



Appeal Decision

Site visit made on 20 August 2024

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2024

Appeal Ref: APP/P0240/W/24/3341349

17 Upton End Road, Shillington, Central Bedfordshire SG5 3PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs & Mr Anne Rowland & Dawes against the decision of Central Bedfordshire Council.
 - The application Ref is CB/23/02764/FULL.
 - The development proposed is to construct a new detached dwelling rear of No. 17 along with associated works following the removal of an existing detached garage, to construct a replacement garage
-

Decision

1. The appeal is dismissed insofar as it relates to the construction of a new detached dwelling to the rear of No. 17 along with associated works following the removal of an existing detached garage.
2. The appeal is allowed insofar as it relates to the remainder of the application and planning permission is granted for the construction of a garage at 17 Upton End Road, Shillington, Central Bedfordshire SG5 3PG in accordance with the terms of the application, Ref: CB/23/02764/FULL, so far as relevant to that part of the development hereby permitted, subject to the following 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 so far as they relate to the construction of a garage only. The plans are referenced:
 - L-01 Rev B - Existing Site Plan, Vehicle Visibility Splay, Site Location Plan
 - L-02 Rev C – Proposed Site Development Plan
 - L-01 – Existing Plans and Elevations
 - L-04 Rev A – Existing and Proposed Garage – Plans and Elevations
 - 3) Notwithstanding the details submitted within the application, no development above slab level shall take place until details of all materials to be used for the external surfaces of the garage hereby approved have been submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

Procedural Matters

3. The appeal relates to the construction of a detached dwelling, removal of the existing detached garage and the construction of a replacement garage. However, the application was refused permission by the Council on grounds relating to matters regarding the construction of a new dwelling and the demolition of the existing garage only.
4. The proposed garage is modest in scale and height, and would appear visually subservient to the host dwelling. The garage would be positioned away from the site boundaries which, along with its modest scale, would mean that it would not appear prominent from the surrounding area. Furthermore, the distance of the garage from nearby properties would mean that there would be no adverse effects on the living conditions of the nearby occupants through loss of light, overshadowing or overbearing. Therefore, I am satisfied that the proposed garage would be acceptable with regard to its effect on the character and appearance of the area and the living conditions of the occupiers of neighbouring dwellings. I am therefore in agreement with the Council's findings in this regard.

Main Issues

5. The main issues are the effect of the development on:
 - i) the character and appearance of the area;
 - ii) protected species and their habitats, with particular regard to bats; and,
 - iii) trees.

Reasons

Character and Appearance

6. No.17 Upton End Road (No.17) is a two-storey detached dwelling with a detached garage. The garage is positioned behind the dwelling and adjacent to the side boundary. No.17 benefits from a large rear garden. The rear garden has a depth which is considerably greater than its immediate neighbours of No.17a and No.17b Upton End Road (No.17a and No.17b), which are sited to the north. To the south is Byrant's Close which comprises two-storey semi-detached dwellings, and includes dwellings which front Upton End Road. This part of the settlement has a closely knit pattern of plots. No.17 marks a transition between this closely knit pattern and the more spacious and lower density development of the appeal site and its northerly neighbours. A public footpath runs parallel with the southern boundary. This separates No.17 from the gardens of Byrant's Close. The rear garden of No.17 is well vegetated with established trees located along much of the site boundaries and throughout the site. This creates a verdant character to the site.
7. The justification to Policy HQ8 of the Central Bedfordshire Local Plan 2015-2035 (2021) (the LP), states that "*Back-land development refers to the development of land which sits behind the existing building line with little or no frontage onto the public highway*"¹. Due to its position to the rear of No.17 Upton Road End with no frontage to the highway, I agree with the Council that

¹ At 7.7.1

the proposed development represents back-land development. The wording of Policy HQ8 advises that such development *"will be resisted where they are against the existing pattern and grain of development and the character and appearance of the area would be harmed"*.

8. The Central Bedfordshire Design Guide 2023 (the DG) also provides guidance on when back-land development may be acceptable, advising that it *"must demonstrate that it accords with the surrounding character, pattern, and grain of development, having regard to plot size, frontage length and dwelling size"*. Therefore, such development would be acceptable where it satisfies the requirements of HQ8 and the DG.
9. The proposal would result in the subdivision of the curtilage of No.17. The resultant plot depth for the existing dwelling would be similar to No.17a and 17b, while its width would not be significantly diminished by the driveway serving the proposed dwelling. From Upton End Road, the resultant frontage of No.17 would not appear significantly different than existing, or out of character with its neighbours.
10. The width and depth of the plot for the proposed dwelling would be similar to the resultant plot of No.17 which, as I have identified above, would not be out of character with its neighbours. Therefore, I find that the size of the new plot would not be out of context with the looser pattern of development along this part of Upton End Road. As such, the site could be split into two parcels as the size of the plots would be in context with the pattern and grain of the area.
11. Due to the spacious nature of the proposed plot, the proposed dwelling would be positioned a good distance from its site boundaries. Therefore, in terms of its proximity to site boundaries, the dwelling could be provided without the plot appearing overly cramped. In addition, the dwelling would provide an appropriate level of garden space to serve the dwelling and the ratio between garden and built footprint appears to be similar to No.17 (as proposed), No.17a, and No.17b. To this end, the development, again, would not be out of context.
12. The proposal is for a dormer bungalow which would not be of a scale that would appear visually at odds with the two-storey scale of No.17. Its modest height, proportions and proximity to site boundaries would ensure that the dwelling would not appear prominent from public vantage points. Further, the reduced height compared with No.17 would ensure that there would be a level of subservience with the existing dwelling. Therefore, I consider the scale of the dwelling to be appropriate to the area.
13. From the adjacent public footpath the dwellings on Bryants Close are visually prominent. While the dwelling would not front the footpath, it would have a visual relationship with it and those dwellings on Byrants Close. Given the visual prominence of the dwellings on Byrants Close the proposed development would not appear as an isolated form of back-land development or result in a form of development that would be out of context with its surroundings. In any event, the dwelling itself would be well screened from the footpath through retained vegetation along the site boundary, and would not be visually prominent.

