



Appeal Decision

Site visit made on 15 April 2024

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th May 2024

Appeal Ref: APP/V3120/W/23/3325338

Land at Yarnells Hill, Botley, Oxfordshire Grid Ref Easting: 449032

Grid Ref Northing: 205148

- 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 Miss Jane Banfield against the decision of Vale of White Horse District Council.
 - The application Ref is P20/V2298/FUL.
 - The development proposed is the erection of three detached dwellings, including access and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three detached dwellings, including access and landscaping at Land at Yarnells Hill, Botley, Oxfordshire Grid Ref Easting: 449032 Grid Ref Northing: 205148 in accordance with the terms of the application, Ref P20/V2298/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Miss Jane Banfield against Vale of White Horse District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The above site address is taken from the appeal statement.
4. The Government published in December 2023 a revised version of the National Planning Policy Framework (the Framework). I am satisfied that no party would be prejudiced by making reference to the Framework in this decision.

Main Issue

5. The main issue in this case is effect of the development on biodiversity, including a protected species.

Reasons

6. The appeal site lies within the residential rear of southern edge of Botley and is accessed via a private drive that leads off Yarnells Hill. The appeal site comprises of semi improved and poor semi-improved neutral grassland, with some mature trees.
7. There is no evidence before me to suggest that the appeal site itself is designed for its landscape or ecological value, however, nearby the appeal site

is Raleigh Park, which is designated as a Local Wildlife Site (LWS), in particular due to the presence of a Lowland Fen habitat, and to the south east lies a brook which runs into Raleigh Park, identified as a spring- and groundwater-fed alkaline fen. Moreover, there badger setts have been identified in close proximity to the appeal site.

8. Policy CP46 of Vale of White Horse Local Plan 2031 Part 1 (2016) (LP) and policy GS2 of the North Hinksey Neighbourhood Plan (2021) (NHNP) seek to protect and enhance biodiversity in connection with development, and states that development likely to result in the loss, deterioration or harm to habitats or species of importance, will not be permitted, unless subject to a number of criteria.
9. LP Policy CP46 confirms that it applies to a variety of sites including LWS, and that the level of protection and mitigation should be proportionate to the status of the habitat or species and its importance individually and as part of a wider network.
10. The Framework defines lowland fen as irreplaceable habitat and states that development resulting in the loss or deterioration of irreplaceable habitats should be refused. This is particularly in light of their susceptibility and sensitivity to harm.
11. The submitted drainage¹ report includes a hydrogeological assessment of the relationship between the site and the ecologically sensitive area of Raleigh Park, and concludes that, subject to appropriate mitigation, there is 'insignificant risk' to its hydrogeological regime.
12. Given its depth, the evidence before me suggest that the development would not affect the existing groundwater under the site in terms of its volume, nor detrimentally affect the chemistry of the water supply including the calcium rich ground water reaching the fen, and it would not be significantly different from the existing situation. It is noteworthy in this respect that the submitted report sets out the limited contribution the appeal site makes to calcium levels reaching the fen.
13. This is also the case in relation to garden chemicals and irrigation, given the lack of control over the existing site in this respect. Whilst disputed by third parties, the Council accept that even if the proposed built form would result in an 'impervious lid', it would represent only approximately 0.6% of the fen catchment area. As such, even if prior development has led to a loss of infiltration area, its overall impact and subsequent risk in this regard would be minimal.
14. I note the detailed concerns set out in third party letters of objection on this matter, but based on the information before me, I am satisfied that the surface water drainage (SUD) system, including permeable paving to the access road, a storage basin with built oil interceptors and a swale, would suitably manage water flow, including overflow water, down into the stream, including its effect on water quality. There is no evidence before me to suggest that the permeable surface would silt-up over time. Moreover, even in this sensitive site, there is no substantive evidence before me to suggest that the proposed maintenance schedule and compliance report, secured through conditions,

¹ By WHS, dated August 2020, additional information/amendment 10 October 2022

would not ensure the effectiveness of the SUD's over a sufficiently lengthy amount of time.

