



Appeal Decision

Site visit made on 21 January 2025

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2025

Appeal Ref: APP/X0360/W/24/3348057

252A Nine Mile Ride, Finchampstead, Wokingham RG40 3NT

- 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 Nick Brister (Sterling Contractors Ltd) against the decision of Wokingham Borough Council.
 - The application Ref is 233030.
 - The development proposed is described as demolition of the existing bungalow, and the construction of 2 semi-detached houses with associated access, car parking, amenity space and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At Part E of the appeal form it is stated that the description of development has not changed, however, a different wording has been entered which reflects that stated on the Council's Decision Notice. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original planning application form.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

4. The main issues are:
 - i) the effect of the proposal upon trees, including whether or not T20 should be considered as a veteran tree, and
 - ii) the effect of the proposal on the integrity of habitats sites.

Reasons

Trees

5. The appeal site comprises a large, rectangular plot, whereby sits a chalet bungalow with an extensive garden. The appeal site is located at the junction of Nine Mile Road with Kiln Ride East within a predominantly residential area where trees are a prevalent feature. Mature trees are located within the appeal site, with those

located towards the site boundaries being particularly prominent within views along nearby roads contributing positively to the sylvan appearance of the locality.

6. It is understood that a number of trees, both individually and groups, are formally protected by way of Tree Preservation Orders (TPO's). A number of trees would be removed to accommodate the proposed development, including the removal of individual low-quality trees, the clearance of two domestic hedges and the partial removal of a further tree group and two domestic hedges. The loss of these was not in contention, instead the focus of the dispute relates to whether a tree known as 'T20' has been correctly identified. The submitted layout indicates that T20 would be retained in any case.
7. The appellant's Arboricultural Impact Assessment¹ (AIA) describes T20 as a High Quality (Category A) English Oak *Quercus robur*, possessing a 1380mm diameter stem and exhibiting moderate burring. It states that the tree's canopy is suppressed to the east, and some large diameter deadwood is present. Whilst recognising that the tree is a notable example, they conclude that it does not satisfy either the size or condition requirements of the Framework definition of a veteran tree.
8. The Council advances that the oak was granted TPO status by the Council in June 2022², whereby the Notice refers to it as a veteran tree, which was not disputed at the time. Moreover, they indicate that the tree in question is recorded as a veteran tree on the Woodland Trust Ancient Tree Inventory (ATI)³.
9. There are notable differences of professional opinion, which highlights the somewhat subjective nature of identifying veteran trees. The appellant's assessment is based on the RAVEN⁴ methodology. This assesses a tree on age, size and condition in respect of their values and allows for flexibility and judgment. The Council has assessed the tree and in doing so has regard to the ATI, British Standard⁵ and Natural England's Standing Advice. The Council submits that the RAVEN methodology has an over reliance upon the size of the tree in assessing its veteran status.
10. The Framework glossary⁶ defines ancient and veteran trees as 'a tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage'.
11. The Planning Practice Guide⁷ sets out further guidance, stating that trees become ancient or veteran because of their age, size or condition. It goes on to state that a veteran tree may not be very old, but it has significant decay features, such as branch death and hollowing. These features contribute to its exceptional biodiversity, cultural and heritage value.
12. It is understood that the Nine Mile Ride was constructed for George III (1738-1820). It is not disputed between the parties that the tree has an estimated age of 245 years. The location of T20 in public view on a historical Ride gives the oak a

¹ Arboricultural Impact Assessment June 2024 11730_AIA.001 Rev E Aspect arboriculture

² Notice of TPO 1896 2022

³ no.165025. Appendix 1 of the Wokingham Borough Council Statement with regard to Tree and Landscape Issues

⁴ Recognition of Ancient Veteran and Notable Trees

⁵ Trees in Relation to Design, Demolition and Construction to Construction - Recommendations" (BS 5837) (2012)

⁶ Annex 2: Glossary

⁷ Ancient woodland, ancient trees and veteran trees: advice for making planning decisions January 2022

cultural significance. The Standing Advice states that a veteran tree should display decay features. No such features are mentioned in the appellant's supporting arboricultural documentation. However, photographic evidence⁸ shows what appears to be Gandoerma fruiting bodies. Ganoderma, large diameter dead wood and burrs are all features of a veteran tree.

13. Having viewed the tree on site, and the evidence before me, T20 is of high value. I recognise there remains dispute over the size of the tree in respect of veteran status, however, this is just one of the factors to consider. The tree displays characteristics contingent with a veteran specimen, and in the absence of compelling evidence to the contrary, I concur that T20 be afforded veteran status.
14. Irrespective of whether or not the tree is of veteran status, its deterioration, or subsequent loss, would be harmful to the visual amenity of the locality.
15. Standing Advice is to create a buffer zone at least 15 times larger than the diameter of the tree, or 5m from the canopy edge, whichever is the greater. It goes on to state that development proposals, including gardens, should not be approved within a buffer zone.
16. It is clear from the submitted plans that built development would stand relatively close to the veteran tree, with the proposed northern gardens within the root protection area. Certain elements of construction would take place potentially among the roots of T20, including soil surfacing impact and hard surfacing for the laying of paths. The appellant indicates that a scheme for safeguarding retained trees, which relies on the use of protective barriers and the adaptation of reduced impact construction methodologies, could be secured by way of a planning condition. Nevertheless, exercising permitted development rights available to dwellings, and their curtilages, would not override the safeguarding provided by the TPO.
17. The proposal does not include canopy pruning to T20. However, the appellant recognises that the proposed development would unavoidably be influenced by tree shade and canopy over sail. Whilst this may not be dissimilar to the relationship of the existing property, the proposal would introduce new development, and intensify the quantum of development, within the site parameters. Furthermore, given the location of the proposed dwellings, and their front gardens, a lack of natural light would increase as canopies grow. It is likely in time that there would be applications from future occupiers, for the tree to be severely reduced or felled, due to concerns regarding overshadowing, falling branches or the tree falling, which could damage the tree's shape, or result in its loss, to the detriment of its visual amenity. Whilst the tree is subject to the TPO, because the future occupier's concerns could relate to their living conditions, the Council would find such applications hard to resist if the proposal were permitted.
18. The Framework is clear that development resulting in the loss or deterioration of irreplaceable habitats, which includes veteran trees, should be refused unless there are wholly exceptional reasons⁹, and a suitable mitigation strategy exists. Even with wider tree protection measures, I cannot be certain that the proposal would not result in the deterioration of this highly important tree. The proposal would provide

⁸ Appendix 3 of the Wokingham Borough Council Statement with regard to Tree and Landscape Issues

⁹ Footnote 70 of Paragraph 193 c) of the National planning Policy Framework: For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss or deterioration of habitat.

some public benefit in the form of an additional dwelling. However, the limited scale and nature of the proposal would not represent such exceptional circumstances as required by the Framework.

19. Additional landscaping could be secured to help assimilate the development into its surroundings and provide opportunities for biodiversity. However, this would take time to establish, and in any event, would not overcome the harm identified.
20. For the reasons stated, I cannot be satisfied that the proposed development would not risk the longevity of T20. Accordingly, I find that the proposed development would cause unacceptable harm to the retained tree, T20. This would conflict with Policies CP1 and CP3 of the Wokingham Borough Core Strategy Development Plan Document 2010 (CS) and Policies CC03, TB21 of the Wokingham Borough Managing Development Delivery Local Plan 2014 (LP) and Policy IRS6 of the Finchampstead Neighbourhood Plan 2023 (NP). Collectively, amongst other things these policies seek to protect and retain existing trees, hedges and other landscape features. Conflict also arises with the Framework which recognises the importance of ancient and veteran trees, stating that the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused unless there are wholly exceptional circumstances.

Habitats Sites

21. The evidence indicates that the appeal site is located within the Zone of Influence of the Thames Basin Heaths Special Protection Area (SPA). The SPA comprises a network of lowland heathland sites which provide a habitat for internationally important breeding bird species including woodlark, European nightjar and Dartford warbler. These are ground nesting species particularly vulnerable to disturbance from increased recreation and predation by cats.
22. The Council imposes a tariff on development proposals to provide contributions in relation to Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) to mitigate the effects of recreational disturbance and protect the integrity of European sites.
23. Due to its proximity to the appeal site, there is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupiers of the development. Although this may be minimal by itself, a significant effect on the integrity of the SPA would occur, when considered in combination with other residential development in the surrounding area.
24. The appellant has indicated a willingness to secure the required contribution towards the mitigation of the nearby sites with a Unilateral Undertaking (UU). However, no UU or other mechanism is before me that would secure mitigation of the impacts. Consequently, the significant and adverse effects that I have identified would not be mitigated and, therefore, the proposed development would harm the integrity of habitats sites.
25. Accordingly, I conclude that the development would have an adverse effect on the habitats sites and therefore would conflict with Policies CP8 and CP4 of the CS and Policy NRM6 of The South East Regional Spatial Strategy for the South East of England (May 2009) which requires, amongst other things, new development to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects.

Other Matters

26. I note the evolution of the proposal from a previously refused scheme. However, I have considered the appeal proposal on its own merits based on the evidence before me.
27. The environmental credentials of the proposed development are noted. The principle of development, the design and external appearance of the proposed dwellings are not in dispute. Similarly, I am satisfied that the proposal would not materially harm the living conditions of neighbouring occupiers. Subject to the imposition of conditions, the proposal would satisfy elements of the development plan policies in respect of highways and parking. However, a lack of harm in these respects are a neutral factor in the determination of this appeal.

Planning Balance and Conclusion

28. The Council is unable to demonstrate a Framework compliant deliverable housing land supply, with the deficit being significant. The Government's objective is to significantly boost the supply of housing. The proposal would provide a net increase of one dwelling in an accessible location with adequate access to goods and services. The proposal would be an efficient use of land, including a site that is partly previously developed. In addition, the provision of one self-build home, also weighs in favour of the scheme. There would be moderate, social and economic benefits associated with the proposal relating to construction employment and spend within the local economy once the dwellings are occupied. Nonetheless, given the small scale of the proposal the provision of one additional house attracts limited weight.
29. I have found that the proposal would have a harmful effect in respect of trees. Furthermore, the scheme would not mitigate the harm to habitats sites. This combined harm is a matter to which I attribute significant weight.
30. Notwithstanding any arguments regarding housing land supply or whether the most important policies for determining the application may be out of date, the presumption in favour of sustainable development as set out in paragraph 11d) of the Framework is not engaged. This is because the harm to the habitats sites means that the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed¹⁰.
31. Accordingly, the proposal would not accord with the development plan when considered as a whole and there are no material considerations that outweigh this conflict. I therefore conclude, taking all other matters into account, that the appeal should be dismissed.

R. Gee

INSPECTOR

¹⁰ Footnote 7 of Para 11 d) of the National Planning Policy Framework