14. For the above reasons, the development would not have a harmful effect on the character and appearance of the area. Therefore, the development complies with Policies HQ1 and HQ8 of the LP, and guidance contained within the National Planning Policy Framework (the Framework). Together, amongst other things, these require development to be of a high-quality design which relate well to the existing local surroundings and ensuring that the density reflects the existing character of the surrounding area. The development would also accord with the principles of the DG which states that back-land development should accord with the surrounding character, pattern, and grain of development.

Protected Species

15. The scheme proposes the demolition of the existing detached garage and involves development which includes works to a number of trees. The submission has been supported by a Preliminary Ecological Appraisal (PEA)² which has been prepared by suitably qualified professionals³. The PEA appraises the possible effects of the development on protected species and their habitats.
16. The PEA confirms that an external inspection of the garage has been undertaken (identified as B2 in the PEA). The PEA notes that *"all tiles appear to be in good condition, however there are small gaps present at the end of the tiles with potential to support roosting bats"*⁴. Furthermore, the PEA confirms that trees have been inspected and it identifies that there are three trees on the site (T16, T22 and T27) which each have small rot holes.
17. These are features within the building and trees which have the potential to support roosting bats. However, these are the initial observations of the ecologist and whether bats are present remains unknown. Therefore, the PEA sets out further recommendations to determine the presence of bats⁵. These include that one further bat activity survey be carried out to determine the bat potential of the garage. With regard to trees, aerial tree inspections should be undertaken to endoscope the identified rot holes.
18. The Councils Ecology & Biodiversity Net Gain Officer has advised that *"The further surveys which are required must be conducted and results provided to the LPA prior to determination. This is to ensure that any/all mitigation which is identified as necessary can be provided within the scheme"*⁶.
19. From the information before me, the additional survey work identified within the PEA, and requested by the Council ecologist, has not been carried out. However, additional information has been provided by way of internal and external photographs of the garage. The appellants also rely on comments within the Tree Survey⁷ (the TS) which suggests that *"No trees within the development site contain features to support roosting bats"*⁸.

² Prepared by Elite Ecology (dated July 2023)

³ Paragraph 1.1

⁴ Paragraph 4.1.9

⁵ At Paragraph 5.3.3

⁶ Consultation responses dated 15/09/23 and 27/10/23

⁷ Prepared by Paul Hicking Associates (dated August 2023)

⁸ TS Page 8

20. The submitted photographs have not been supported by any observations from an ecologist and, as such, I do not consider that such information can be relied upon to determine the presence/absence of bats. It remains that the building has features which have the potential to support bats and that their presence could only be determined through the necessary bat activity surveys requested.
21. I appreciate that an arborist may be familiar with when bats could be encountered within a tree. However, their observations do not identify the rot holes identified in the PEA or give any reason why they are not suitable potential habitat. The comments are clearly contrary to the observations of an ecologist, and I have no evidence to suggest that the author of the TS is a qualified ecologist. As such, their observations do not provide me with sufficient comfort to depart from the views of the ecologist. These are clear that an aerial investigation of the identified rot holes are necessary to determine the bat potential of the trees.
22. It is ordinary terminology for a PEA to set out further survey work in their "recommendations". This does not mean that a determination to approve a scheme can be advanced in the absence of such information. The effect of a development on protected species and/or their habitat, and the extent to which they could be affected by the proposed development, along with any mitigation which may be required, should be established before planning permission is granted. This has not been established, and I do not consider that there are any exceptional circumstances for me to determine that this could be dealt with in any other way or by way of condition.
23. While I note that it is proposed to install a significant number of bat and bird boxes across the site, this would not outweigh the potential harm that may arise to protected species and their habitats in the first instance. Without knowing the likely harm, I cannot be satisfied that this would lead to suitable mitigation or compensation. In addition, I do not consider that restricting construction to a time of year when bats are less likely to be encountered is appropriate when their presence is clearly unknown.
24. For the above reasons, there is insufficient information to determine the effect that the development would have on protected species and their habitats, with particular regard to bats. Therefore, the development is contrary to Policy EE3 of the LP, and guidance contained within the Framework. Together, amongst other things, these seek to avoid negative impacts on biodiversity.