15. Whilst the effectiveness of any SUDs system cannot be 100% guaranteed in perpetuity, given the low level of likely risk in the context of the total water supply of the fen, I am satisfied that the effect of the development in this respect is acceptable. I am satisfied that these conditions would meet the relevant tests, and specifically, there is no compelling reason given why these conditions could not be properly enforced.
16. The sensitivity of the fen means that a comprehensive and detailed analysis of any effect is justified, however, I am satisfied that the information and mitigation measures submitted are robust and proportionate to the residual impact that is likely to occur. This includes the foul drainage system accepted by Thames Water and its potential effect on nitrate pollution, and the level of detail submitted relating to hydrology. Even if the siting of nearby development is further away from the fen than the appeal site, it is noteworthy that the Council has accepted that conditions can mitigate any potential harm to the fen in approving recent development within its wider catchment area, including directly next to (with no such conditions) or close by to the appeal site².
17. I am satisfied therefore that subject to these mitigations, harm to the fen would not likely occur due to the proposed development. It is noteworthy that the Council's independent assessors³ accepted the conclusions of the submitted reports, with some additional information and amendment to the Water Quality Construction Statement. It is also noteworthy that the Council's Senior Ecology Officer also accepted that the potential impact pathways are addressed, and if the mitigation were secured, there should not be any adverse impact on the fen.
18. Badgers are a protected species, not for their rarity, but for their welfare and against illegal cruelty. The submitted ecology reports⁴ sets out that three badger setts exist to the west of the appeal site in land owned by the applicant (edged blue on the location plan). There is a main sett and two outlier setts. Given the proximity of plot 1, there is clearly potential for a detrimental impact on the main sett. The appellant proposes a purpose-built replacement artificial sett in the woodland to the west of the development site which would be provided in advance of the sett exclusion work. Based on the evidence before me, relocation of setts is a tried and tested methodology and subject to an appropriate mitigation plan there is no reason to suggest that the welfare of badgers would be compromised in the short, medium and long term.
19. Whilst third party comments point to an example where relocation has failed, as part of the conditions for a Natural England (NE) licence to close any main sett, NE is clear that there would be a need to show that the badgers are using the replacement sett before the existing sett can be closed.
20. From what I observed on site, I have no reason to believe that the site proposed for the replacement sett is inappropriate. This would also be assessed by NE, who set out that some requests for licenses are rejected or require further information. I am therefore satisfied that this additional stage of

² Planning permission references P19/V1259/FUL & P22/V0347/FUL

³ By Aspect Ecology & PJA Consultants

⁴ By BSG Ecology, dated 20 July 2020, updated 28 June 2021

assessment, which also includes compliance checks, provides further suitable protection in accordance with the Protection of Badgers Act 1992. Similarly, from the information submitted and what I observed, I have no reason to believe that there would not be sufficient foraging land remaining and suitable connectivity for the badgers. Therefore, in this regard I am satisfied that adequate measures to mitigate and compensate the disturbance to badgers have been explored and identified, and the development would maintain the status of the local badger population. It is noteworthy that the Council's Senior Ecology Officer does not believe that there 'are sufficient grounds to refuse this application on impact to badgers.'

21. In accordance with the requirements of LP Policy CP46, I am satisfied that the proposed site could not reasonably be developed in a less impactful way, and, given the limited harm identified to a species of importance, that the benefit of three new dwellings, as supported by the Government's broader objective of significantly boosting the supply of homes, would outweigh this adverse effect.
22. This is subject to the suggested conditions securing a Construction Environment Management Plan and Landscape and Ecology Management Plan, which I am satisfied would secure details such as ecological enhancements, ongoing monitoring and remedial measures, and would ensure satisfactory protection and details of the replacement sett.
23. I therefore conclude that, based on the information before me and subject to the conditions set out below, the development would not result in unacceptable risk and harm to biodiversity, including protected species, or result in the loss or deterioration of irreplaceable habitats. There is therefore no conflict with the biodiversity protection goals of LP Policy CP46, NHNP Policy GS2 or the Framework.

Other Matters

24. I have no reason to dispute the expertise or understanding of the independent consultants used by the Council, or the Council's own Ecology Officer, nor to consider that the judgement of the Council's Planning Officer was influenced by being too close to the project. That the proposed properties would not contribute to any identified housing need does not weigh against the proposal.
25. Given its age and lack of information before me, it is difficult to compare the planning history specifically referenced by third parties⁵ with the scheme before me. The lengthy recent history of proposals on the appeal site does not weigh against the proposal, nor affect my consideration of the plans and information before me.

Conditions

26. A list of suggested conditions has been provided and I have considered these in light of the Planning Practice Guidance (PPG) and the tests set out in the Framework. For clarity and to ensure compliance with the tests, I have amended some of the suggested wording.
27. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.

⁵ P75/V0595 & P76/V0596

28. Given the importance of drainage in this location and sensitivity to water quality set out above, conditions requiring the submission of details regarding foul water and a sustainable drainage scheme are necessary, in order to ensure the effective drainage of the site both in terms of local ecology. Similarly, conditions requiring the submission of a SUDS compliance report and a foul water compliance report would ensure that the schemes are installed effectively, and a condition requiring a water quality construction statement would ensure that the effect of the construction upon local water quality is minimised.
29. Given the sloping land levels, a condition requiring the submission of slab levels is necessary in order to ensure the dwellings are above appropriate flood levels.
30. A Construction Environmental Management Plan would ensure that the construction process would suitably protect biodiversity features. In order to ensure the long-term management of habitats, species and other biodiversity features, a condition securing a Landscape and Ecological Management Plan is appropriate. I have amended this condition to remove the requirement for a legal mechanism, as this would be contrary to guidance in the PPG.
31. These conditions are required to be pre-commencement, in order to ensure that the details are finalised prior to the commencement of any works that could affect the site, given its ecological sensitivity.
32. A condition requiring further details of appropriate boundary treatments is necessary, in order to ensure that the development is in keeping with the verdant surroundings. Given the detail within the submitted Arboricultural Impact Assessment (ABA) in relation to the stone all boundary between Yarnells and plot 1, a condition requiring compliance with this is appropriate. For the same reason, a condition requiring details of hard and soft landscaping is also necessary, as the submitted plans do not include sufficient detail.
33. In order to safeguard the adjacent trees, a condition ensuring the development is carried out in accordance with the submitted Arboricultural Impact Assessment (ABA) is appropriate.
34. A condition requiring the approval of the external materials to be used in the development is appropriate, to ensure that the development is in keeping with the generally consistent and high quality surrounding dwellings.
35. Conditions securing the provision of the widened access, visibility splays and car parking spaces prior to occupation is necessary, in the interest of the living conditions of the future occupiers, and highway safety. Similarly, a condition securing the provision of a turning space for refuse vehicles is necessary in the interest of highway safety.
36. A condition requiring the retention of the garage/car port spaces for car parking is necessary to ensure the dwellings have sufficient on-site parking provision, given the narrow and lengthy access.
37. On wider sustainability requirements, conditions requiring the installation of electric vehicle charging sockets is necessary, along with the provision of bicycle parking spaces.

38. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The PPG advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
39. Given the sensitivity of the site in relation to biodiversity, it is appropriate of the Council to retain control over development that would otherwise be permitted, in order to ensure appropriate construction techniques and extent of hardstanding for example. In addition, to ensure sufficient parking space is provided, a condition requiring the garages provided to be retained as such is necessary. However, given the limited impact of fences, gates and even walls erected within the curtilage of the three properties, a condition specifically removing permitted development rights for these works is not justified.
40. Finally, a condition specifically defining the residential curtilages of the properties is not necessary, as any enlargement would require further permission.

Conclusion

41. There are no material considerations that indicate the development should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, the appeal is allowed.

