

Appeal Decision

Site visit made on 20 May 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2024

Appeal Ref: APP/J0405/W/23/3330885

Wendover Plaice, 53 Tring Road, Wendover, Aylesbury HP22 6NU

- 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 M Dragicevic of Wendover Plaice Fish and Chips against the decision of Buckinghamshire Council.
 - The application Ref is 23/02297/APP.
 - The development is a proposed dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the surrounding area;
 - whether the proposed dwelling would provide adequate living conditions for future occupants in respect of outdoor space, outlook, noise, and odour;
 - whether adequate outdoor space would be retained for the host property; and,
 - the effect of the proposed development on the integrity of the Chiltern Beechwoods Special Area of Conservation (SAC).

Reasons

Character and appearance

3. The appeal site principally includes land at the rear of a fish and chip shop, with access proposed to the side of the shop, leading from Tring Road. The site levels slope down quite considerably from the roadside, with the shop being single storey at the front and 2-storey at the rear. The site is located within a predominately residential area. That said there are other commercial premises nearby, including a local convenience store adjacent and a restaurant further along Tring Road.
4. The area generally displays variety in terms of property design, plot size, shape, and density, including some bungalows that are not dissimilar to the design and scale of the proposal. The prevailing character of the area is that of dwellings fronting a highway. There are no evident existing examples of single dwellings situated to the rear of other buildings within the immediate area. Also, there is a strong consistent rear site boundary to dwellings that front Tring Road.

5. The new bungalow would be of a simple design and appearance. This would not be unacceptable in the local context alongside the density of the proposal. Also, its design takes account of the change in ground levels across the site. Due to the site levels, the single storey height and that the new dwelling would be located to the rear of the fish and chip shop, it would appear subservient in scale compared to surrounding development and would not be visually prominent from Tring Road. However, the bungalow would be dwarfed by the adjacent convenience store and other surrounding 2-storey buildings and would not follow the prevailing character of the immediate area, due to its backland position and lack of road frontage. Therefore, the proposal would be incongruous in its setting and would fail to integrate successfully into the area.
6. I acknowledge that the National Planning Policy Framework (the Framework) promotes the efficient use of land. However, it also recognises that developments should be sensitive to its surroundings.
7. The appellant has drawn my attention to examples of backland development off Barlow Road and High Street. However, in my view they are not comparable to the appeal proposal, as they have different site contexts. Also, I note that they relate to dwellings served via private drives and that the High Street example relates to the demolition and replacement of existing buildings, whereas the appeal site is an open lawned area.
8. For the above reasons, the proposal would be harmful to the character and appearance of the surrounding area. Accordingly, it would conflict with Policy BE2 of the Vale of Aylesbury Local Plan (VALP), September 2021, Policy SD1 of the Wendover Neighbourhood Plan (made 2020) (NP) and the Vale of Aylesbury Local Plan Design Supplementary Planning Document, 2023 (SPD), which, amongst other matters, require new development to respect the character and scale of surrounding buildings and the local context and distinctiveness. Although, in view of the density being appropriate in the local context, the proposal would not conflict with Policy BE4 of the VALP.

Living conditions of future occupants

9. The amount of proposed outdoor garden space would normally be acceptable in area, for a 2-bedroom property. Although, the proposed space at the rear of the new bungalow would be of limited depth and would be wedged between the new bungalow and the tall blank side wall of the adjacent local convenience store. In view of the size, position, and relationship to the surrounding buildings, this would be a shaded and oppressive space, which would not be particularly pleasant. As such, the garden could not be reasonably enjoyed, undermining the living conditions of future occupants.
10. Even though the rear garden space would be private, due to its narrow width, the close very high blank side wall of the adjacent local convenience store, which extends along much of the side boundary of the site, the outlook both from the proposed rear windows of the new dwelling and the outdoor space would be unacceptable, even if planting were to be introduced.
11. The close relationship of the proposed dwelling to the fish and chip shop and other commercial premises, including an Indian restaurant and adjacent convenience store has the potential to cause various harm to the living conditions of the future occupants of the bungalow. The fish and chip shop has a flue on the rear of the property and at the time of my visit smells were evident within the site. Also, no substantive details have been provided in respect of the extraction systems in place at the fish and chip shop, and so, I

am unable to conclude that there would be no harm caused to the living conditions of the future residents in respect of odour.

