



Appeal Decision

Site visit made on 28 May 2025

by **M Aqbal BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th August 2025

Appeal Ref: APP/W0340/W/24/3344428

Sylvan House, Fisher's Lane, Cold Ash, Thatcham RG18 9NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Millen Homes Ltd against the decision of West Berkshire District Council.
 - The application Ref is 23/02964/OUT.
 - The development proposed is serviced self-build plot at land adjacent to sylvan house, Fisher's Lane, Cold Ash.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline with all matters reserved except for access and layout. Appearance, landscaping, and scale would be matters for future consideration. Accordingly, whilst plans showing the proposed front elevation and frontage landscaping have been submitted, these are for illustrative purposes only.
3. Since the Council determined the application, the Cold Ash Neighbourhood Plan was made ('NP'). The main parties are aware of this and have made submissions in respect of this. Moreover, this forms part of the development plan, and I have had regard to this in determining this appeal.
4. A similar proposal to the proposed scheme was refused by the Council and dismissed at appeal¹ ('the previous appeal'). Consequently, this is also a relevant consideration in the determination of this appeal.

Main Issues

5. The main issues are:
 - i) The effect of the proposal on the character and appearance of the area, including protected trees;
 - ii) Whether the proposal provides satisfactory arrangements for foul and surface water drainage; and
 - iii) The effect of the proposal on the River Lambourn Special Area of Conservation (SAC).

¹ APP/W0340/W/23/3316050

Reasons

Character and appearance

6. The appeal site forms part of the garden associated with Sylvan House. This dwelling and its garden are within the settlement development boundary of Cold Ash, which for the purposes of the West Berkshire Core Strategy (2006-2026) ('CS') is defined as a Minor Rural Centre. The village is characterised by low density development comprising mostly of detached dwellings which are set back from the highway and occupy well proportioned, maturely landscaped plots. These characteristics provide for a verdant and spacious setting which contributes positively to the semi-rural character and appearance of the area.
7. The topography of the wider site falls by some 6m from the host property to the north-western boundary. Many of the larger trees along this boundary together with those adjacent to Fishers Lane are collectively protected by a Tree Preservation Order. These protected trees are substantial in size and prominent within their immediate setting and, together with the well-established, dense roadside hedgerow make a strong and attractive contribution to the local character.
8. In particular, Policy CAP12 of the NP identifies the historic network of sunken lanes within the plan area, which includes the section of Fishers Lane adjacent to the appeal site. This Policy says that: *"Development proposals should respect the character and appearance of sunken lanes within the neighbourhood area. Development proposals which would detrimentally affect the character of a sunken lane or create a new access onto such a lane will not be supported."*
9. Indeed, the raised level of the land associated with the appeal site's frontage along with the existing landscaping, reinforces the sunken lane character of this part of Fishers Lane.
10. In dismissing the previous appeal, the Inspector identified harm arising from and the creation of an open driveway, and the introduction of a lengthy, deep, and tapered splays which are not commonplace along Fishers Lane.
11. There are a number of dwellings which are accessed off Fishers Lane, to this end, there are various access points along this lane. However, in general the areas either side of these accesses are enclosed by landscaping or fencing. Also, most of these are not identified as being part of the historic network of sunken lanes.
12. Since the previous appeal was determined a timber gate has been installed along the frontage of the appeal site adjacent to Fishers Lane. There has also been some removal of landscaping along the frontage of the appeal site to facilitate the installation of this gate. Whilst the Council and others have expressed concern about the lawfulness of these works and potential impacts on protected trees, at the time of determining this appeal, there is no substantive evidence to support this or that the Council is engaged in any formal enforcement action in respect of these matters.
13. The access for the proposed dwelling would be broadly in the location of the installed gate. Irrespective, the access for the new dwelling is shown to be open and would incorporate an engineered solution to create the vehicle crossover and driveway. This would also require visibility splays. Although the frontage hedge

may have been coppiced in the past, to facilitate the required visibility splay, a substantial section of this would be removed to provide a clear height visibility above 0.6m.

14. The appellant is proposing layers of new planting, including mature tree specimens and other smaller specimens and hedging. Some of this landscaping is intended to establish quickly and screen the gap between the low planting within the visibility splay and below the canopies of trees to the rear of this. Whilst landscaping is a reserved matter, the submissions contain limited information about specific species, planting arrangements and maintenance. As such, I cannot be certain that this would adequately mitigate the discordant form of the visibility splays and the loss of mature landscaping and suitably complement the planting along Fishers Lane.
15. Moreover, the extent of works proposed to create the access for the new dwelling, in particular the removal of the hedge would have an erosive effect on the sunken lanes character of Fishers Lane and this is likely to be greater than that associated with the installation of the existing gate, which although new is not an uncommon feature for a lane in a rural area.
16. The proposed access and driveway for the new dwelling would encroach into the Root Protection Areas ('RPAs') of several trees, including the protected grade 'A' Oak trees, identified as T1, T2, T3 and T9.
17. In summary the submitted Arboricultural Impact Assessment ('AIA') says that the proposed development has been planned to take into account the constraints of the existing trees, and it is possible to retain all individual trees within the scope of the survey.
18. However, in dismissing the previous appeal, which on the information before me included the same AIA, the Inspector concluded that: *"While the details suggest a ramp system is feasible, the AIA plots the RPAs of the protected trees as roughly perfect circles. When taking account of the nearby hardstanding including Fishers Lane and the adjacent driveway, it is likely that the root systems will have developed to compensate for this. Given the uncertainty regarding the extent of the true RPAs and the noted change in ground levels required to achieve the necessary access gradient, I cannot be certain that the proposed measures could be undertaken without damaging the roots of the protected trees."*
19. In addition, to the AIA, the scheme before me is supported by a recently commissioned Airspade Investigation Report ('AIR'). The air spade uses a precisely directed stream of high-pressure air to penetrate and dislodge soil so as not to damage plant roots. There is no strong technical evidence that the AIR does not adhere to the methodology outlined in BS 5837:2012.
20. The AIR Investigations were based on two areas. Area 1- Along the edge of Fishers Lane where the proposed drive would meet the road surface and Area 2 - to the north of the proposed dwelling. For both these areas, the AIR revealed no significant roots belonging to T1 or T9. Fine roots identified were attributed to understorey vegetation (e.g., Hazel, Holly) based on their visible characteristics.
21. Whilst the hard surface of Fishers Lane does limit root spread, the AIR confirms that these are not significantly offset into the plot, confirming that the presence of the road surface does not unacceptably affect the root morphology.

22. Also, the proposed 220 mm no-dig driveway utilises a cell-web system to ensure minimal soil disturbance along the 1:10 slope which would be designed to integrate the driveway into the existing contours without requiring excavation.
23. Furthermore, the above works are intended to be carried out under the supervision of a qualified arborist to mitigate any risk of root disturbance.
24. The AIA also supports the assertion that the structural stability of T1 and T9 will remain unaffected because no excavation is proposed within the structural root plate radius (4-4.5 m) and therefore the anchorage zones for these trees will remain intact.
25. In light of the above, I have no strong reason to conclude that the proposal would be harmful to protected trees.
26. Nevertheless, due to the loss of hedgerow and the creation of an open driveway, including a lengthy, deep, and tapered splays which are not commonplace along Fishers Lane and the erosive effect of these on the sunken lanes character of Fishers Lane, the proposal would result in harm to the character and appearance of the area, contrary to Policies CS14 and CS19 of the CS. Amongst other things, these policies seek to ensure that development is appropriate to the pattern and character of the existing settlement and conserve and enhance the diversity and local distinctiveness of the area.
27. Accordingly, the proposal conflicts with NP Policy CAP12. Also, the proposal does not support the aims of NP policies CAP2, CAP3 and CAP7, which together seek to secure the enhancement of roadside green space; require that infill development is landscape led and supported by a landscape strategy, and the maintenance of enhancement of the landscape character which includes the important landscape features such as hedgerows, trees and verges, which should be enhanced to maintain the rural beauty of the area.
28. The above policies align with the aims of the National Planning Policy Framework ('the Framework') for enhancing the natural and local environment.
29. The Council's decision also alleges conflict with Policies CS 17 and CS 18 of the CS, which relate to biodiversity and green infrastructure respectively. Whilst the removal of the hedgerow may affect biodiversity, the Council does not allege any harm in this regard. Further, given the CS's definition of 'Green Infrastructure', I am not persuaded that this would be relevant to this proposal. Therefore, these policies are not determinative to this main issue.

Surface and foul water drainage

30. The appeal site lies within Flood Zone 1 and therefore is at low risk of flooding from rivers and the sea. It is also at low risk from surface water flooding. However, the Council's Strategic Flood Risk Assessment indicates that the site is in an area of high groundwater with groundwater over part of the site between 0.025 metres and 0.5 metres below ground surface. As such, and in accordance with Policy CS 16 and footnote 63 of the Framework, the proposal is supported by a Flood Risk Assessment ('FRA'). On the information before me, this FRA and supporting Technical Note are the same as those submitted for the previously dismissed appeal.

31. The FRA indicates that foul waste would be disposed of via a private treatment plant which will act as the primary and secondary treatment to clean the foul water. The treated effluent flows would then be pumped into a drainage mound located within the appeal site, where the flows would be allowed to infiltrate.
32. Surface water would be disposed of via a sustainable drainage system which largely relies on the permeable driveway for the proposed dwelling, with the intention of dealing with surface water at source via infiltration so as not to increase the risk of flooding elsewhere. The appellant advises that the drainage strategy is compliant with the drainage hierarchy and has been designed up to and including the 1 in 100 year +40% climate change event.
33. The submissions state that the appellant's flood risk consultants have instructed updated infiltration tests and that the submitted report shows that the ground conditions remain largely unchanged from 2012. However, the infiltration results are derived from the BGS borehole records and whilst site specific percolation tests have been carried out, these were undertaken in 2012.
34. Therefore, I concur with the previous Inspector in that whilst the boreholes, albeit located in the same underlying bedrock foundation are located some 250 metres from the appeal site, there is no assurance that the rates of infiltration at the site would be comparable to the borehole records. Also, whilst the 2012 percolation test results for Sylvan House demonstrated suitable ground conditions, a considerable period has since elapsed. Therefore, although the appellant submits that the proposed system would be a betterment to the earlier scheme which was accepted by the Environment Agency, I cannot be sure that 2012 test results can be relied upon for the purpose of this appeal and that infiltration would be an appropriate means of drainage at the appeal site.
35. More recently, in undertaking the AIR, in part, the ground at the appeal site was found to be waterlogged. This further supports my concerns about the suitability of the ground conditions for the proposed drainage schemes.
36. The Unilateral Undertaking ('UU') includes an obligation to provide a drainage strategy to manage surface water on the appeal site, including connection to the County Council's existing system if on-site drainage is unfeasible. Nevertheless, no details of an alternative drainage strategy are before me and West Berkshire District Council is a Unitary Authority and therefore there would be no existing County Council system. As such, I afford this obligation little weight.
37. Accordingly, insufficient and updated details have been submitted with the application to confirm that the proposed surface and foul drainage schemes would be successful for the present ground conditions at the appeal site. Therefore, I cannot be certain that the proposed surface and foul drainage schemes would be successful in managing flood risk. Accordingly, the proposal conflicts with Policy CS16 of the CS, which along with other things seeks to ensure that development does not increase flood risk elsewhere. This Policy is consistent with the Framework, which also seeks to ensure that flood risk is not increased elsewhere.

River Lambourn SAC

38. The appeal site is located within the catchment of the River Lambourn SAC a European designated site which is protected by the Conservation of Habitats and Species Regulations 2017 ('Habitats Regulations'). Natural England ('NE') advise

that the River Lambourn SAC is in an unfavourable condition due to an exceeded nutrient (nitrous / phosphorous) threshold.

39. In order for development to be acceptable, these Regulations require it to be demonstrated that it will have no likely significant effect on the River Lambourn SAC, either alone or in combination with other proposals. If it cannot, measures must be proposed to remove the impact, for example, a satisfactory scheme of mitigation (i.e. one that can demonstrate the nutrient neutrality of the proposed development), or the proposal should be refused.
40. In this case, the impacts of the proposal are likely to arise from foul water discharge. As the competent authority, I am responsible for undertaking Appropriate Assessment ('AA') as to whether the integrity of the River Lambourn SAC would be affected by the development.
41. The appellant's submissions in respect of the above are largely outlined under Section 6 of the FRA, the supporting Technical Note and Nitrate Neutrality Plan. Whilst the FRA says that proposed foul flows are likely to be extremely low, there is limited information to substantiate this. Furthermore, this asserts that the site's discharge location is located over 1km away from the River Wye SAC and any Sites of Special Scientific Interest, whereas the impacts under consideration in this appeal relate to the River Lambourn SAC.
42. Moreover, the appellant's submissions largely rely on the removal of proposed foul waste via the private treatment plant to remove the impact on the River Lambourn SAC. However, I have already found that I cannot be certain of the efficacy of this.
43. By referring me to Appeal Ref. 3289198, the appellant advises that mitigation measures could be secured via a condition that prevents the development from commencing until the mitigation measures have been approved in writing by the Council, which demonstrate that the additional nutrient loading generated by the proposal would not have an adverse effect on the integrity of the European site.
44. However, such an approach is specifically addressed in the Planning Practice Guidance ('PPG')². This sets out clearly that a positively worded condition is unlikely to pass the test of enforceability and a negatively worded one is unlikely to be appropriate in the majority of cases. Nonetheless, it does note that in exceptional circumstances such a condition may be appropriate where there is clear evidence that the delivery of that development would otherwise be at serious risk, stating that this may apply in the case of particularly complex development schemes, and where the six tests for conditions are also met. However, the proposed scheme is for a single dwelling is and not a particularly complex.
45. Irrespective of the above and other advice in the PPG in respect of conditions, the suggested mitigation measures include the appellant committing to securing off-site credits as part of the submitted UU. This still requires that there is certainty and transparency about the delivery of mitigation in order to ensure that the identified potential for an adverse effect on the integrity of the European site is not realised. In this case, the Council advises that there are no schemes in place to secure such credits in the district.
46. In Appeal Ref. 3271379, the proposal included installation of a package sewage

² PPG Paragraph 010 Reference ID: 21a-010-20190723

treatment plant on the site and a commuted sum to the Council to secure investment into a nitrate's mitigation scheme consisting of the conversion of a nearby existing farm into a nature reserve. As such, because a specific scheme for nitrate mitigation was identified, the circumstances of this allowed appeal are not directly comparable to the proposal before me.

47. Therefore, without the submission of a satisfactory scheme of mitigation (i.e. one that can demonstrate the nutrient neutrality of the proposed development) insufficient evidence has been submitted with the appeal to permit me to undertake the AA. I am therefore unable to conclude that the development would not add to the unfavourable nitrate / phosphate levels within the River Lambourn SAC. As such, the proposal does not accord with CS Policy CS17, which amongst other things requires that habitats designated or proposed for designation as important for biodiversity or geodiversity at an international or national level or which support protected, rare or endangered species, will be protected and enhanced. This Policy is consistent with the aim of the Framework for enhancing biodiversity and geodiversity.

Other considerations

48. Having considered the proposal in light of the available evidence, I concur with the main parties that, in principle, the appeal site is in a suitable location for new housing with regard to its location and the general pattern and arrangement of dwellings in the area. Also, there is some support for this through local and national planning policies. I have also taken account of the support for new housing in other government documents, such as Written Ministerial Statements.
49. The Self Build and Custom Housebuilding Act 2015, requires local planning authorities to establish and publicise a local register of custom-builders who wish to acquire suitable land to build their own home. The Housing and Planning Act 2016 sets out that local planning authorities have a duty to grant planning permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period. The Framework also supports small sites to come forward for community-led development for housing and self-build and custom-build housing.
50. On the evidence before me, the need for Self-Build and Custom Housebuilding in the district far exceeds the supply and this situation has worsened overtime. As such, the Council is failing in their obligations and their duty under the Self-build and Custom House-building Act 2015. The UU includes an obligation which confirms that the proposed dwelling would be for a Self-Build and Custom house and the proposal would support the supply of self-build housing.
51. Although the appellant intends to pursue an environment friendly, high-quality scheme, which will include additional tree planting and wider biodiversity enhancements, at this stage these requirements cannot be secured. As such, there is no certainty to this. Therefore, these and any associated environmental benefits attract limited weight.
52. Whilst it has been suggested that the proposal can be delivered in a short time frame, no mechanism has been identified to secure this.
53. Nonetheless, if the appeal were to succeed and subject to the approval of any reserved matters, the proposal would secure a new self-build dwelling. There would

also be jobs created during construction of the development. When complete the new dwelling and its occupiers would support local services and contribute to the economy. As such, there would be some social and economic benefits.

54. In light of the above and in particular the self-build nature of the proposal and the Council's position, I attach significant importance to this. However, given the small scale of the proposal (1 dwelling). This, and the benefits associated with it attract less than moderate weight.
55. The appellant has referred me to other housing schemes allowed on appeal where Inspectors afforded significant weight to self-build housing. Nevertheless, in the approved schemes the quantum of self-build housing was greater. In any event, the weight afforded to this type of housing is largely a matter of judgement for the decision maker.

Planning balance and conclusion

56. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
57. I have found that although the proposal could be undertaken without harm to protected trees, there would be harm to the character and appearance of the area. Also, on the information available to me, I cannot be certain that the ground conditions of the site would support the proposed surface water and foul drainage schemes. In addition, I am unable to conclude that the development would not add to the unfavourable nitrate / phosphate levels within the River Lambourn SAC. The harm associated with these matters and conflict with the development plan and similar aims of the Framework, attract substantial weight.
58. Having taken account of the other considerations in support of the proposal to which I attach less than moderate weight, I do not consider these to be sufficiently forceful, even if taken together, to outweigh the harm and conflict with the development plan I have identified. Consequently, in the circumstances of this case, the material considerations do not justify a decision other than in accordance with the development plan taken as a whole.
59. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR