



Appeal Decision

Site visit made on 25 August 2020

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2020

Appeal Ref: APP/R0335/W/20/3246407

Winsdene, Forest Road, Winkfield Row, Bracknell RG42 7PY

- 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 Mr Michael Gallagher, MJG London against the decision of Bracknell Forest Borough Council.
 - The application Ref 18/00641/FUL, dated 18 June 2018, was refused by notice dated 8 August 2019.
 - The development proposed is demolition of the existing buildings and the site's redevelopment to provide 10 new residential dwellings (6 x 5 bed dwellings and 4 x 4 bed), the construction of a new internal access road, utilising the existing vehicular and pedestrian access from the adopted highway and associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The address of the appeal property has been spelt "Windsdene" on the Council's decision notice and the appeal form. However, it is spelt "Winsdene" on the application form and, more importantly, on the property, so this would appear to be correct. I have therefore used this second spelling throughout this decision.
3. During the consideration of the application by the Council the then applicant submitted a number of amended drawings and additional reports, which the Council considered in making its decision. I will use these amended drawings and reports in this decision.
4. The appeal was accompanied by a Planning Obligation by agreement under Section 106 of the Town and County Planning Act 1990 (as amended) dated 21 July 2020 dealing with sustainable drainage systems (SuDS) and contributions towards public open space and mitigation for the effects of the proposal on the Thames Basin Heaths Special Protection Area (the SPA). The Council confirmed that this overcomes their reasons of refusal relating to the effects on the SPA and public open space, but not matters relating to drainage. I will discuss these matters below.

Main Issues

5. The main issues are:

- the effect on the character and appearance of the area;
- whether the proposed development would be at risk of flooding or increase the risk of flooding elsewhere; and
- the effect on ecology.

Reasons

Character and appearance

6. The appeal site lies on the south side of Forest Road. It is a builders' reclamation and salvage yard and also has a single dwelling, Winsdene, a bungalow. The reclamation and salvage yard includes extensive areas of hardstanding, along with various buildings, storage units and areas of open storage. The buildings are generally single storey, but some, particularly towards the western boundary at the rear of the site are slightly taller. Due to the lack of height, the extensive vegetation along Forest Road and the limited views through the two entrances into the site, the site is not readily seen from the public highway. Additionally, it can be seen through vegetation from an area of public open space around a balancing pond in the Carnation Drive estate to the east. There is woodland to the south and to the east of the site, with a watercourse running northwards to the east of the site. The site slopes down from west to east towards the watercourse.
7. To the west is a substantial two storey property, Woodlawns, which is set a similar distance back into the site as Winsdene. This faces Forest Road and positively addresses the street. Beyond that there is an extensive bungalow set in substantial grounds a greater distance from the road. Further along Forest Road is a row of dwellings, as frontage development. To the east is the Carnation Drive estate which is likely to date from the 1980s and 1990s, having a character of a suburban residential estate of this era.
8. The development plan for the area includes the Bracknell Forest Borough Local Plan (the Local Plan) which was adopted in 2002, the Core Strategy Development Plan Document (the Core Strategy) (2008), and the Site Allocations Local Plan (2013). Under the terms of these plans, the site lies in the countryside outside any settlement.
9. Policy CS2 of the Core Strategy sets out locational principles for development in a sequential approach. The last of these is as extensions to defined settlements with good public transport links. Policy CS9 of the Core Strategy requires land outside settlements to be protected for its own sake, particularly from development that would adversely affect the character, appearance or function of the land. Policy CS7 of the Core Strategy also requires high quality design which builds on local character, respecting patterns of development, and enhancing the landscape.
10. Policy H5 of the Local Plan indicates that outside settlements new dwellings will not be permitted unless, among other matters, it would cause no harm to the character of the area, or the relationship between the settlement and the surrounding landscape. Policy EN8 of the Local Plan indicates that the countryside will be protected for its own sake, with development only permitted if it would not adversely affect the character, appearance or function of the land or damage its landscape quality. Policy EN20 requires that development

should be in sympathy with the appearance and character of the local environment and appropriate in scale, design, layout and siting.

11. The proposed layout would utilise one of the existing access points, closing the other, and provides for a row of detached properties set along one side of a street perpendicular to Forest Road. The remaining dwellings would be set around a turning head to create a cul-de-sac.
12. Plot 1 would be set noticeably closer to Forest Road than Winsdene or Woodlawns and through its location, height and design would intrude into views from Forest Road. It would not positively address Forest Road, being a side elevation, even with some fenestration in that north elevation. This means that it would significantly and demonstrably harm the character of the area, particularly as the area between the dwelling and the road would form the private garden to the dwelling leaving little opportunity for landscaping. Being within a private garden it would not be reasonable or proportionate to require landscaping in this area to be maintained. Landscaping, therefore, would not mitigate these harmful effects.
13. The layout along the street would be dominated by hardstanding, either from the road itself or from the areas for parking that would be laid out in front of the dwellings. This would be out of keeping with the well landscaped wider area and would result in a highly urban character. This urban character would therefore not act as a transition between the suburban area of the Carnation Drive estate to the east and the wider countryside to the west, particularly as there would be an area of undeveloped land to the east of the appeal site. It would therefore be significantly and demonstrably at odds with the character of the area. As the design would be dominated by hardstanding the development would represent poor design, and as paragraph 130 of the National Planning Policy Framework (the Framework) makes clear, development of poor design should be refused. Paragraph 127 of the Framework also makes clear that planning decisions should ensure that developments are sympathetic to local character and be visually attractive. For the reasons set out above this would not be case.
14. The parties have set out their positions as to whether the development plan should be considered to be up-to-date, and thus whether the tilted balance set out in paragraph 11 d) of the Framework should apply. However, as I find below that, even with the mitigation proposed, the site would be at risk of flooding, footnote 6 indicates that the tilted balance does not apply.
15. It is clear that the settlement boundaries in the development plan flow from housing numbers in the South East Plan which, for these purposes, was withdrawn some years ago and do not follow the methodologies in the Framework, and are thus out-of-date. However, whether the development plan policies relating to the location of development and those relating for development in the countryside are consistent with the Framework or not, in my view, the layout is such that it would be significantly and demonstrably harmful to the character and appearance of the area. The policies relating to good design, which are an intrinsic part of this assessment, are consistent with the Framework and it is these policies which, for the purposes of this issue, represent the most important policies for determining this appeal.
16. While the site represents previously developed land, the current use of the site does not intrude into the character and appearance of the area to the same

extent as would the proposal and even giving significant weight to the benefits of the proposals in economic and social terms, this does not outweigh the harm I have identified.

17. Consequently, the proposal would be harmful to the character and appearance of the area. It would be contrary to Policy CS7 of the Core Strategy and Policy EN20 of the Local Plan as set out above. It would also be contrary to paragraphs 127 and 130 of the Framework, again as set out above.

Flooding

18. The site is at a significant surface water flooding risk, predominantly from the south, although there is also a, comparatively, minor flow from the west. The extent of this risk is shown on maps provided by the Environment Agency. At the appeal stage the appellant submitted a revised Flood Risk Assessment. The Council's concerns relate to surface water, foul drainage and SuDS.
19. The Council is concerned that insufficient information has been submitted to show the risk of flooding affecting both those living on site and by increasing flood risk elsewhere had been minimised, and the development was appropriately flood resistant and resilient. This particularly related to the appellant's proposed mitigation proposals of providing, effectively, an on-line pond to the south from which flows would be attenuated. It is also proposed to raise the ground floor level of the properties in the area at risk of flooding above existing ground levels.
20. However, the location of the proposed attenuation pond is itself in the area at risk of flooding. This area of woodland has not been surveyed accurately, and therefore it is not possible to be sure whether it would function as intended, or because of the location, would actually increase flows by removing existing natural obstructions. Furthermore, because there is a known obstruction further up the catchment, should this no longer be in place, it may be that the pond would be of insufficient size to reduce the risk of surface water flooding for the dwellings. Resolving this should not be left to condition since it may not be capable of resolution taking into account all other factors, some of which are discussed below, without resulting in further harm.
21. The sites of Plots 9 and 10 and, to a lesser extent, Plots 7 and 8 are subject to on-site flood risk; these are the properties where the ground floor level would be raised. However, this would create obstructions to surface water flow and it is not clear what measures would be put in place to compensate for the area, and thus volume, lost from this area. Further, it is not clear what additional built structures, such as steps or decking to allow access to gardens that might impede flow, would be necessary in light of this raised level, and thus what compensation would be needed for this. This results in an increased risk and for the same reasons should not be resolved by condition.
22. The appellant maintains that it is not possible to connect to the nearest foul water sewer, and thus proposes to introduce on-site treatment. The Council's concerns relate to whether there would be sufficient capacity within that system so that flows from the system could be attenuated at times of surface water flooding so as to not add to that risk. The appellant's response to this was that details of the system could be conditioned. Given the location of the proposed tank would be under a road, I am satisfied that this would have provided sufficient flexibility had it not been for the west-east surface water

flows that go through this area. Because these have not been fully modelled, it is not possible to be satisfied that an attenuation tank of sufficient capacity would not result in an obstruction to that cross flow, thereby adding to flood risk.

23. The Council's final concern relates to SuDS and whether these would work satisfactorily. While the maintenance of these would be dealt with satisfactorily through the Planning Obligation, because of the uncertainty over surface water flows, it cannot be determined that the system would be of sufficient capacity to ensure that the proposal was adequately drained within the appeal site or on adjoining land in the appellant's control. Again, this should not be left to conditions.
24. Consequently, it has not been shown that the proposal would not be at risk of flooding or increase the risk of flooding elsewhere. It would therefore be contrary to paragraph 163 of the Framework relating to flood risk.

Ecology

25. The appeal site falls within the boundary of Big Wood Local Wildlife Site (LWS). This is designated for its lowland deciduous woodland with wet areas such as streams and flushes. The Council was concerned at the application stage that insufficient information had been provided in relation to various matters, including bats, Great Crested Newts, reptiles and breeding birds. At the appeal stage an updated Preliminary Ecological Appraisal was submitted, which included surveys undertaken at different times of year. While this updated Preliminary Ecological Appraisal deals with some matters, it does not overcome all the Council's concerns. In any event the Council is concerned about the effects on the LWS itself.
26. In considering whether sufficient information is available to allow a proper decision to be made, I am mindful of paragraph 99 of Circular 06/2005 "Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System" which advises 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.
27. In respect of bats the updated Assessment, following specific survey, concluded that the buildings on site were of negligible value for bats, but that the woodland was likely to be utilised for commuting and foraging. The proposal was not considered to affect bat populations, because of the lack of higher value trees for roosting. However, because of the lack of surveys in this area, and the uncertainties as to the extent of the surface water attenuation pond discussed above, this cannot be appropriately determined; higher value trees may be affected. Therefore, it has not been demonstrated with sufficient certainty that the proposal would not adversely affect bat populations.
28. There are no records of Great Crested Newts within 1km of the site but there are four ponds in relatively close proximity. The original survey was undertaken in January and the updated survey in July. Both of these are outside the optimum survey period of March to May. Pond 3 was not surveyed, but due to Forest Road between the site and this pond, was considered by the appellant not to be well connected to the site. However, there is direct connectivity

- through the culvert under Forest Road, and while in flood there would be high flows preventing migration from the pond to the site this will be infrequent. The lack of survey information as to this pond means that it cannot be ascertained whether there are any adverse effects on Great Crested Newt populations.
29. Surveys of the Paddock and Woodland areas to the south of the appeal site identified that these areas were used by grass snake and slowworm. Other than for the drainage works these areas should not be affected by the development. However, there was a lack of information as to where the squares of roofing felt used for surveying were located on the site and whether this included the appeal site itself. This means that it cannot be ascertained from the information submitted that the areas which would be affected by construction works do not, currently, provide a suitable habitat for these reptiles, and that this would not be reduced.
30. In relation to breeding birds it is not suggested that any particular species would be affected by the proposal, rather that breeding birds using the LWS may be affected by operations. Subject to appropriate surveys by an ecologist before any works taking place, and any works taking place outside the bird nesting season, I am satisfied that appropriate measures could be put in place to ensure that populations of breeding birds would not be adversely affected.
31. The LWS designation covers both the appeal site and the land within the appellant's control (as well as land to the south and southwest). While the appellant maintains that the overall condition of the woodland is poor, this, of itself, is not a reason that harm should be permitted. The appellant notes that there may be increased recreational activity, light spill and the potential for garden compost, waste and ornamental species 'escaping' into the LWS. Set against this the appellant proposes the removal of current invasive species from the woodland within his control, which would be a benefit, as well as providing a buffer between the site and the woodland area to mitigate species 'creep'.
32. Again, because of the lack of detail that the surface water drainage system would be adequately designed, the effects on the LWS, whether direct or indirect, cannot be ascertained with certainty. Further, the buffer area would be likely to result in the loss of part of the ecologically sensitive area, and there is nothing to ensure that this would be appropriately maintained in the long term or that the invasive species are removed. The Planning Obligation does not cover this, and a condition cannot reasonably ensure the long-term management of the area.
33. Consequently, it cannot be determined that there is sufficient information to ensure that the ecology of the area is not harmed. As such the proposal would be contrary to Policy EN20 of the Local Plan which requires regard to be had to retained beneficial ecological features and it would also be contrary to Policies CS1 and CS7 of the Core Strategy which require that the quality of natural resources is protected and enhanced and that biodiversity is enhanced.

Other matters

34. As the site is within 5km of the SPA, had I been minded to allow this appeal it would have been necessary for me to undertake an Appropriate Assessment to show that the proposal, on its own or in combination with other plans and projects, would be unlikely to have a significant effect on the integrity of the

SPA in light of the SPA's conservation objectives. However, as I am going to dismiss the appeal for other reasons, there is no need for me to consider this further.

35. The contribution towards public open space is required to mitigate the effects of the proposed development and therefore is only a neutral factor in the determination of this appeal.

Conclusion

36. For the reasons given above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR

Richborough Estates