



Appeal Decision

Site visit made on 23 April 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/A1910/W/23/3321623

Land Adjacent Lockers Cottage, Bury Hill, Hemel Hempstead, Hertfordshire HP1 1SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Lane against the decision of Dacorum Borough Council.
 - The application Ref is 22/01107/FUL.
 - The development proposed is the construction of new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted¹ in 2018 for the erection of a pair of semi-detached dwellings on the site. The building had a similar form and footprint as proposed for the scheme of this appeal. The approved scheme was not implemented and it appears that this planning permission has since expired. As a result, there is no fall-back position that would allow me to ascribe weight to the previously approved scheme. Nonetheless, the Council has not drawn my attention to any fundamental change to its heritage policies since this scheme was approved. Also, no reason has been advanced in evidence to demonstrate that a similar scheme would not be approved by the Council in present times. I therefore attribute some, albeit modest, weight to the planning history of the site.
3. Amended plans² have been submitted in support of the appeal. These have altered the number and size of windows, placed fewer windows on the rear and front elevations, removed the proposed double garage, and removed the porch. These alterations would create a form and design that would be similar to the approved scheme in 2018. These are offered as an alternative set of plans should they be deemed necessary by the Inspector to address any concerns. These were first submitted to the Council during its consideration of the planning application, but were later withdrawn, as the Appellant requested the original version be determined instead.
4. The planning appeal process is not the place to evolve a scheme. Nonetheless, under the *Holborn Studios Ltd*³ principles, I have considered whether the

¹ Planning Application Reference: 4/00535/17/FUL

² Revised Plans Reference: 400505-01(J), 400505-02(D) and 400505-04(B)

³ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

development is so changed that to grant approval would deprive those who should have been consulted the opportunity of such consultation.

5. The proposed revisions would not alter the substance of the proposal and relate to minor changes. Furthermore, the amended proposal would reduce the effect of development on surrounding neighbouring plots and the setting of the listed building, partly due to these alterations proposing reduced built form, through the deletion of the double garage, and reduced of window size and number. Consequently, my acceptance of the amended plans would not cause procedural unfairness to neighbouring occupiers who would have otherwise required re-consultation. As such, I have taken the revised plans into account in this appeal.

Main Issues

6. The main issues are:

- The effect of the proposed dwelling on the integrity of the Chilterns Beechwoods Special Area for Conservation (SAC),
- The effect of the proposed dwelling on the character and appearance of the area including Lockers Cottage, a grade II listed building, and
- The effect of the proposal on the living conditions of the neighbouring dwellings, especially with respect to privacy.

Reasons

Chilterns Beechwoods SAC

7. The appeal site is within the zone of influence of the Chilterns Beechwoods SAC. The Chilterns Beechwoods SAC is protected due to it being the most extensive area of native beech woodland in England. It is designated for its beech forests, semi-natural dry grasslands and scrubland and habitats of Stag Beetle. Increased pressure from visitors would be likely to affect the habitat value of the site. Therefore, without mitigation the proposal would be likely to affect the integrity of the SAC. I have, therefore, carried out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), as amended, and my findings are recorded below.
8. The Council has explained how the effects of recreational pressure are capable of being mitigated through the Chilterns Beechwoods SAC Mitigation Strategy [2022]. Mitigation is described as consisting of payments towards SAMM (Strategic Access Management and Monitoring) and SANG (Suitable Alternative Natural Greenspace) in accordance with the tariffs of the Strategy. The SAMM payment would partially fund protection of the Chilterns Beechwoods at Ashridge Commons and Woods from the predicted pressures associated with future growth of housing in the district. The SANG payment would contribute towards an existing Council SANG at either Bunkers Park or Chipperfield Common for their ongoing maintenance to divert recreational pressure away from the SAC.
9. These would need to be secured by a s106 Planning Obligation. However, no legal mechanism has been submitted to secure mitigation at the decision-making stage in accordance with the Council's mitigation strategy. A Grampian condition, requiring an agreement be reached before the commencement of

development, has been suggested by the Appellant. However, this would approach would conflict with the mitigation strategy. Also, this would not account for the fact that the Council's SANG sites are being rapidly allocated by approved development and cannot be reserved for prospective schemes that may not proceed. Furthermore, such a condition would not secure the required certainty, to my satisfaction, that suitable mitigation would be capable of being provided to offset the impact on the SAC at the time of making a decision. Accordingly, I am unconvinced that sufficient certainty exists to ensure that the required mitigation would be in place to prevent an adverse impact.

10. Consequently, the proposed development, in combination with other development, would lead to adverse effects on the integrity of the affected European site. Accordingly, as competent authority I cannot agree to the proposal. Therefore, the proposal would conflict with policy CS26 of the Dacorum Core Strategy [2013] (CS), and the National Planning Policy Framework (the Framework). These seek, among other matters, for development to protect the Green Infrastructure Network and to protect designated sites.

Character and appearance

11. The appeal site is within a suburban residential area on a hill side. Bury Hill Close, providing an access to the site, is substantially higher than Warners End Road which is beyond the rear of the site. The local pattern of development includes medium to low density housing, some of which stand within large plots with woodland and individual trees providing a green setting for the site. Also, close to the site there are areas of open space, such as Gabebridge Park, that in combination with large gardens create a verdant and spacious local character. The site was previously part of the adjacent listed building's plot. It has been severed by fencing, defining the appeal site's boundary. The site, as an area of overgrown garden area, is a relatively narrow parcel of land which makes a neutral contribution to the area's character and appearance.
12. The grade II listed Lockers Cottage originates from the C17 is adjacent to the site. This is a two-storey dwelling with steeply sloping roofs, with a timber frame and whitewash brick nogging, a large brick stack and a weatherboard barn addition. The building is set within a spacious plot on a sloping site that includes mature tree planting to its west and to the northern boundary of the appeal site. Its significance includes its age, being a traditional rural dwelling, having an intact nature and as it forms an element of the social and local history of Bury Mills.
13. The Framework describes the setting of a heritage asset as "the surroundings in which a heritage asset is experienced and that elements of a setting may make a positive or negative contribution to the significance of the asset, may affect the ability to appreciate that significance or be neutral". The appeal site is an open area of green space and makes a positive contribution to the sense of spaciousness around the listed building. The site has a strong historical functional link to the listed building being formerly part of its grounds and contributes to its setting. However, it's setting has evolved with the introduction of surrounding built form placing the building within a residential estate. Furthermore, the key gaps in built form around the listed building are to its front and rear. These gaps would be retained and remain free of

development, limiting the overall effect of the proposal on the setting of the listed building being set away from its main elevations.

14. Views of the proposed dwelling, from the gated entrance of the listed building's plot from Bury Hill, would be obscured due to the curve of the driveway, mature landscaping and the building itself. Nonetheless, views of the proposal would be clearly evident from the listed building's driveway. Other views of the two buildings, side-by-side, beyond the grounds of the listed building would be obscured from most viewpoints due to topography and planting. Despite the site's elevated position, it is not particularly prominent.
15. In layout terms, the proposed dwelling would be partly aligned with the largely rectangular footprint of the listed building, presenting a continuation of built form towards 4 Bury Hill Close (No 4). It would be offset from the shared boundary, presenting some separation of built form. Furthermore, the design of the proposal would have a barn-like form. It would include recessed components adding articulation and variety to its front elevation. The proposal would be clad in black stained weatherboarding with clay tiles, materials that would complement the listed building.
16. The proposal would include level changes to create platforms for both the footprint of the dwelling and an area of hard standing above. Although the retaining walls would be relatively tall, these would also enable the proposed dwelling to be embedded into the hillside. This would disguise some of its overall mass, placing its ground floor at a similar level as the listed building. The amended proposed site layout would also include an area of hardstanding at a high level, alongside the access. This would be required for car parking provision and would be an open area with only a small shed placed away from the shared boundary. The areas of hardstanding when combined would have no material effect on views of the listed building.
17. In consideration of its appearance, the proposal would include most glazing to its front elevation, which would look towards the listed building. The refused scheme included an extensive area of glazing and built form. The refused version would have a domestic design that would harmfully encroach onto views of the courtyard space and the setting of the listed building. Whereas the amended scheme has simplified the elevations and reduced the extent of glazing. Also, the scheme also no longer proposes a detached double garage. These revisions would enable the scheme to present a subdued appearance that would respect its relationship with the listed building. The appearance of the amended scheme would reflect the barn-like style of parts of the listed building and would minimise harm to its setting.
18. As a result, the form of the proposed dwelling would complement the setting of the listed building. Accordingly, the amended proposal would preserve the significance of Lockers Cottage. It would therefore comply with CS policies CS12 and CS27 and saved policy 119 of the Dacorum Borough Local Plan [2004] (LP) and the Framework. These include to require development to take into consideration the setting of a listed building and for the setting and distinctiveness of designated heritage assets to be protected.

Living conditions

19. Both the refused and amended schemes include windows that would provide views towards No 4 and Lockers Cottage. There is a dense screen of planting

and a close boarded fence on the appeal site's shared boundary with No 4. Although boundary landscaping would reduce overlooking, much of the existing tree and hedge cover may be removed to allow for construction and to provide reasonable light into these spaces. As such, boundary planting cannot be considered as forming a permanent screen that would maintain privacy.

20. The version of the proposal that was refused by the Council includes a number of first floor windows that would overlook neighbouring properties. Whilst obscure glazing could prevent the rear facing windows from providing views towards No 4, this would leave occupiers of bedroom 2 with a poor-quality outlook. Overlooking from bedroom 4 and the tall living room windows, towards the courtyard of Lockers Cottage, would erode the current privacy of neighbouring occupiers but the effect of this combined harm would be modest, as it would largely only provide views of the driveway and parking area. As such, this version of the proposal would overlook occupiers of No 4 or would result in poor living conditions for future occupiers if obscure glazing was installed.
21. The amended version of the proposal reduces the number of windows. These include only three windows on its north elevation, looking towards No 4. These would serve a landing at first floor and a kitchen and bathroom at ground floor. The first-floor landing window would provide views from an elevated height into the rear garden of No 4. The kitchen and bathroom window would be at a lower level and less likely to result in overlooking due to the fence and separation distance. Nonetheless, as the windows serve non-habitable spaces, the limited overlooking identified could be addressed through the imposition of a condition to require these to be obscurely glazed.
22. The front elevation of the amended proposal would include ground and first floor windows that would look towards Lockers Cottage. These would serve a bedroom at first-floor, a two-storey glazed section serving the living room, and a hallway at ground floor. The living room windows would be alongside the gable end of Lockers Cottage, causing no overlooking into the dwelling and only oblique and limited views towards the rear garden and courtyard at ground floor level. The bedroom window would also only overlook the car parking area of the neighbour. Due to the change in levels and separation distance the amended proposal would not result in substantive overlooking.
23. Accordingly, the amended proposal would not demonstrably harm the living conditions of the occupiers of adjacent neighbouring occupiers through a loss of privacy. Consequently, the amended proposal would comply with CS policy CS12 and the Framework. This seeks, *inter alia*, for development to avoid a loss of privacy and create a high standard of amenity for existing users.

Other Matters

24. The Council asserts that the proposed dwelling would be larger than the approved scheme. This has been refuted by the Appellants. Nonetheless, even if the Council's measurements are correct, the overall scale of the amended proposed dwelling is similar in general terms to the previously approved schemes. In any event, and consistent with previous decisions taken by the Council, I have found that the proposal would preserve the setting of the listed building. This finding has taken into consideration its height, width and depth which would retain modest proportions.

25. The Council's Statement of Case raises new concerns, that were not within its reason for refusal, with respect to loss of light and overshadowing of the rear garden of No 4. The neighbouring plot is to the north of the appeal site. As such, direct sunlight into the rear garden of No 4 would be unlikely to be affected by the scheme. Furthermore, whilst filtered daylight may break through gaps in the adjacent tree cover, the extent of daylight reduced by the proposal would be minimal. As a result, the effect on adjacent neighbours, with respect to sunlight and daylight, would be negligible causing no material harm to their living conditions.

Planning balance and conclusion

26. The Council is unable to demonstrate a five-year supply of housing and in such circumstances the 'tilted balance' applies, as described by paragraph 11 of the Framework. The Framework seeks to boost the supply of housing and highlights the important contribution small sites can make. The proposal would deliver a family house, making only a limited contribution to the housing needs of the district. However, this could be delivered relatively quickly, making a rapid positive contribution to the local supply of housing in the area.
27. The site is within an area with good access to public transport and goods and services. There would be some economic benefits during the construction phase when the development would provide jobs and opportunities for local companies. Also, once occupied future residents would be likely to support services in the surrounding area, providing social and economic benefits. The proposal would preserve the significance of the adjacent listed building and would not harm neighbouring living conditions. However, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
28. Weighed against these benefits is the fact that the appeal scheme would not comply with the Council's policy which seeks to protect Special Areas of Conservation. The proposal would therefore fail to provide certainty that the proposal, either alone or in combination with other sites, would not be likely to have a significant effect on this habitat site. The effect on this asset of particular importance provides a clear reason to refuse the scheme. Paragraph 11(d) of the Framework states that when the tilted balance is engaged planning permission should be granted unless the proposal is subject to footnote 7. The Framework explains that when a proposal would harm a habitat site, the presumption in favour of sustainable development does not apply.
29. For the reasons given above, the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed, and planning permission is refused.

Ben Plenty

INSPECTOR