



Appeal Decision

Site visit made on 23 July 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/R3650/C/23/3314250

17 Frensham Road, Farnham GU9 8HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Templias Limited against an enforcement notice issued by Waverley Borough Council.
 - The notice was issued on 1 December 2022.
 - The breach of planning control as alleged in the notice is: 1. Without planning permission, the erection of a dwelling in the approximate position marked 'A' on the plan attached to the notice ('the dwelling'). 2. Without planning permission, an engineering operation comprising of the creation of hardstanding in the approximate areas crosshatched black on the attached plan. 3. Without planning permission, a building operation comprising of the erection of steps in the approximate areas coloured yellow on the attached plan. 4. Without planning permission, a building operation comprising the installation of retaining walls marked by blue lines on the attached plan. 5. Without planning permission, the carrying out of an engineering operation to materially change the levels of the land in the approximate area within the green line on the attached plan.
 - The requirements of the notice are: 1. Remove the dwelling. 2. Remove the hardstanding. 3. Remove the steps. 4. Remove the retaining walls. 5. Restore the levels of the land in the area marked green on the attached plan to the levels of the land before the engineering operations took place. 6. Remove all materials from the land resulting from compliance with steps 1-5 above.
 - The period for compliance with the requirements is twelve months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed insofar as it relates to the erection of a dwelling as shown on drawing nos 1332/P-103, 1332/P-301, 1332/P-302, 1332/P-304, 1332/P-305, 1332/P-306 & 1332/P-307 and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a dwelling at 17 Frensham Road, Farnham GU9 8HF subject to the conditions in the Schedule at the end of this Decision.
2. It is directed that the enforcement notice be varied by in paragraph 5 after step 6 inserting the following steps: '*7. Alternatively, make the development comply with the terms (including the conditions and limitations) of the planning permission granted by appeal reference APP/R3650/C/23/3314250. 8. Remove all materials from the land resulting from compliance with step 7.*'
3. Subject to the above variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the erection of a dwelling, an engineering operation comprising of the creation of hardstanding, a building operation comprising of the erection of steps, a building operation comprising

the installation of retaining walls and an engineering operation to materially change the levels of the land at 17 Frensham Road, Farnham GU9 8HF on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. The Council adopted the Waverley Borough Council Local Plan Part 2: Site Allocations and Development Management Policies (LPP2) in March 2023. Policies DM1 and DM4 in that document have superseded policies D1 and D4 referred to in the reasons for issuing the notice. This appeal falls to be determined against the policies in the current Development Plan.
5. My decision takes into account the revised National Planning Policy Framework, published on 19 December 2023.

Ground (a) appeal

Background & Main Issues

6. The appeal site contains a part two, part three-storey detached dwelling. Planning permission was granted to erect a contemporary dwelling at the site in November 2017¹. However, what has been built departs significantly from the permitted scheme; another storey has been added, the dwelling is constructed about 5.5 metres further down the slope of the site and reorientated around 10 degrees clockwise, also having a higher finished floor level and utilising different external materials including light grey coloured cladding. The Council refused planning permission for the 'as built' dwelling, a subsequent appeal against that decision being dismissed in November 2022².
7. In the deemed planning application arising from the ground (a) appeal it is proposed to modify the dwelling by removing the upper floor in its entirety- thus reducing the overall height by around 2.8 metres, together with elevational alterations which include cladding the upper external walls with dark stained oak boarding and removing the front external stairway. There is no dispute that the revised scheme is capable of being considered in this appeal. At s177(1)(a), the Act provides that planning permission may be granted in respect of the whole or part of the breach described in the notice. The revised scheme relates to part of the development enforced against, for which permission has been sought in the deemed planning application arising from the appeal on ground (a). The revised scheme contains no significant new works that are not part of the development in the notice.
8. Relevant Judicial authority³ confirms that a revised scheme cannot necessarily be excluded from being part of the development enforced against merely because additional works would be involved. The *Wheatcroft*⁴ principle has no application to the ground (a) appeal. In any event, those who should have been consulted have not been deprived of that opportunity, the Council having refused permission for the revised scheme in June 2023⁵.
9. Therefore, the main issues in this ground of appeal are:
 - The effect of the dwelling in the revised scheme on the character and appearance of the surrounding area.
 - The effect on European Protected Sites.

