



Appeal Decision

Site visit made on 7 May 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Appeal Ref: APP/C1760/W/23/3328916

3 Furzedown Cottages, Kings Somborne, Stockbridge SO20 6QJ

- 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 Chris Twigg against the decision of Test Valley Borough Council.
 - The application Ref is 23/00602/FULLS.
 - The development proposed was originally described as: change of use to C3 residential, plus erection of single garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was submitted as retrospective development. The Council considered the application on this basis, and so shall I.
3. The Council's first reason for refusal refers to the use of the land as well as other matters. However, the Council granted a certificate of lawfulness Ref: 23/02787/CLES for the existing use of land as part of the residential land associated with No 3 Furzedown Cottages on 1 March 2024. The certificate relates to the appeal site and is therefore a material consideration. The main parties have had an opportunity to comment on this matter during the course of the appeal. The Council maintains its first reason for refusal insofar as it does not relate to the use of the land.
4. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The main parties have had the opportunity to make comment on any implications of this change within the appeal timetable. As such neither party is prejudiced by a lack of consultation on the revised Framework.

Main Issues

5. The main issues are:
 - whether the proposed development is appropriate within the countryside;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on protected trees; and
 - the effect of the proposal on protected species.

Reasons

6. Nos 1-7 (consecutive) Furzedown Cottages are a linear form of residential properties, accessed via a shared access drive from Furzewood Road. The land

adjacent to the easterly side of the access drive is initially flat, before falling away towards Furzewood Road and appears as woodland (the woodland area). The appeal site is directly opposite the gravelled frontage of No 3, with the shared access drive between.

7. The appeal scheme includes a garage, log store and a path which extends beyond the boundary of the appeal site into the adjacent woodland.

Appropriate development in the countryside?

8. The appeal site is outside of any defined settlement boundary and is in the countryside. In such circumstances, Policy COM2 of the Test Valley Borough Revised Local Plan DPD 2016 (RLP) applies, which only permits development if it is appropriate in the countryside as set out in certain policies of the RLP (including Policy COM11); or if it is essential for the proposal to be located within the countryside. Policy COM11 permits the creation of ancillary domestic buildings in the countryside (where permission is required) providing certain criteria are all met.
9. Due to its overall scale and siting, the garage forms a large and imposing structure alongside the otherwise unbuilt area of land alongside the access drive, despite the use of timber materials and the presence of nearby trees. The garage, log store and path are in prominent view within the adjacent woodland area. Due to the topography of the area and the intervening woodland, views from Furzedown Road are limited. Views would be less limited when the trees are not in leaf.
10. Consequently, the garage appears more visually intrusive in the immediate landscape, and within the wider landscape, even if limited. The proposal therefore fails to accord with criterion b of Policy COM11.
11. The garage and log store are intended for purposes incidental to the existing dwelling at No 3. From the evidence before me, the frontage serving No 3 is used for parking of vehicles, and there is also a garage serving the dwelling. In this context and in the absence of any evidence to robustly demonstrate that the proposed development is essential within the countryside, the proposal fails to accord with Policy COM2.
12. The appellant draws my attention to the property at No 7, which has a garage at the end of the shared access drive. While the detailed circumstances which led to its construction are not before me, this garage is set back within the corner of the plot, and therefore it does not have the same spatial relationships as the appeal scheme.
13. I therefore conclude that the proposal is not appropriate development within the countryside. It conflicts with Policy COM2 of the RLP, which seeks to ensure that the location of development within the countryside is essential, and is not more visually intrusive in the landscape.

Character and appearance

14. The density of trees is such that the area of woodland retains a fairly open character. This area of land, which includes the appeal site, makes a positive contribution to the elevated setting of the linear form of the cottages, and to the wider countryside character and appearance of the area.
15. The design of the garage and log store are predominantly of timber, and the path is bounded by vertical timber posts. As such, these materials result in an appearance which is not uncommon to ancillary and/or incidental structures serving a dwelling in a rural or countryside setting. However, the garage and log store are sited forward of the principal elevation and frontage of No 3, and beyond the shared access drive. Consequently, the siting of the garage and log store fails to respect the linear layout of the cottages, and the relationships between buildings.
16. While some areas along the easterly side of the shared access drive appear to be used for parking and bin storage, the garage is a structure of significant height, width and depth which creates permanent bulk and mass in an area of land that would otherwise be devoid of such built form.
17. It is this siting and scale which results in a dominant structure creating a more urban feel along the easterly side of the shared access drive, undermining the open nature of the street scene, the setting of the cottages, and the woodland character and appearance of the area. The log store and path add to this urban feel.
18. The path enables further access to the woodland area. The existing pathways within this land appear to be without foundations or bases and unbounded. Consequently, the path is discordant to the wider character and appearance of the paths within the woodland area.
19. For these reasons, the development fails to respect the character and appearance of the area.
20. I therefore conclude that the proposed development would harm the character and appearance of the area. It conflicts with Policies COM2 and E1 of the RLP. Taken together these policies seek to ensure that development does not result in visual intrusion in the countryside, and is of a design that integrates, respects and compliments the character of the area in terms of various factors including but not limited to layout, appearance, scale and materials.

