



Appeal Decision

Hearing held on 10 September 2024

Site visit made on 10 September 2024

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/X0360/W/23/3332084

Land rear of The Bowers, Sandhurst Road, Wokingham RG40 3JX

- 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 & Mrs Headland against the decision of Wokingham Borough Council.
 - The application Ref is 230479.
 - The development proposed is the erection of one self-build dwelling with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the Hearing the appellants requested reference to the development being self-build be inserted into the description, and I have considered the scheme accordingly.
3. The Council has a Draft Local Plan that has reached Regulation 19 stage. The weight I afford it is therefore limited as it could well be amended or modified before adoption.

Main Issues

4. The main issues are
 - a) the effect on the character and appearance of the area;
 - b) its effect on biodiversity and
 - c) if harm would be caused by either/both of the above whether a decision contrary to the development plan would be justified by other material considerations.

Reasons

The effect on the character and appearance

5. The Bowers is a short cul-de-sac off Sandhurst Road that I was told was built some 24 years ago. The appeal site is a remaining, undeveloped portion of land that lies across the head of the cul-de-sac behind a tall fence. Although the appellants' Ecological Survey Report of October 2023 (the Report) identifies it as predominantly comprising a grassland field, that is not how I would describe it. Rather, with extensive areas of bramble and a belt of tall

trees and shrubs along its rear boundary that has been subject to little maintenance, I view it as an unused overgrown piece of land. To either side are the back gardens of the houses along Sandhurst Road and Finchampstead Road, while beyond the rear fence is a golf course. The appeal site is outside of but immediately adjacent to the defined Development Limits, and the boundary to these Limits runs northwards and to the south-east through the middle of the long adjacent gardens.

6. Policy CP11 in the *Wokingham Borough Core Strategy* (the Core Strategy) says proposals outside of Development Limits will only be normally accepted in certain circumstances. The reason for this is '*in order to protect the separate identity of settlements and maintain the quality of the environment*'. This is supported by Core Strategy Policies CP1 and CP3, and by Policy TB21 in the *Wokingham Borough Managing Development Delivery Local Plan* (the MDD). Among other things, these policies collectively seek to maintain the quality of the environment in the Borough, and retain or enhance the condition, character and features that contribute to the landscape.
7. As none of the certain circumstances given in Core Strategy Policy CP11 apply to this proposal, they are not a basis to support the scheme. However, mindful of the reasons for that policy, there is nothing before me to show that this development would undermine the sense of separation between settlements to any material extent.
8. Turning to the other reason for the policy, namely the effect of the scheme on the quality of the environment, I consider the development would be in keeping with The Bowers when seen from Sandhurst Road and the cul-de-sac itself. The dwelling would not be unduly dominant. Rather, its design and scale would reflect those houses on The Bowers that are to either side, and it would also bring an appropriate sense of termination to the road that is not now experienced. While the trees at the rear of the site are currently visible, any benefit these may have in this regard is negated to an extent by the unsightly fence that is currently the dominant feature at the head of this short road. In any event, I consider an awareness of some of the trees on the rear boundary would remain once this new dwelling was built, given its size and position. Seen from this direction, the development would therefore not harm the quality of the environment.
9. I was told that Sandhurst Road, being a historic 'Ride', was a non-designated heritage asset. However, any significance it may have in this regard would not be harmed by this development, which would be set back from the road some distance, at the furthest end of The Bowers, and would relate well to the buildings around.
10. I nonetheless find that building a house on this seemingly undeveloped piece of land outside of the Development Limits, in what is treated as countryside, would lead to some diminution to the quality of the environment. This is because built form of a distinctly urban nature would be introduced where there is currently extensive planting that reflects what is found on the landscape beyond and relates to the adjacent countryside. Although there may be few public places from where this situation can be seen that, of itself, does not mean this harm would not occur.
11. I accept that now the trees on the north-eastern boundary play a role in separating it from the wider countryside, creating a feeling of enclosure, and

reducing the site's connection to the land beyond. Many of these though are to be removed and any replacements would take a while to create a comparable sense of separation. The scheme would therefore be far more prominent, at least in the short and medium term, when looking from the north-east when compared to the site's visibility from that direction at present.

12. However, balanced against this, while the dwelling's plot would take the form of a domestic garden, to the south-east and to the north garden areas already straddle the defined Development Limits and extend into the countryside for a similar distance. There is therefore already a possibility of sheds, swimming pools and similar, as well as ornamental planting, occurring outside of the Development Limits, and the site would be seen in the midst of this. To my mind this dilutes and limits the level of harm that would be caused by the scheme to the wider rural landscape.
13. In assessing this matter I have had regard to the submitted extract from the Landscape Character Assessment (Document LPA2 below). However, as the boundary for this area appears to run along or near to the rear fence of the site it has not led me to different findings.
14. It was also said the scheme fully complies with paragraph 84 (formerly paragraph 80) of the *National Planning Policy Framework* (the Framework). However, as this cannot be defined as an isolated home, that paragraph is not relevant.
15. Accordingly, I conclude the adverse effect on the quality of the environment means the development would cause harm, albeit limited, to the character and appearance of the area, in conflict with Core Strategy Policies CP11, CP1 and CP3 as well as MDD Policy TB21.

Biodiversity

16. Policy CP3 in the Core Strategy seeks to maintain or enhance the ability of a site to support flora and fauna. Core Strategy Policy CP7 starts by giving comment on sites designated as of importance for nature conservation at a national or international level. However, while some of its clauses then expressly concern those designated sites, clause (B) says that where a proposal would harm habitats or species of principal importance it will only be supported where the need for the development outweighs the need to safeguard nature conservation and no alternative site is available. As I read the structure of the policy, and mindful it has the general title of 'Biodiversity', I have no reason to consider clause (B) relates only to those sites of national or international importance, but rather could also be applied to other sites not so designated. MDD Policy TB23 then states that development must accord with Core Strategy Policy CP7, and incorporate an unspecified amount of biodiversity features and be ecologically permeable.
17. This need to protect flora and fauna is also found in the Framework, which says that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort compensated for, then planning permission should be refused.
18. Circular 06/2005 supports this position, stating that the presence of protected species is a material consideration when assessing a proposal that would be likely to result in harm to the species or its habitat. It goes on to say that

it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

It further advises that undertaking surveys after planning permission has been granted should only be done in 'exceptional circumstances'.

19. In the light of this advice, I have no reason to consider this case is one of the 'exceptional circumstances' to which the Circular alludes. Enough information should therefore be submitted for the effect of the development on protected species and their habitats to be fully considered before determination. This does not mean that some elements cannot be subject to conditions, but rather there should be sufficient evidence when considering the proposal to assess the likely negative effects on protected species.
20. This is not designated as a site of specific ecological value or importance to nature conservation, and is not near one either. The visits in connection with ecology were undertaken in the optimal survey season, albeit towards the end of that season. Furthermore, given when the application subject of this appeal was submitted, it is not required to comply with the mandatory Biodiversity Net Gain targets, and so on-site changes since January 2020 need not be established.
21. The Preliminary Ecological Appraisal of September 2022 (the PEA) said treelines and mature trees are to be retained. However, 4 groups and 3 specimens are to be felled, with the ones to be kept being mainly in the site's eastern corner. Indeed, the proposal would involve widespread removal of planting on site, as well as extensive earth works. As such, it is reasonable to assume that very little of the existing flora and fauna would remain during the period of construction. As the eventual landscaping scheme would be resolved by condition, any difference between what is proposed under the Report and the other landscaping details submitted is not problematic. However, the landscaping scheme shown in the Report is markedly different to the current situation, and so would constitute a new phase in the site's ecological journey.
22. On the evidence before me in the PEA and the Report, I am satisfied that flora would not be unacceptably harmed.
23. Turning to the fauna, being an undeveloped and overgrown piece of land on the edge of the countryside, where people have hardly ever gone for over 20 years, it is to be expected that it is used by wildlife for foraging, transit and maybe habitat. Indeed, evidence of a number of animals was apparent, but most were not defined as being of principal importance. However, the appellants accepted at the Hearing that the baseline in this regard was not confirmed. It is therefore difficult to see how I can be suitably confident that the presence or otherwise of protected species and the extent that they may be affected by the proposed development has been established.
24. The Report found that 'given the majority of the site comprised improved grassland' it provides limited value for reptiles. Elsewhere though it said the majority was semi-improved grassland and, mindful of what I saw on site and the absence of clear evidence to show that improvement had occurred over

the recent past, this is a view I share. This therefore calls into question the basis for the Report's finding that the value for reptiles is limited.

25. Low numbers of slow worms and grass snakes were nonetheless detected and, given their juvenile status, it is reasonable to assume breeding populations could be on or near the site. The Report acknowledged that the clearance of the grassland and scrub may cause the injury or killing of individual slow worms, and the overall loss of suitable habitat. Moreover, due to their low numbers, it found that translocation was disproportionate. It therefore accepted that there will be harm to these species. It said though that any reptiles found during the destructive search will be relocated to the retained grassland to the south of the site, but to me it is unclear where this area would be and whether it would be suitable in size and nature for such a purpose.
26. Although the Report said that the grassland was likely to be of value for notable invertebrates and they may utilise the site, it did not adequately explain why it concluded they would not use it in significant numbers. Moreover, the findings on hazel dormice were not clear, making reference to elsewhere in the country, while it was accepted hedgehogs were anticipated to be present.
27. New landscaping to respond to the ecology of the site would take time to become established. It would also require on-going careful and sympathetic management over a substantial period to ensure it delivered the benefits, and this could well be difficult given the domestic nature of the land and the reasonable aspirations of the residential occupiers. Indeed, even if the appellants had the intention now of managing the plot appropriately, it cannot be assumed they will always do so, or that subsequent occupiers would do likewise. Although a lengthy management period was suggested, to my mind that would exceed what was normally imposed under a condition.
28. I accept that the fencing to the cul-de-sac and to the back gardens of neighbours on The Bowers diminishes permeability in that direction. However, that is only preventing access to the suburban development. The fence to the golf course is also relatively complete, but access to another adjacent property is possible. As such, while some permeability could be delivered as part of the scheme, this is a limited benefit as it can already be achieved to a degree.
29. Finally, there is no mechanism before me to ensure that off-site mitigation can be secured to overcome any ecological harm that may arise from the scheme, and I have no evidence of alternative sites.
30. Accordingly, when the above matters are taken together, I conclude it has not been shown that the development would not cause significant harm to biodiversity and it has not been demonstrated that this harm can be adequately mitigated or, as a last resort, compensated for. As such, I also conclude it would conflict with Policy CP3 in the Core Strategy, as well as the Framework and Government advice in Circular 06/2005.

Other Considerations and planning balance

31. I have therefore found development plan conflict would be caused by the scheme's limited harm to the character and appearance of the area, as well as to biodiversity. However, section 38(6) of the *Planning and Compulsory*

Purchase Act 2004 refers to a balance, saying development should be in accordance with the development plan unless material considerations indicate otherwise.

32. The appellants have offered a number of material considerations that they contended weighed in favour of their scheme. The first of these is that the Council cannot demonstrate a required housing land supply, and so paragraph 11d) of the Framework is engaged. Insofar as it concerns this appeal, this states that where the policies which are most important for determining the proposal are out-of-date (including situations where the local planning authority cannot demonstrate a necessary housing land supply) permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (paragraph 11d)(ii)).
33. Given the stage the Draft Local Plan has reached, the Council needs to demonstrate only that it has a 4-year supply. However, it was agreed by the parties that the current supply was below that, being 3.2 years, and I have no basis to come to a different view.
34. The Council said the reason for this shortfall was because it had substantially exceeded its delivery targets over the last few years, and as a result its supply of deliverable sites had been drained. It therefore contended that the shortfall in supply was not a failure of its policies but rather a demonstration of their success. I consider it reasonable to assume the high delivery over recent years should temper the benefit of housing to some extent. However, these circumstances, to my mind, do not prevent the application of Framework paragraph 11d)(ii), as that makes it clear it applies when there is a housing land supply shortfall, irrespective of why that has occurred. Indeed any housing land supply figure is not a ceiling that should not be exceeded, and the oversupply of housing is not, of itself, a justification for resisting a development.
35. In the light of the above, I consider this shortfall of some 20% is appreciable. Consequently, even the delivery of this single house would be of some benefit, though I accept that as the scheme would bring forward just one dwelling then the extent of this benefit would be limited. Despite the tempering effect, I therefore attach great weight to what I accept would be this limited benefit of the scheme. Moreover, I afford the over-delivery limited weight as the shortfall, and so the requirements of Framework paragraph 11d)(ii), remain.
36. It was also said it was the intention that it would be a self-build house. From the submissions it was unclear as to whether there was a need for such housing in the Borough. However, whilst a possible condition was discussed to ensure its delivery and retention, it is difficult to secure certain matters relating to self-build in that way. Consequently, a legal agreement is likely to be the most appropriate method to secure these, and this would also bind the requirement to successors in title (should the land be sold in the future). However, the submitted obligation does not commit to this. Therefore, although in the description, there is no mechanism before me to ensure that it would remain as such, so any weight it can be afforded is limited.
37. Turning to the policies I have found most important in my determination, Core Strategy Policy CP11 does not appear to offer a basis to resist proposals outside Development Limits, if that development would not fail to protect the separate identity of settlements or maintain the quality of the environment, as

any such development would not conflict with its reasons. Although that brings some flexibility, it is nonetheless more proscriptive than the Framework and so the weight I attach to the development plan conflict is reduced somewhat. I consider that the other policies are consistent with the Framework insofar as they affect this scheme.

38. The harm to the character and appearance of the area by itself would not outweigh the appellants' stated benefits. However, when taking the effects on biodiversity and the character and appearance together, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits identified in connection with this single dwelling, when assessed against the policies in the Framework taken as a whole. Indeed this would be so even if, despite my comments, I were to assume the proposal as a self-build house was secured. Moreover, in the light of the above I also conclude the need for the development does not outweigh the need to safeguard nature conservation and so it is therefore contrary to Core Strategy Policy CP7.

Other matters

39. Although within 5km of parts of the Thames Basin Heaths Special Protection Area, my findings mean the effect of the development on this is not a matter I have had to explore further.

Conclusion

40. I therefore conclude the appeal should be dismissed.

JP Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

G Headland	Appellant
J Headland	Appellant
M Miller	Planning agent

FOR THE LOCAL PLANNING AUTHORITY:

S Castle	Planning Enforcement Manager
B Crafer	Landscape Architect
T Cuss	Ecology Officer
B Pulahi	Senior Planning Officer

INTERESTED PARTIES:

B Davies	Local resident
P King	Local resident

DOCUMENTS SUBMITTED AFTER THE HEARING

FOR THE APPELLANTS:

APP1: List of revised conditions

APP2: Comments on the Draft Local Plan (dated 17 September 2024)

FOR THE LOCAL PLANNING AUTHORITY:

LPA1: Map showing within 5km of the Thames Basin Heaths SPA

LPA2: Details of Landscape Character Assessment Area M1: Finchampstead Forested and Settled Sands