12. Despite the tall side wall of the adjacent convenience shop, at the time of my visit, some noise was audible associated with customer activities and movement from within the site and, I note that this shop has later opening times. While a 1.8m high fence is proposed at the rear of the chip shop, due to the location of its openings, including doors to the storage areas on its rear elevation, there would be noise and disturbance caused to the future residents of the bungalow by the activities at the adjacent commercial property. Notwithstanding that the owners of the fish and chip shop and their family intend to live in the new bungalow, the occupants would likely have unacceptable living conditions, due to noise disturbance and odour from the adjacent commercial premises. Furthermore, no condition is proposed to restrict the occupation of the dwelling.
13. In view of the above, the proposed dwelling would have inadequate living conditions for future occupants, due to unacceptable outdoor space, outlook and likely harm caused by virtue of noise disturbance and odour. Thereby, the proposal would conflict with Policy BE3 of the VALP, which requires development to provide a satisfactory level of amenity for future residents.

Outdoor space for host property

14. The host property currently has a large outdoor space to the rear, which is an attractive, well-maintained lawn area that wraps around the building. I observed children's play equipment, including a trampoline on the lawn area and the appellant advises it is used for the enjoyment of them and their family. Whilst I note the Council's comments, no local or national policy or guidance has been highlighted demonstrating a specific requirement for outdoor space in association with such commercial premises. The proposed outdoor space for the host property, of approximately 38sqm to the side, would provide sufficient private space for seating or general outdoor enjoyment by the owners and employees of the fish and chip shop.
15. Thereby, adequate outdoor space would be retained for the host property, and so there would be no conflict with Policy SD1 of the NP, which amongst other matters, requires proposals to not unacceptably affect neighbouring properties by way of loss of privacy, daylight, generation of noise or fumes, visual intrusion, or loss of amenity.

Effect on the SAC

16. The site is located within 12.6km of the Ashridge Commons and Woods Site of Special Scientific Interest (SSSI) within the Chiltern Beechwoods Special Area of Conservation (SAC), which is afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the Habitat Regs). Therefore, as the competent authority it is necessary for me to consider whether the proposal would likely have a significant effect on the integrity of the SAC.
17. The proposed development would have an adverse impact on the integrity of the SAC due to increased pressure placed on it, in combination with other plans and projects, leading to a deterioration of the quality of the habitat by reason of increased access to the site including access for general recreation and dog-walking. This is confirmed by Natural England under a Habitats Regulations

Assessment (HRA) and, they note that mitigation measures will be necessary to rule out effects on the integrity of the SAC.

18. The appellant has not advanced any means of mitigation and, whilst they advise they would be happy to enter into a legal agreement to secure a financial contribution towards a mitigation strategy, no such agreement has been completed and submitted. Accordingly, the proposed development would adversely affect the integrity of the SAC and so, in having regard to the Habitat Regs, permission must not be granted.
19. Notwithstanding the above, as I have found the proposed development would cause harm in relation to character and appearance and living conditions of future occupiers, significant enough to dismiss the appeal, it is not necessary for me to consider any harm and/or mitigation further as the competent authority.
20. In view of the unacceptable adverse effect on the integrity of the SAC the proposal would be in conflict with Policy NE1 of the VALP and Policy G3 of the NP and, would fail to adhere to the Habitat Regs, which require development to safeguard designated and protected sites.

Other Matters

21. There is no dispute with regard to the principle of residential development in the area. Also, I appreciate the appellant would accept conditions, including to secure on-site biodiversity enhancement. However, such are neutral matters that would not outweigh the harms I have identified.

Planning Balance and Conclusion

22. The Council accepts that they cannot demonstrate a deliverable five year supply of housing land as required by the Framework. As such, in line with paragraph 11d of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
23. However, paragraph 188 of the Framework indicates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an Appropriate Assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out above, I have not reached such a conclusion and consequently paragraph 188 applies.
24. In conclusion, the proposal conflicts with the development plan taken as a whole and other considerations do not indicate that a decision should be made other than in accordance with it. Accordingly, the appeal is dismissed.

C Billings

INSPECTOR