B Phillips

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: PL-002 Rev A, 3455-10B, WHS1758_002 Rev B, PL-006 Rev B, PL-004 Rev D, 8180565-4101, PL-007 Rev D, PL-008 Rev C, PL-009 Rev B, PL-005 Rev C, PL-001 Rev C, PL-003 Rev G, PL-017 Rev A, PL-012 Rev A and PL-013 Rev A.
3. Prior to the commencement of development, a detailed scheme for the foul water drainage of the development shall be submitted to and approved in writing by the Local Planning Authority. The detailed scheme must conform with Thames Water's latest design and construction guidance. The approved scheme shall be fully implemented and offered to Thames Water for adoption prior to the occupation of any new building.
4. Prior to the commencement of development, a detailed surface water drainage scheme shall be submitted to, and approved in writing by, the local planning authority. The submitted scheme shall be based on the submitted Yarnells Hill FRA Addendum dated 08/04/2021 from Wallingford HydroSolutions and shall include details of the maintenance of the system to ensure maximum efficiency. The approved scheme shall be implemented prior to the first occupation of the development and shall be maintained in accordance with the approved scheme at all times thereafter. An inspection log of the maintenance undertaken in accordance with the detailed surface water drainage scheme must be maintained, and this inspection log must be made available to the Council upon request.
5. Prior to the commencement of development, details of the existing ground levels of the site and the proposed slab levels of the new dwellings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved slab levels.
6. Prior to the commencement of the development, a construction environmental management plan for Biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
 - a) Update ecological surveys for relevant habitats and species, update surveys shall follow national good practice guidelines.
 - b) Risk assessment of potentially damaging construction activities.
 - c) Identification of biodiversity protection zones.
 - d) Practical measures (both physical measures and sensitive working practices) to avoid, reduce or mitigate the impacts on important habitats and protected species during construction.
 - e) The location and timing of sensitive works to avoid harm to biodiversity features.
 - f) The times during construction when specialist ecologists need to be present on site to oversee works.
 - g) Responsible persons and lines of communication.
 - h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

7. Prior to the commencement of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:
 - a) Description and evaluation of features to be retained, created and managed on site.
 - b) Ecological trends and constraints on site that might influence management.
 - c) Proposals for ecological enhancements for habitats and species, including methods of creation/establishment.
 - d) Aims and objectives of management.
 - e) Appropriate management options for achieving aims and objectives.
 - f) Prescriptions for management actions.
 - g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period) covering a plan period of at least 30 years.
 - h) Details of the body or organization responsible for implementation of the plan.
 - i) Ongoing monitoring and remedial measures.
 - j) Full biodiversity metric assessment to demonstrate that the proposed ecological measures on site will deliver a net gain for biodiversity.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details and management prescriptions implemented across the site for the plan period.

8. Prior to the commencement of development, a detailed water quality construction statement shall be submitted to, and approved in writing by, the local planning authority. The approved statement shall be followed during the entire course of the construction of the development.
9. Prior to the occupation of any dwellings, a SUDS Compliance report prepared by an appropriately qualified Engineer must be submitted to and approved by the Local Planning Authority. This must suitably demonstrate that the sustainable drainage system has been installed and completed in accordance with the approved scheme (or detail any minor variations) along with providing details of maintenance thereafter and for the developments lifetime. This report should as a minimum cover the following;
 - a) Inclusion of as-built drawings in DWG or DXF format,
 - b) Inspection details of key SUDS features such as flow controls, storage features and volumes and critical linking features or pipework undertaken, with appropriate photographs to inform remediation works during construction.
 - c) Details of any remediation works required following the initial inspection,

- d) Evidence that that remedial works have been completed.
- e) Coloured key defining ownership and maintenance of all surface water drainage components from Rainwater Pick-up.
- f) Written agreement on behalf of the appointed maintenance management company to take on ownership or and maintenance of all surface water drainage components in accordance with the coloured key drawing. The appointed maintenance management company must be able to demonstrate their competence in maintaining all surface water drainage features by providing worked examples and references from other sites that they have worked/work on.
- g) The form of inspection logs going forward to maintain all surface water drainage components. The logs must be supported by specific feature details, along with dates for inspections and maintenance.
- h) CCTV survey of the installed network from RWP.

10. Prior to the occupation of any dwellings, a foul water drainage Compliance report prepared by an appropriately qualified Engineer must be submitted to and approved by the Local Planning Authority. This must suitably demonstrate that foul water drainage has been installed and completed in accordance with the approved scheme (or detail any minor variations) along with providing details of its maintenance thereafter and for the developments lifetime. This report should as a minimum cover the following;
- a) Inclusion of as-built drawings in DWG or DXF format,
 - b) Inspection details of all foul water drainage features, including manholes and pipework, with appropriate photographs to inform remediation works during construction.
 - c) Details of any remediation works required following the initial inspection,
 - d) Evidence that that remedial works have been completed.
 - e) S104 agreement from Thames Water.
 - f) CCTV survey of the installed network from soi vent pipe.
11. Prior to first occupation of the dwellings hereby permitted, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include hard surfacing materials, schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and an implementation programme. The development shall be carried out in accordance with the approved details and programme. Thereafter, the landscaped areas shall be maintained for a period of 10 years. Any trees or shrubs which die or become seriously damaged or diseased within 10 years of planting shall be replaced by trees and shrubs of similar size and species to those originally planted.
12. No above ground development shall take place until details of all materials to be used externally in the construction shall be submitted to and approved in writing by the Local Planning Authority. The development shall be built using only the approved materials.
13. Tree protection works both prior to the commencement of development and during the entire course of the construction of the development shall be

carried out in accordance with the details contained in the Arboricultural Impact Assessment dated 24 June 2020 by S J Stephens Associates

14. Notwithstanding any details shown on the approved drawings, the site's internal and external boundaries, except for the boundary with Yarnells, shall be enclosed in accordance with a detailed scheme and programme of implementation which shall first have been submitted to and approved in writing by the Local Planning Authority. The programme shall ensure that the approved boundary treatments for each dwelling are completed prior to the occupation of that dwelling, and the approved boundary treatments for the whole site are completed prior to the occupation of the last dwelling.
15. Prior to the first occupation of the dwelling on Plot 1, the boundary with Yarnells shall be constructed in accordance with the information submitted within the Arboricultural Impact Assessment dated 24 June 2020 by S J Stephens Associates.
16. Prior to the occupation of the new development, improvements and widening of the existing driveway and the access to the development, including the provision of visibility splays at the junction of the access drive and Yarnells Hill in both directions, shall be implemented in accordance with submitted Transport Statement, August 2020 by Paul Basham Associates. Thereafter, the visibility splays shall be permanently maintained free from obstruction to vision.
17. Prior to the first occupation of the new development, the car parking areas shown on approved drawing number PL-003 G shall be constructed, surfaced and marked out. The parking spaces shall be constructed to prevent surface water discharging onto the road. Thereafter, the parking spaces shall be kept permanently free of any obstruction to such use.
18. Prior to the first occupation of the new development, the turning space shown on approved drawing number PL-003 G and the submitted Transport Statement (August 2020 by Paul Basham Associates) shall be constructed to enable a refuse vehicle to enter, turn and leave in forward gear. The turning space shall be constructed to prevent surface water discharging onto the highway. Thereafter, the turning space shall be kept permanently free of any obstruction to such use.
19. Prior to the first occupation of the development, electric vehicle charging points shall be provided for every dwelling in accordance with details which shall have been first submitted to, and approved in writing by, the local planning authority.
20. Prior to the first occupation of the new development, provision for parking bicycles on the site shall be made in accordance with the details which shall have been first submitted to, and approved in writing by, the local planning authority. The cycle parking shall be permanently retained and maintained thereafter.
21. Notwithstanding the provisions of Class A of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting

that Order), the garage accommodation forming part of the development shall be retained for parking motor vehicles at all times and shall not be adapted to be used for any other purpose.

22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), no extension or enlargement (including additions to roofs) shall be made to any dwellinghouse hereby approved.

23. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) the provision within the curtilage of the dwelling of any building, enclosure or swimming pool shall not be undertaken.

End of Schedule