Trees

25. The appeal site is well vegetated and includes a number of mature trees. These are principally located to the rear half of the garden where the proposed dwelling would be sited. The boundary trees are visually prominent in the skyline from Upton End Road, and particularly when viewed from the adjacent public footpath. T16 is a category B2 maple tree⁹ and is set into the site slightly, next to the boundary trees. T16 visually contributes to the extent of canopy cover at the site. T27 is a category A2 willow tree⁹. The tree is sited centrally within the garden and, as such, is less prominent than the boundary vegetation. However, its canopy is visible from Upton End Road and makes a visual contribution towards the variety of canopy coverage within the site.

⁹ As confirmed by Appendix A of the Tree Survey

Together, the trees make a valuable contribution to the visual amenity of the area.

26. The Tree Protection Plan¹⁰ (the TPP) identifies that T27 is scheduled for removal. The TPP shows T16 scheduled for retention although the proposed dwelling would be sited in very close proximity and partially within its RPA. However, the TS identifies that both T16 and T27 are scheduled for removal¹¹. I am not clear therefore whether T16 will be retained or removed.
27. LP Policy EE4 requires that specimen trees are protected and buffered, and where their removal is justified the asset is replaced with equivalent canopy coverage. Given the high categorisation of these trees along with their contribution to the visual amenity of the area, I consider that they should be sought for retention and/or the effects of development to them minimised. The removal of T27 would result in the loss of its canopy, and a high-quality specimen tree in itself, and would have a negative effect on the overall character and appearance of the area. Should T16 be removed, then this further loss of canopy would exacerbate the negative effect on visual amenity.
28. There is little justification provided for the removal of the tree(s). I have not been provided with any evidence to suggest that either tree has an underlying health issue, or any other evidence, to suggest that their longer term retention would not be feasible. On the contrary, the TS identifies both trees as having a life expectancy of greater than 20 years¹². In addition, I have not been provided with any evidence that the scheme represents the only feasible layout of the site and that other options to retain the trees with the development have been fully explored. While there is a high coverage of tree canopy on the site, the scheme does not minimise the effects to specimen trees. Full justification for their removal is required, as confirmed by Policy EE4, and this has not been provided or demonstrated.
29. While I note that additional compensatory planting could be provided, I have not been given the evidence to demonstrate that this would provide an equivalent canopy coverage to that removed, as required by Policy EE4. Notwithstanding this, in any event, I am not persuaded that this would compensate for the loss of specimen trees where their removal has not been fully justified.
30. Assuming T16 is to be retained, the TPP identifies that the proposed development would encroach into its RPA. The TPP indicates that *"Structural Engineers details are required to detail the type of foundation to be installed within the RPA of the retained trees. This may require mini-pile foundations to minimise the impact upon tree roots"*. The submitted TS provides limited information on the overall implications on T16, as noted above it suggests that the tree is scheduled for removal. I have not been provided with any evidence, by way of a detailed Arboricultural Impact Assessment or an Arboricultural Method Statement, to demonstrate that the extent of encroachment into the RPA is within any acceptable tolerances and whether the relationship is acceptable.

¹⁰ Drawing Number 2162 - 02

¹¹ Page 6

¹² As confirmed by Appendix A of the Tree Survey

31. Works within the RPA could have implications on the health of the trees and, therefore, ultimately whether there would be future pressures for its removal. Therefore, I concur with the Council, that greater detail on this matter is necessary to establish the full effects of the development on T16.
32. For the above reasons, there is insufficient information to justify the effects of the development on existing trees. Therefore, the development would be contrary to Policy EE4 of the LP and guidance contained within the Framework. Together, amongst other things, these seek to ensure that specimen trees are protected and that any loss is justified.

Other Matters

33. I acknowledge that the development would bring economic benefits during construction. While it would also bring both economic and social benefits to the area upon occupation. Further, the development would help to boost the supply of housing. However, these benefits would be limited to a single dwelling and I do not consider that they are sufficient to outweigh the harm, or potential harm, that I have identified.

Conditions

34. I have had regard to the list of conditions suggested by the Council. These principally relate to matters regarding the proposed dwelling. As I am dismissing that part of the appeal, those conditions would not be relevant.
35. I have imposed standard conditions relating to the commencement of development, and to require compliance with the submitted plans for certainty. A condition requiring details of the materials of the garage to be provided and approved by the Council is necessary in the interest of the character and appearance of the area.

Conclusion

36. The element of the scheme with which I take issue is severable from the remainder of the proposal. Therefore, for the reasons I have given, and having regard to all other matters raised, I conclude that the appeal should be dismissed in relation to the construction of a new detached dwelling to the rear of No.17 along with associated works and removal of an existing detached garage. However, the appeal should succeed in relation to the construction of the detached garage.

D Cleary

INSPECTOR