the existing dwellings and the public realm where the appeal site can be seen through gaps in the dwellings and from the communal landscaped amenity space between Nos 28 and 30 Treviglio Close.
22. Whilst in its own right, I find that the proposal conflicts with Policy E1 of the LP, a fall-back position exists that could result in dormer windows of the same scale being constructed. Further, there is also potential under permitted development rights that larger more harmful dormer windows could be constructed.

Other Matters

23. There is concern that the Appellant has not complied with the original plans for tree management and planting program to provide adequate screening. I understand that such measures are secured in a Section 106 Agreement associated with the original planning permission. The delivery and enforcement of such measures is a matter for the Council and not one for this appeal. On a related matter, I acknowledge the concerns raised about the loss of the protected tree within the ecological planting strip. However, this loss is also not a matter for me to consider as part of this appeal. In addition, the effect on house values is not a planning matter.

Conclusion and Planning Conditions

24. I have found that the proposal would not result in unacceptable overlooking. However, I have found conflict with the development plan due to the harm caused to the character and appearance of the host dwellings and the area. However, the fall-back position is a material consideration that outweighs this conflict. On this basis, the appeal succeeds.
25. Given the appeal is allowed, it is necessary to consider what planning conditions should be applied. Other than the condition the subject of this appeal, the parties agree that all of the previously applied conditions controlling ongoing use of the appeal site, remain relevant and necessary. I agree with this view and consider each still meets the tests set out in the National Planning Policy Framework, 2023 (NPPF).
26. A further condition (20) is required to ensure the bathroom windows in the dormers have obscure glazing and are permanently retained as such. It has been requested by a local resident that should the appeal succeed that all of the dormer windows are frosted glass. However, for the reasons discussed above, I am not of the view that this is necessary.

27. The Council has sought to revoke all permitted development rights throughout the development. However, it has provided no evidence to demonstrate why this is necessary and, on this basis, I consider such a blanket approach would not meet the tests set out in the NPPF.
28. The Council has also sought to restrict any further windows or dormer windows being created through permitted development rights on the west/southwest elevation of the plots 5 and 6. I consider that the addition or enlargement of the windows or dormer windows at second floor level could result in increased overlooking to neighbouring residents. I therefore consider the restriction of permitted development rights to be justified for plots 5 and 6, in the interests of the living conditions of neighbouring residents. I have amended the Council's suggested condition (21) to make this clear.

Jonathan Manning

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun within three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in complete accordance with the details shown on the following submitted plans:
 - 2001_0001
 - 2001_0002
 - 2001_1001
 - 2001_1002 Rev D
 - 2001_2001
 - 2001_2002 Rev A
 - 2001_2003
 - 2001_2011
 - 2001_2012 Rev A
 - 2001_2013
 - 2001_2022 Rev B
 - 2001_3001
 - 2001_3002
 - 2001_3011
 - 2001_3012
 - 2001_3021 Rev D
 - 2001_3022
 - 2001_3031
 - 2001_3032
 - 2001_6000
 - 1718-PP-300 REV C
- 3) Development shall be undertaken in accordance with the approved Land West of Cupernham Lane, Romsey External surfaces & Materials.
- 4) The development hereby approved shall be undertaken in full accordance with the approved plans ref 2001_EX_203_A and 2001_PR_203_A of the existing and proposed ground levels of the development and the boundaries of the site and the height of the ground floor slab and damp-proof course in relation thereto.
- 5) The development hereby approved shall be undertaken in full accordance with the provisions set out within the Arboricultural assessment & method statement (barrell, 15th May 2020 ref 18168-AA-PB-3) and Tree Protection Plan ref 18168-BT4.
- 6) Tree protective measures installed (in accordance with the tree protection condition) shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities, nor material storage, nor placement of site huts or other equipment what-so-ever shall take place within the barrier.
- 7) All service routes, drain runs, soakaways or excavations in connection with the development hereby permitted shall remain wholly outside the tree protective barrier.