Protected trees

21. Tree Preservation Order (Ref: TVBC.465) is a 'woodland order' and includes those trees alongside the shared access drive, as well as the land towards Furzedown Road.
22. The information submitted with the application includes a document entitled Garage/Workshop Retrospective Pre-application, which includes photographs and photomontages pertaining to the construction of the proposal, as well as information regarding the construction method and materials. An Arboricultural Impact Assessment (AIA) and Tree Protection Plan were also submitted.
23. The AIA identifies that the garage structure overlaps the root protection areas (RPAs) of six trees, all being either oak or yew trees, and that one tree limb

has been removed. It concludes that the trees have been impacted by the garage and footpath, but that this is of low significance.

24. The AIA states that the footprint of the new structure (the garage) sits within an old parking space. In this regard, it is considered that roots were more likely to extend eastwards down the bank. As such, RPAs have been offset towards the east to take account of the previous hardstanding and parking of vehicles. I find no reason to consider otherwise.
25. I note that the construction method indicates that the chalk and clay removed for the garage footings was used for backfill behind the path sleepers, with externally supplied topsoil. However, the AIA states that "the area to the east of the footpath has had the level raised with existing topsoil", without reference to any backfill of chalk and clay. Given that roots are considered likely to extend eastwards down the bank, towards the path, I am not satisfied that the effect upon the RPAs of the affected trees has been robustly assessed. It is also not clear whether the construction method information was provided for the purposes of the AIA.
26. Consequently, I cannot be certain that the conclusions and recommended actions of the AIA are sound, including its overall conclusion that the removal of any structure would likely result in more harm than good.
27. Having regard to all of the above, and notwithstanding the hardy nature of the tree species affected by the development, I am not satisfied that the effect on the protected trees has been robustly demonstrated, nor that the proposed recommendations would be sufficient to prevent further harm to the health of the trees and ensure their safe retention.
28. I therefore conclude that the proposed development would harm the protected trees. It conflicts with RLP Policy E2, which seeks to ensure that development does not result in the loss of important local features such as trees.

Protected Species

29. RLP Policy E5 refers to biodiversity and sets out that development likely to result in the loss, deterioration or harm to habitats or species of importance to biodiversity either directly or indirectly will not be permitted unless certain criteria are met. The habitats and species of importance to biodiversity include trees and woodlands. The appeal site is in proximity to trees and woodland habitat.
30. Although the appellant states that one tree limb was removed to enable the development, and no other works to trees have taken place, my findings indicate that harm has arisen to protected trees as a consequence of the development, and that further harm could occur to the health of those trees. The construction method/photographic information before me indicate clearing of some parts of the woodland area, including areas to form the path. The pre-existing hardstanding does not negate these findings.
31. There is no evidence before me concerning the baseline of the woodland habitat, nor any ecological assessment of its consequences. In such circumstances, and in the absence of any evidence to the contrary, I cannot be certain that the proposed development does not and would not result in adverse harm to the woodland habitat and/or any protected species that it may support; nor that any such harm could be adequately mitigated.

32. I therefore conclude that the proposed development fails to demonstrate the effect upon protected species. It conflicts with RLP Policies E5 and COM2, which, when taken together seek to ensure that development in the countryside conserves, and where possible restores and/or enhances biodiversity. The proposal conflicts with the requirements of the Conservation of Habitats and Species Regulations 2017.

Other Matters

33. The appellant's evidence refers to matters pertaining to land ownership and rights of way. Much of this evidence is in support of the residential use of the site, which now benefits from a certificate of lawfulness for residential use. For the avoidance of doubt, such matters are private and have had no material bearing on my assessment of the planning issues in this appeal. The absence of objections does not of itself render the scheme acceptable.

34. The proposal would form a benefit to the occupiers of No 3. However, this is a private benefit and therefore attracts no weight either for or against the proposal.

Conclusion

35. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

J Moore

INSPECTOR