¹ Council Ref: WA/2017/1549

² Appeal Ref: APP/R3650/W/22/3291680

³ *Bhandal v SSHCLG & Bromsgrove DC* [2020] EWHC 2724 (Admin)

⁴ *Bernard Wheatcroft Ltd v SSE* [1982] JPL 37

⁵ Council Ref: WA/2023/00123

Reasons

Character and appearance

10. The site is located on sloping land, adjacent to maturing deciduous woodland, close to a main road. Buildings in the vicinity vary widely in terms of their size, bulk and overall height, as well as in their external finishes, relationship to the road, relationship to one another and age. The relatively steep valley sides have led to a number of buildings being visible and prominent in views, whilst the extent of tree cover creates a well-wooded and verdant feel which contributes to the informal, semi-rural visual qualities of the locality. These attributes are reflected in the Farnham Neighbourhood Plan (NP), which defines part of the locality as an Arcadian Area where the landscape is the dominant visual element, as well as in the Farnham Design Statement (DS).
11. The Inspector in the previous appeal considered that the 2017 permission, although expired, established the principle of residential development on the site as well as the form, height, scale, appearance and design ethos of an acceptable form of such development. They also considered that the 2017 permission is not the only form of development which could be acceptable on the site. There is no sound reason why I should not agree with those findings.
12. In dismissing the previous appeal, the Inspector nevertheless found that the siting of the dwelling, together with its height and the light colour and visibility of the external wall materials, all led to its appearing as an unduly, unacceptably prominent and visually dominant feature and that as a result, the area did not retain its informal rural character and well-wooded appearance.
13. Removing the upper floor and the associated protruding front balcony would have the effect of significantly lowering the roofline, as well as considerably reducing the scale of the revised dwelling over that of the current structure. The revised dwelling would be significantly lower than the current structure and much less prominent towards the front, more open part of the site. The scale of the revised dwelling would also be significantly reduced compared to the dwelling in the 2017 permission, the roofline being around 1.2 metres lower than the permitted structure.
14. Removing the substantial external stairway at the front and replacing it with an area of soft landscaping would further reduce the scale of the revised dwelling compared to the 'as built' situation and the permitted scheme. The darker, more muted appearance of the timber cladding proposed would echo traditional weatherboarding utilised on buildings in the locality and together with the substantial reduction in the overall height and scale of the built form described above, would assist greatly in assimilating the revised dwelling into its well-wooded setting. The upper external walls of the permitted dwelling would have had similar cladding.
15. In combination the revisions set out above would all lead to the revised dwelling appearing as an appreciably more subdued built feature in its setting compared to the dwelling as built, as well as in relation to the permitted scheme. The revised dwelling would have a much lower profile and a considerably more subtle appearance in close-up and further away views from the adjacent main road and the well-used public footpath immediately to the south, compared to both the current structure and the permitted scheme.
16. As revised, the dwelling would nestle comfortably in the woodland setting in local views, retaining the informal rural character and well-wooded appearance of the locality. Owing to its greater overall height the permitted dwelling would have been a more visible built feature, even though set back further into the wooded hillside at a slightly different angle. Consequently, the revised dwelling would not appear as a prominent built feature in the surroundings, the

immediate setting being largely dominated by maturing trees consistent with the visual qualities of the Arcadian Area.

17. The lower roofline of the revised dwelling would only be slightly above the ground level in the amenity space at the rear, which is currently flat and enclosed by timber fencing. I share the Council's concern, which also echoes the views of the previous Inspector, that the raised ground levels and somewhat artificial profile of this area together with the tall close boarded timber fencing on the boundaries, does little to integrate the dwelling with the naturalistic setting. Even so, suitable planning conditions could be imposed to ensure that the visual impact of the garden area is minimised, including by reducing ground levels and defining the boundaries in a manner more sympathetic to the predominantly wooded surroundings, together with appropriate landscape planting.
18. Therefore, the revised dwelling would satisfactorily address and overcome the visual harm identified by the previous Inspector in relation to the dwelling as built and there would be no unacceptable harm to the character and appearance of the surrounding area. It follows that there is no conflict with Policy TD1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (LPP1), the revised dwelling being of a high quality and inclusive design that responds to the distinctive local character of the area in which it is located. Neither is there a conflict with LPP2 Policy DM1, as the revised dwelling would not cause harm to areas of townscape or landscape value and it would integrate effectively with existing development.
19. Furthermore, being of a high-quality design which reinforces local distinctiveness and responds to the local context and character by taking into account its scale, height, mass, form and bulk together with its architectural composition, appearance, materials and detailing, the revised dwelling does not conflict with LPP2 Policy DM4. For similar reasons, there is no conflict with NP Policy FNP1. As the informal rural character and well-wooded appearance of the area would be maintained, there is also no conflict with NP Policy FNP8. In addition, by respecting and being sympathetic to the immediate architectural surroundings in terms of scale, materials and form, reflecting building heights in the area, with careful consideration having been given to the effect on the street scene, the revised dwelling would be consistent with design guidelines in the DS.

European Protected Sites

20. The site is located within the 5km 'zone of influence' of the Thames Basin Heaths Special Protection Area (SPA). The SPA is a network of heathland sites which are designated for their ability to provide a habitat for three internationally important rare bird species-Dartford Warbler, Woodlark and Nightjar. All three species nest on the ground or at low level and so are easily disturbed or harmed by increases in human activity, including recreational pursuits, arising from new residential development.
21. Occupiers of the dwelling would be likely to cause increased recreational activity which would disturb the protected birds. Therefore, the dwelling would, either alone or in combination with other projects, be likely to have a significant adverse effect on the SPA. Accordingly, it is necessary to carry out an appropriate assessment (AA) to determine the extent of those effects and whether they could be avoided or whether mitigation measures could remove or reduce the effects. I am required to undertake an AA before reaching my decision, as the competent authority in relation to the appeal. In doing so, I will take the Council's AA, carried out prior to determining planning application reference WA/2023/00123, into account.

22. LPP1 Policy NE3 requires new residential development within the zone of influence which is likely to have a significant adverse effect on the SPA to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects, including by making appropriate contributions towards the provision of Suitable Alternative Natural Greenspace (SANG) along with a financial contribution towards wider Strategic Access Management and Monitoring (SAMM). The latest version of the Council's SPA Avoidance Strategy Supplementary Planning Document (SPD) sets out the level of financial contributions required for SANG and SAMM. Natural England have confirmed that they are content there would be no adverse effect on the integrity of the SPA, subject to contributions being made towards SANG and SAMM as required by the SPD.
23. A completed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was supplied, making the financial contributions required by the SPD. By making the required contributions towards SANG and SAMM, the potential adverse effects of the development would be avoided and the integrity of the SPA would be maintained. Since the contributions would be used to fund the management and monitoring of SANG and SAMM, they would not involve the provision of infrastructure falling under the pooling restrictions in Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). Therefore, the UU is necessary to make the revised dwelling acceptable in planning terms, it is directly related to the development and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122(2) of the CIL Regulations.
24. Taking all of the above into account, I conclude that the revised dwelling would not have an adverse effect on the integrity of the SPA, there is no conflict with LPP1 Policies NE1 and NE3, nor with criterion in LPP2 Policy DM1 or NP Policies FNP12 and FNP13 and Policy NRM6 of the South East Plan and there is no contravention of the Conservation of Habitats and Species Regulations 2017 (as amended).

Other Matters

25. The previous Inspector found that the dwelling as built would not affect the setting or significance of the Grade II listed Fox Public House, located to the south of the site. There is no sound reason why I should conclude differently in relation to the revised dwelling.

Conditions

26. The standard time limit condition is unnecessary, as development has already begun. After seeking the views of the main parties, I shall impose a number of other conditions. Firstly, a condition will be imposed specifying the approved drawings, in the interests of certainty. Conditions 2,3 and 4 respectively require reduction in the overall height of the dwelling as built, removal of the external steps and the submission to and approval by the Council of the details of the external finishes and of the private amenity space for the dwelling. These conditions are necessary to safeguard the character and appearance of the surrounding area.
27. Conditions 5 and 6 require the submission to and approval by the Council of schemes to ensure that suitable protection measures are afforded to trees during the course of construction. These conditions are necessary to safeguard natural features and promote biodiversity, as well as to safeguard the character and appearance of the area. Condition 7 requires the submission to and approval by the Council of a Construction Method Statement, in the interests of highway safety. Requiring compliance with conditions 2 to 7 before any further development commences is necessary to ensure that works are carried out in a satisfactory fashion.

28. Condition 8 restricts the hours of working at the site, to safeguard the living conditions of neighbouring residential occupiers. Condition 9 requires the submission to and approval by the Council of a landscaping scheme together with its implementation and is necessary to ensure a visually satisfactory setting for the dwelling. Condition 10 requires installation of a charging point for electric vehicles and is necessary to promote low carbon forms of transport. Additionally, conditions 11, 12 and 13 will be imposed which, respectively, require the provision of suitable off-street parking space in the interests of highway safety, ensure that the dwelling minimises water usage in accordance with LPP1 Policy CC2 and require the submission to and approval by the Council of a scheme for enhancing the biodiversity of the site together with a timetable for its implementation.
29. I have imposed condition 14 to remove 'permitted development' rights to alter or enlarge the dwelling and for the erection of incidental outbuildings in the curtilage. In doing so, I have been mindful of the advice in the Planning Practice Guidance concerning the circumstances in which such conditions should be used. The condition defines precisely which rights are being restricted and it is both reasonable and necessary in this instance, in the interests of safeguarding the character and appearance of the area and the living conditions of occupiers of neighbouring residential property. For a similar reason, condition 15 will be imposed to restrict the use of the roof of the dwelling as a balcony, roof garden or similar area.

Conclusion-Ground (a) appeal

30. Subject to the conditions set out above, the revised dwelling would not cause unacceptable harm to the character and appearance of the surrounding area, there would be no adverse effect on European Protected Sites and there is no conflict with the Development Plan. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Consequently, although the ground (a) appeal fails in respect of the dwelling as built and the associated building and engineering operations referred to in the notice, it nevertheless succeeds in part i.e., in relation to the revised dwelling.

Ground (f) appeal

31. The ground of appeal is that the requirements of the notice are excessive.
32. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or its purpose can be to remedy any injury to amenity which has been caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires removal of the dwelling and the associated building and engineering operations and reinstatement of the pre-existing ground levels. Removal of the dwelling and the associated works, along with reinstating the previous ground levels, would restore the site to its condition before the breach took place.
33. As the 2017 permission has expired, varying the notice so that parts of what has been built could be retained would sustain elements of the breach. This would not restore the site to its condition before the breach took place and so the purpose of the notice would not be achieved. There can be no reasonable assurance that the current planning application to erect a dwelling in accordance with the 2017 permission⁶ will be permitted. Moreover, a grant of permission does not necessarily lead to implementation. Therefore, the notice requirements are reasonable and not excessive for the purpose of remedying the breach.

⁶ Council Ref: WA/2023/00103

34. Nevertheless, it is also possible to remedy a breach of planning control by making the development comply with the terms (including conditions and limitations) of a planning permission which has been granted in respect of the land. As enforcement action is intended to be a remedial measure, whether the planning difficulties could be overcome at less cost and disruption than total demolition of the development is a relevant consideration. Following partial success of the ground (a) appeal, it is appropriate to provide the alternative of remedying the breach by making the development comply with the terms of the planning permission granted for the revised dwelling. The differences between what has been built and what is permitted are clearly documented and the remedial works required to comply with the permission are readily apparent. As a result, this requirement would be sufficiently precise in order to remedy the breach.
35. Consequently, whilst the requirements are not excessive, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that extent.

Conclusion

36. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, namely the revised dwelling, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other parts. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall be carried out in accordance with drawing nos 1332/P-103, 1332/P-301, 1332/P-302, 1332/P-304, 1332/P-305, 1332/P-306 & 1332/P-307.
2. No further development shall be carried out until the upper storey of the dwelling and the front external stairway have been demolished and the resulting debris removed from the site.
3. No further development shall be carried out until a scheme for the external surfaces of the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. Development shall not be carried out other than in accordance with the approved scheme.
4. No further development shall be carried out until a scheme showing the residential amenity space for the dwelling and any associated boundary treatment, including a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. Development shall not be carried out other than in accordance with the approved scheme. Upon implementation, that scheme shall thereafter be retained as approved.
5. No further development shall be carried out until a detailed and scaled Tree Protection Plan (TPP) and related Arboricultural Method Statement together with a timetable for their implementation, along with details of the specification and location of exclusion fencing, ground protection and the phasing and method of all construction activity that may take place within the Root Protection Area of trees shown to scale on the TPP, including the installation of retaining features and service routings and arboriculturist monitoring and supervision of each stage of development potentially affecting trees, have been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of retained trees shall be carried out as approved.
6. No further development shall be carried out until a scheme of supervision for the arboricultural protection measures required by condition 5, to be administered by a qualified arboriculturist, has been submitted to and approved in writing by the Local Planning Authority. This scheme shall be appropriate to the scale and duration of the works and shall include details of induction of staff in awareness of arboricultural matters; identification of individuals and their responsibilities; timing and methods of site visiting and record keeping, including updates and procedures for dealing with variations and incidents. The scheme of supervision shall be implemented as approved.
7. No further development shall be carried out until a Construction Method Statement, to include details of the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development together with a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
8. Demolition and construction works shall take place only between 08:00 to 18:00 Mondays to Fridays and 08:00 to 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
9. The dwelling hereby permitted shall not be occupied until a scheme for the landscaping of the site, including a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the approved timetable and any trees or plants which within a period of 5 years from the completion

of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

10. The dwelling hereby permitted shall not be occupied until a fast charge socket for electric vehicles has been installed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Following installation, the scheme shall be maintained in accordance with the approved details.
11. The dwelling hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved drawings for the parking of vehicles. Thereafter, the parking areas shall be retained and maintained for their designated purpose.
12. The dwelling hereby permitted shall not be occupied until details have been submitted to and approved in writing by the Local Planning Authority to confirm that no more than 110 litres of water per day would be used by the occupiers.
13. The dwelling hereby permitted shall not be occupied until an Ecology Enhancement Strategy, including a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The Ecology Enhancement Strategy shall be implemented in accordance with the approved details and shall be retained thereafter.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B and E of Part 1 of Schedule 2 to the Order shall be undertaken.
15. The roof area of the dwelling hereby permitted shall not be used as a balcony, roof garden or similar amenity area.