- 8) Landscape implementation, management and maintenance for a minimum period of 5 years shall be undertaken in accordance with the specifications on the approved Landscape Plan ref 1718-PP-300 Rev C. Any plants which die within the first 5 years shall be replaced. Implementation, management and maintenance of on-site landscaped and biodiversity enhancement areas outside of residential garden areas shall be undertaken for a minimum period of 10 years in accordance with details secured in the associated s106 legal agreement.
- 9) The development shall not be occupied until space has been laid out and provided for the parking and manoeuvring of vehicles to enable them to enter and leave the site in a forward gear in accordance with the approved plan and this space shall thereafter be reserved for such purposes at all times.
- 10) Any gates shall be set back at least 4.5 metres from the edge of the carriageway of the adjoining highway.
- 11) Development shall be undertaken in accordance with the approved plans ref 2001_SS_101_A and 2001_PR_010_D in relation to the layout for the parking and manoeuvring onsite of contractor's and delivery vehicles during the construction period. The approved scheme shall be retained for the duration of the construction period.
- 12) There shall be no construction or demolition works, no machinery shall be operated, no processes carried out and no deliveries received or dispatched outside the following times: 07:30 to 18:00 hours Monday to Friday and 08:00 to 13:00 hours on Saturday. In addition, no such activities shall take place on Sundays, Bank or Public holidays.
- 13) The development hereby approved shall be designed and built to meet Regulation 36 2 (b) requirement of 110 litres/person/day water efficiency set out in part G2 of Building Regulations 2015.
- 14) The drainage system shall be constructed in accordance with the Drainage Strategy and Flood Risk Statement Ref 20030 (Aqua Callidus, 28/4/2020) and Infiltration SuDS GeoReport Ref BGS_308084/10845 (British Geological Survey, 26 March 2020). Any changes to the approved documentation must be submitted to and approved in writing by Local Planning Authority and Lead Local Flood Authority. Any revised details submitted for approval must include a technical summary highlighting any changes, updated detailed drainage drawings and detailed drainage calculations. The long-term maintenance arrangements for the surface water drainage system shall be undertaken in accordance with the approved SuDS Maintenance and Management Plan (Cowan Consultancy) Reference EG/435067/DJB, 20 March 2023.
- 15) Development shall proceed in accordance with the ecological mitigation, compensation and enhancement measures detailed within the Ecological Impact Assessment Final Document (Rev. 1) October 2020 (ECOSA), the Biodiversity Metric Assessment Final Document (Rev. 3) (ECOSA) and Knotweed Management Plan ref JKLE16932 (Japanese Knotweed Ltd, March 2020) unless otherwise agreed in writing by the Local Planning Authority. Ecological mitigation, compensation and enhancement features shall be

created/installed as per ecologists instructions and retained in perpetuity in a condition suited for their intended purpose.

- 16) The development shall not be brought into use until vehicular visibility splays of 2.4m x 43m as indicated on the approved plans in which there should be no obstruction to visibility exceeding 0.6m in height above the adjacent carriageway channel line have been completed. Such visibility splays shall thereafter be retained for the lifetime of the development.
- 17) Development shall be undertaken in accordance with the approved Construction Environment Management Plan Ref LWOCL.
- 18) Development shall be undertaken in accordance with the approved Updated Ground Conditions Assessment Report ref J21-006-R02 (GCC, version 4.0 23.07.2021). The development hereby permitted shall not be occupied or brought into use until there has been submitted to the local planning authority verification by a competent person approved under the provisions of condition (I)c that any remediation scheme required and approved under the provisions of condition (I)c has been implemented fully in accordance with the approved details (unless with the written agreement of the local planning authority in advance of implementation). Unless agreed in writing by the local planning authority such verification shall comprise:
 - a) as built drawings of the implemented scheme;
 - b) photographs of the remediation works in progress;
 - c) certificates demonstrating that imported and/or material left in situ is free from contamination;
 - d) thereafter the scheme shall be monitored and maintained in accordance with the approved scheme.
- 19) Development shall be undertaken in accordance with the approved Invasive Plant Species Remediation Method Statement Ref TP/21/7775 (Zirkon Limited, 18 August 2021).
- 20) The second-floor bathroom window in the west/southwest rear elevation of plots 5 and 6 of the development hereby permitted, shall be fitted with obscured glazing and thereafter retained as such.
- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no new windows/dormer windows in the west/southwest rear elevation of plots 5 and 6 of the development hereby permitted (other than those expressly authorised by this permission) shall be constructed.