



Appeal Decision

Site visit made on 22 November 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19.12.2023

Appeal Ref: APP/X0415/W/23/3321381

**Waggon and Horses Public House, Copthall Lane, Chalfont St Peter
SL9 9QU**

- 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 Ekrem Mahmutaj on behalf of Sheriff Construction Ltd against the decision of Buckinghamshire Council.
 - The application Ref PL/21/1024/FA, dated 12 March 2021, was refused by notice dated 15 February 2023.
 - The development proposed is residential development - 6 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant was not present when I arrived at the appeal site for my visit during the pre-arranged period. Nonetheless, I was able to see all I needed to from public land and subsequently the site visit procedure was altered from an access required site visit to an unaccompanied site visit.

Main Issues

3. The main issues are:
 - The effect of the proposal on biodiversity, with specific regard to bats;
 - Whether the proposal would provide acceptable living conditions for future occupants, with specific regard to outlook and the utility and quality of the proposed garden space; and
 - The effect of the proposal on the character and appearance of the area.

Reasons

Biodiversity

4. The Conservation of Habitats and Species Regulations 2017 imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal. Bats are listed as an EPS under these regulations.
5. The appellant considers the proposal would only affect a small area of shrub to the eastern end of the appeal site, which would be partially cleared, and the trees trimmed rather than removed. The main trees would not be affected, and the appellant's intention would be to retain as much existing foliage and as many trees as possible.

6. Nevertheless, I saw on site that there is relatively dense vegetation along the southern boundary of the appeal site, including some tall trees, which would likely be affected by the proposal. While there are no details of the proposed works to these trees or whether the new sections of retaining wall would breach any root protection areas, the submitted plans¹ confirm that two sycamore trees would be removed.
7. Given the possibility of trees being removed as part of the proposal, the Council's Ecologist advised that a preliminary ground level bat roost assessment would need to be carried out to understand the trees' potential for roosts. I have before me a Preliminary Roost Assessment² (PRA) for the site, prepared in 2019. Notwithstanding the scope or results of the PRA, it is now over four years old and therefore it is highly unlikely that the data is still valid. Furthermore, the PRA focuses on the suitability of the former public house building, which previously existed on the site but has now been demolished. Although it states that trees have been checked (from ground level only), there are no findings in the PRA setting out whether the trees on the site provide a suitable habitat for bats.
8. The appellant considers that any further studies, if needed, could be commissioned and their findings acted upon prior to the commencement of any works affecting the relevant trees. Nevertheless, Circular 06/2005³ advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. It goes on to advise that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not aware of any such circumstances in this case.
9. Given the above, I find that insufficient information has been provided to demonstrate that the proposal would not have an unacceptable adverse effect on bats. The proposal would therefore conflict with Policy CS24 of the Core Strategy for Chiltern District (2011) (Core Strategy) and the similar provisions of the National Planning Policy Framework (the Framework), which seek to conserve and enhance biodiversity. For the same reasons it would also fail to meet the statutory duty I have set out above.
10. The Council's Notice of Decision does not refer to Policy GC4 of the Chiltern District Local Plan (1997) (Local Plan) with regards to the effect of the proposal on biodiversity. However, this policy seeks to ensure that existing established trees in sound condition and of wildlife value are retained, thus, in the absence of evidence to the contrary, the proposal would also conflict with this Policy GC4 of the Local Plan in this regard.

Living conditions

11. The proposal would appear as a short row of terrace houses comprising two 2-bedroom houses and four 1-bedroom flats. The bedrooms in the two first floor 1-bedroom flats would each be served by a single window. The windows would be velux sloping and vertical combination windows with the cill at 1700mm

¹ Proposed Block Plan and Roof Plan, Drawing No: 2020033-PL-010, Rev G June 2022.

² Preliminary Roost Assessment undertaken by Cherryfield Ecology for Sheriff Construction Ltd for the site of the Former Waggon and Horses, 2 Copthall Lane, Chalfont St Peter, SL9 0BU dated 11/09/2019.

³ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, dated 16 August 2005.

above floor level. Although the windows would be fairly narrow, they would be a moderate size. As the windows would be at a high level, views taken from them for most people would be of the sky, as well as trees and vegetation along the southern boundary of the appeal site. However, the submitted plans⁴ state that the windows to the first and second floors on the rear elevation would be frosted glass, which would prevent any views from being taken. This would limit any connection between future occupants and their surroundings and would likely make the bedroom spaces feel very enclosed. While there would be a pleasant outlook from the living space at the front of these units, this would not be sufficient to compensate for the lack of outlook from the bedroom, particularly given that the units would be positioned in the middle of the terrace with no side windows. Overall, the proposal would not provide an acceptable level of outlook.

12. I note that the Council in its Officer Report refers to the velux sloping part of these proposed windows as being clear glazed. This is not apparent on the submitted plans and, even if this part of the windows was clear glazed, it would be very modest in size and the outlook would be limited to views of the sky. Thus, it would be immaterial.
13. The appellant is willing to reduce the height of the cill while providing obscure glazing in the form of a contemporary stained-glass design. However, this would not increase the outlook from the windows and thus would not address the harm I have identified.
14. All six of the proposed residential units would have access to a communal rear garden and the plans show one of the 2-bedroom houses would be served by a balcony. The Council refer to a previous appeal⁵ at the appeal site for the demolition of the redundant public house and the construction of seven apartments, which was refused by the Council and subsequently dismissed at appeal. In that case, the Inspector considered the proposed communal garden space, among other things, would feel squeezed between the building and boundary of the site and would have limited usability and attractiveness. Thus, it would not provide a satisfactory standard of external amenity space.
15. While I do not have the full details of the dismissed scheme before me, I have a plan which shows that the building comprising the seven flats would have been located in a similar position on the appeal site to the row of houses in the appeal proposal before me. As a result, the size and shape of the communal garden would also be similar.
16. I appreciate that the appeal proposal before me comprises one unit less than the previously dismissed scheme and that one of the flats would also benefit from a balcony. Also, all six residential units would have access from the front of the row of houses, meaning the garden space would not double as a pedestrian access. Nevertheless, the proposed space would be narrow, like that of the dismissed scheme, and an unusual shape with pinch points created by the stepped access to the rear of the flats. While it would likely receive some sunlight given its south facing position, the tall and dense vegetation and trees along the southern boundary would overshadow the space to a degree and would be imposing, making the space feel tight, enclosed, and likely oppressive. Therefore, from the evidence before me and my observations on

⁴ Proposed Block Elevations, Drawing No: 2020033-PL-012, Rev G June 2022

⁵ Appeal reference: APP/X0415/W/3245570

site, I am of the same view as the Inspector of the previous appeal that the proposed communal garden space would have limited usability and attractiveness. Thus, the appeal proposal would not provide an acceptable standard of external amenity space.

17. For the reasons above, the proposal would not provide acceptable living conditions for future occupants, with specific regard to outlook and the utility and quality of the proposed garden space. It would therefore conflict with Policies GC3 and H12 of the Local Plan, which seek to ensure development achieves good standards of amenity for future occupiers, by among other things, providing a private garden area adequate for and appropriate to the size, design and amount of living accommodation proposed.

Character and Appearance

18. The second reason for refusal set out in the Council's Notice of Decision, while referring to the living conditions of future occupants considered above, also sets out that the proposed development would be of a design, scale and layout that is out of keeping with the character of the area. However, the Council's approach regarding the effect of the proposal on the character and appearance of the area seems confused, as its Officer Report does not raise any specific concerns regarding the scale and form of the development. To the contrary it states the form and scale of the proposal would be acceptable as it would reflect residential development more generally in the area and the smaller plot sizes referred to in the Chalfont St Peter Neighbourhood Plan (2013-2028).
19. The reason for refusal suggests the concerns regarding the character of the proposal are related, at least in part, to the narrow external amenity space. Nonetheless, the Officer Report does not provide any specific assessment or reasoning regarding this. I note that the Council are concerned about the removal of part of the existing bank, which would result in the removal of existing vegetation and specifically the two sycamore trees mentioned above. However, the Officer Report does not set out why the Council are concerned nor whether there would be any harm to the character and appearance of the area as a result. The two sycamore trees form part of the group of trees and vegetation along the southern boundary of the site. Therefore, although their loss would likely be noticeable, it would be less noticeable than if the trees stood alone and would not result in any appreciable harm to the open character of the immediate area or its green and verdant setting.
20. The Officer Report does recognise that there would be less space around the proposed building compared to that which existed in relation to the former public house. However, it goes on to identify opportunities for new landscaping and considers this could be secured by condition in the event that planning permission was forthcoming. It also considers that concerns raised by the Council's Urban Design Consultant regarding the detailed design of the proposal, such as rainwater goods and the demarcation at the front of the site, could be addressed by conditions. From the evidence before me and my observations on site, I am of the same view.
21. Notwithstanding the above, the Council's Urban Design Consultant also raises concerns regarding the window alignment on the front elevation of the proposed houses, and I agree that the proposed arrangement of the windows, with the ground floor and first floor windows not fully aligned, would appear disjointed and unattractive. The positioning of windows is fundamental to the

overall design and internal layout of the proposal and therefore these concerns could not be addressed by a condition in a similar manner to the other detailed design concerns.

22. Furthermore, the immediate area surrounding the appeal site is very open due to the junction of the A413, Gravel Hill, Rickmansworth Lane and Copthall Lane, which includes an open green space opposite the site. Together with the rise in the land along Copthall Lane away from Gravel Hill, this makes the appeal site prominent in the street scene. Thus, the inconsistent and arbitrary arrangement of the windows would result in some harm to the character and appearance of the area.
23. Accordingly, the proposal would conflict with Policies GC1 and H3 of the Local Plan and Policy CS20 of the Core Strategy. These seek to ensure that development is designed to a high standard by, among other things, reflecting and respecting the character of the surrounding area.
24. Notwithstanding the conflict with Policy GC4 of the Local Plan identified above, there is no substantive evidence before me that the proposal would conflict with this policy in terms of character and appearance, provided a condition requiring full details of the associated landscaping is imposed on any approval.

Other Matters

25. The Council cannot demonstrate a five-year supply of deliverable housing sites. Therefore, paragraph 11d) of the Framework falls to be considered. In this case, this means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. Neither party have clarified the extent of the shortfall so, for the purposes of paragraph 11d) ii, I have assumed an acute shortfall in supply.
26. The Framework seeks to create high quality, beautiful and sustainable buildings and places by, among other things, ensuring developments are visually attractive and sympathetic to local character, and by creating places with a high standard of amenity for future users. This is considered fundamental to what the planning and development process should achieve, and paragraph 134 of the Framework advises that development that is not well designed should be refused. Therefore, in the context of this appeal, the harm I have identified to the living conditions of future occupants and the character and appearance of the area affords significant weight.
27. Another important aim of the Framework is to protect and enhance biodiversity, including the protection and recovery of priority species. I also have a duty to consider the effect of the proposal on bats and must take a precautionary approach. Therefore, in the absence of evidence to the contrary, the harm to European protected species also affords significant weight.
28. In terms of benefits, the provision of six residential units in an accessible location weighs in favour of the proposal. While this may be a modest contribution towards the Council's housing supply and the Government's objective of significantly boosting the supply of new homes, it attracts moderate and meaningful weight as a benefit of the proposal. The proposal would also have modest social and economic benefits resulting from its construction and subsequent occupation.

29. Accordingly, when assessed against the policies in the Framework, taken as a whole, the significant adverse impacts of the proposal would significantly and demonstrably outweigh the moderate benefits.

Conclusion

30. For the reasons above, the proposal would conflict with the development plan, read as a whole. Having had regard to all relevant material considerations, including the Framework, it has not been demonstrated that there are any of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR