



Appeal Decision

Site visit made on 30 April 2024

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/A1910/W/23/3331979

35 High Ridge Road, Hemel Hempstead, Hertfordshire HP3 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Scott Gungadoo against Dacorum Borough Council.
 - The application Ref is 23/00877/FUL.
 - The development proposed is described as demolition of current three bedroom bungalow and replace with two 2 bedroom two storey dwellings.
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Decision

1. The appeal is dismissed and planning permission for demolition of current three bedroom bungalow and replace with two 2 bedroom two storey dwellings is refused.

Background and Main Issues

2. Within the Council's statement of case it is indicated that the application would have been refused had an appeal not been lodged, and putative reasons for refusal have been given. 2 of the main issues in this appeal have been taken from these reasons.
3. The site is located within the zone of influence of the Chilterns Beechwoods Special Area of Conservation (SAC) - a European-designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 - as amended (the Habitat Regulations). Although not forming part of one of the Council's putative reasons for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC.
4. Therefore, the main issues are the effect of the development on;
 - the Chilterns Beechwoods SAC;
 - the living conditions of the occupiers of number 37 High Ridge Road, with particular regard to sunlight, daylight and outlook, and the living conditions of the occupiers of number 3 High Ridge Close, with particular regard to privacy and outlook; and
 - the character and appearance of the area.

Reasons

Habitat sites

5. The appeal site is within the 12.6km zone of influence of the Ashridge Commons and Woods Site of Special Scientific Interest which forms part of the

habitat site known as the Chilterns Beechwood SAC. The qualifying features of the SAC are the semi-natural dry grasslands and scrubland facies on calcareous substrates, the beech forests, and stag beetles, contained within it. Having regard to research carried out by Footprint Ecology in 2021, Natural England recognises that new housing development within 12.6km of the SAC can be expected to result in increased recreational pressure on it.

6. Given that an additional dwelling is proposed on the appeal site, there is a credible impact pathway between the proposed development and the qualifying features of the SAC. Therefore, and given that a precautionary approach must be adopted in respect of habitat sites, without mitigation, and in combination with other plans or projects, a likely significant effect on the SAC would arise from the development.
7. In these circumstances, the Habitat Regulations require that an Appropriate Assessment be carried out to establish the likely significant effects of the proposal on the integrity of the habitat site. I have sought further evidence on this matter. Although Natural England has also been consulted as part of the appeal, it has indicated that it has no further comments to make beyond those within its application consultation response.
8. The evidence indicates that a threat to the conservation status of the qualifying features of the SAC arises from increased recreational pressure associated with new residential development within the zone of influence. Such recreational pressures include; further trampling and vegetation wear; soil compaction and erosion; contamination including nutrient enrichment (e.g. dog fouling); litter and invasive species; and, increased risk of fire.
9. The Council has produced a mitigation strategy¹ regarding the SAC. In locations such as the appeal site which are outside of a 500m avoidance zone and within the 12.6km zone of influence, this strategy confirms that Natural England has agreed that the effects of qualifying development - which include additional dwellinghouses, on the SAC can be sufficiently mitigated (or avoided) through measures set out elsewhere within the strategy. The identified mitigation requires financial contributions to be made towards the delivery of the Strategic Access Management and Monitoring Strategy (SAMMS) and Suitable Alternative Natural Green Space (SANG).
10. From the evidence, I have no reason to doubt that appropriate mitigation may be possible. However, notwithstanding that the appellant has indicated their agreement to the specified SAMMS and SANG contributions, no Unilateral Undertaking or Section 106 agreement to this effect has been provided. Although the appellant has suggested that a condition could be imposed to secure such contributions, no suggested wording for such a condition has been put before me. Furthermore, the Government's Planning Practice Guidance (PPG) is clear that a positively worded condition cannot be imposed requiring the payment of money. The PPG also advises that negatively worded conditions limiting the development that can take place until a planning obligation or other agreement has been entered into are unlikely to be appropriate in the majority of cases, and that such conditions should only be used in exceptional circumstances. In this case, no exceptional circumstances have been

¹ Chilterns Beechwoods Special Area of Conservation Mitigation Strategy for Ashridge Commons and Woods Site of Special Scientific Interest - To support the Habitats Regulations Assessment for Dacorum Borough Council; Buckinghamshire Council; Central Bedfordshire Council; St. Albans City and District Council

demonstrated. As such, I have no reason to depart from the approach set out within the mitigation strategy, which requires that contributions be provided via a planning obligation.

11. Even if I were to conclude that the identified contributions would, in principle, mitigate any adverse effects of the development on the SAC, in the absence of a suitable mechanism to secure these contributions, I cannot be certain that this mitigation would be provided. That being the case, adverse effects on the integrity of the SAC cannot be ruled out. Moreover, no alternative solutions have been identified that would have a lesser effect or avoid an adverse effect entirely.
12. For the reasons above, there is insufficient evidence to provide the certainty needed to rule out adverse effects on the integrity of the SAC. Consequently, the proposal would conflict with policy 32 of the Dacorum Borough Council Core Strategy 2006-2031² (the Core Strategy) which, amongst other things seeks to maintain air and soil quality standards. It would also conflict with both Chapter 15 of the National Planning Policy Framework - which seeks to conserve and enhance the natural environment, and, the Habitats Regulations. Moreover, the Habitats Regulations confirm that I cannot permit a proposal where significant adverse effects might occur. Therefore, this consideration is decisive, and the appeal should be dismissed.

Living conditions

13. The appeal site occupies a corner plot adjacent to the junction between High Ridge Road and High Ridge Close. It is within a built-up area, and there are nearby neighbouring dwellings at number 27 High Ridge Road (number 37) and number 3 High Ridge Close (number 3).
14. The evidence suggests that the ground floor study within number 37 has a single window within the side elevation. Although dwelling 2 would not project as far back within the site as the existing bungalow, the eaves height of dwelling 2 would be significantly higher than the existing bungalow. Moreover, the separation distance between number 37 and proposed dwelling 2 would also be slightly smaller than that which is between it and the existing bungalow. Therefore, and notwithstanding that a rear section of the first-floor accommodation would be set back a little from the shared boundary, the tall and closely located side walls of dwelling 2 would be a dominant and oppressive feature through the window of the study at number 37.
15. Dwelling 2 would be both close to and significantly taller than the study window at number 37. As such, I do not doubt that the proposed development would obstruct a significant amount of daylight from entering the study window. Furthermore, even if the study has a secondary indirect light source, I have not been provided with compelling evidence to conclude that, following the implementation of the development, the amount of daylight available within the room, would enable users of it to secure adequate living conditions. Therefore, and on the evidence before me, I am unable to conclude that the level of daylight that would be available to users of the study at number 37 would not be harmfully reduced by the implementation of the proposed development.

² Dacorum Borough Council Core Strategy 2006-2031 Adopted 25 September 2013 Dacorum's Local Planning Framework

16. The study window is within the northeast elevation of number 37. As such, sunlight is only likely to be able to enter this window in the early part of the morning. Therefore, and while there may be a very small reduction in the amount of sunlight to the study following the implementation of the development, from the evidence before me, this small reduction would not be harmful to the occupiers of number 37.
17. There are 2 main areas to the garden at number 3. The first is a sizable patio area with direct access via doors in the further side of the house from the appeal site. Although a snapshot in time, during my site visit, this area included children's play equipment; outside seating; and a BBQ. The second area comprises a relatively narrow strip of grass to the rear of the house and the patio. Based on my observations on site, I have no reason to doubt that the patio area is likely to be the most frequently used part of the garden for purposes such as sitting out and play, and where a degree of privacy may be reasonably expected by occupiers of that dwelling.
18. Although the level of the garden at number 3 is a little lower than the ground levels within the appeal site, I have no reason to doubt that unobstructed views into parts of the garden at number 3 would be limited to those through the upper floor window in the rear of dwelling 2. Nevertheless, the length of the intervening rear garden; the tall close boarded fence proposed on the boundary between the appeal site and number 3; and the location of the house itself at number 3, mean that the parts of the garden that would be visible from this window would not be close, and would not include the patio area. The distance of dwelling 2 from the garden area would similarly prevent the development from causing harm to the outlook available to users of the gardens at number 3. The development would not therefore prevent occupiers of number 3 from securing a reasonable amount of privacy and outlook within their outside spaces.
19. For the reasons given above, the development would cause harm to the living conditions of the occupiers of number 37 High Ridge Road, with particular regard to daylight light and outlook. However, it would not cause harm to the living conditions of the occupiers of number 3 High Ridge Close, with particular regard to privacy and outlook, or the occupiers of number 37 with particular regard to sunlight. Nevertheless, in respect of this main issue, the development conflicts with policy 12 of the Core Strategy, which seeks to secure quality of site design, by amongst other things, avoiding visual intrusion and loss of daylight.

Character and appearance

20. The appeal site which is within a built-up area, contains a detached bungalow. The property appears to have been historically subject to unsympathetic additions and extensions. On the relatively long and mainly residential High Ridge Road, the majority of the dwellings are detached. While there is a relatively regular rhythm to the properties on the road, there is variety in their height, scale, and appearance. This results, in part, from the extensions, alterations, and rebuilding works that have been undertaken, all of which have assimilated into and form part of the street scene.
21. The spacing between the 2 proposed dwellings would be smaller than that which is typical between dwellings on High Ridge Road, and less than that

identified within the Council's HCA34: Manor Estate character appraisal³. However, it would not be dissimilar to that observed between some nearby dwellings. Moreover, and even though the resultant density of development on the appeal site would exceed that which the character appraisal indicates is typical of the area, the reasonably sized gap between proposed dwelling 2 and the dwelling at number 37, and the large gap between dwelling one and number 33 High Ridge Road, would prevent the development from having either a cramped appearance or a harmful terracing effect.

22. The proposed houses would align well with the dwellings either side of them on High Ridge Road. Therefore, the development would not be prominent within views along this road.
23. A 2-storey flank wall is proposed close to the High Ridge Close carriageway. Although this would be set forward of the neighbouring dwelling at number 3, the limited housing development on the Close does not conform to a clear building line. Furthermore, while the flank wall adjacent to the Close would be taller than the existing and similarly located walls on the appeal site, its total length would be less. As such, when viewed from locations on both High Ridge Road and High Ridge Close, and, when compared with the existing development on the site, the development would make a positive contribution to the quality of the area.
24. Consequently, the proposed development would not cause harm to the character and appearance of the area. Accordingly, and in respect of this main issue, it would comply with policies CS11 and CS12 of the Core Strategy. Collectively these policies require development to enhance general character; respect typical densities; preserve attractive streetscapes; and to respect adjoining properties in terms of layout and site coverage. It would also comply with paragraph 135 of the Framework which, amongst other things requires new development to add to the overall quality of the area, be visually attractive and sympathetic to local character and history. Although the development would not accord with the typical densities and spacing identified within the HCA 34 Manor Estate character appraisal, I have found that no harm would be caused in respect of these considerations.

Other matters

25. The development would contribute towards the Government's objective of significantly boosting the supply of homes. A benefit would also result from the creation of an additional dwelling suitable for family occupation in a built-up location. In addition, the development would contribute to the local economy and help to support a strong, vibrant and healthy community. However, given the small scale of the scheme, the weight that can be attributed to each of these benefits is very limited.
26. Even if pre-application advice was provided which was supportive of the principle of the development, such advice would not bind the Council to approve the application.
27. While the current occupiers of number 37 have not objected to the proposals, I must consider the effect of the development on existing and future occupiers of that property.

³ Area Based Policies Supplementary Planning Guidance, May 2004

28. Even if the extensions and alterations to number 37 authorised by planning permission reference 20/02538/FHA have resulted in the bungalow on the appeal site being harmfully overshadowed, this consideration would not justify granting permission for other harmful development.
29. The Council has indicated that it has a 1.69-year housing land supply. In such circumstances paragraph 11. d) of the Framework sets out that permission should be granted for proposals that constitute sustainable development unless certain circumstances apply. One such circumstance at 11. d) i. is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 of the Framework confirms that the policies referred to within 11. d) i. include those related to habitat sites. Given that I cannot rule out adverse effects on the integrity of the SAC, the presumption given by paragraph 11.d) would not be triggered in this case.

Conclusion

30. Even though I have found that the proposals would not cause harm to the character and appearance of the area, the Habitat Regulations confirm that I cannot approve a proposal where likely significant effects cannot be ruled out. This matter is of overriding concern and provides a clear reason for refusing to grant planning permission for the development.
31. The proposed development conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. I therefore conclude that this appeal should be dismissed and that planning permission should be refused.

V Simpson

INSPECTOR