



Appeal Decision

Site visit made on 11 July 2023

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Appeal Ref: APP/H2265/W/22/3302608

2 Yardley Park Road, Tonbridge TN9 1NE

- 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 9 The Spinney Ltd against the decision of Tonbridge and Malling Borough Council.
 - The application Ref 21/01677/FUL, dated 11 June 2021, was refused by notice dated 8 April 2022.
 - The development proposed is the demolition of the existing buildings and the erection of 13no. apartments with associated access, landscaping, parking and infrastructure.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by 9 The Spinney Ltd against the decision of Tonbridge and Malling Borough Council and is the subject of a separate decision.

Procedural Matters and Main Issues

3. I have taken the description of the proposed development from the appellant's appeal form, which reflects the amended proposals submitted to the Council and consulted upon prior to determination of the planning application. I am satisfied that using this description would not prejudice the interests of any party.
4. The appeal development involves the demolition of buildings and the removal of trees. The Council advised in its Committee Report that a pre-commencement condition would have been imposed to secure surveys of the appeal site for protected species. In the context of the advice in Circular 06/2005, I wrote to the main parties inviting comments on protected species. Although not requested, the appellant undertook a bat roost potential survey of the appeal site's buildings, dated 5 November 2023. This found that the dwellinghouse supports 2 potential bat roost features and some trees have the potential to support roosting bats. The survey recommended that to fully establish the presence/absence of roosting bats within the appeal site, further survey work is recommended to be carried out at the appropriate time of year.
5. The appellant's survey report and analysis would, were I to accept it, lead to procedural unfairness by depriving interested parties and the Council with an opportunity to make representations on this information and the results of the further survey work. For these reasons, I have not taken the appellant's survey information and analysis into account in determining this appeal.

6. In light of this, the main issues in this appeal are the effect of the proposed development on:
- The effect of the proposed development on biodiversity and protected species, with particular regard to bat species.
 - The character and appearance of the area, and whether it would preserve or enhance the character or appearance and significance of the Tonbridge Conservation Area (CA).
 - The living conditions of the occupiers of Springhill Cottage, with particular regard to outlook, access to light, and noise and disturbance.

Reasons

Biodiversity and Protected species

7. The proposed development is relatively extensive, involving the demolition of existing buildings of some age, and the removal of some trees and vegetation. Furthermore, there are trees and vegetation nearby, and other buildings of traditional construction, which could provide linkages to the appeal site for protected species.
8. Based on my observations at the site, the scale and nature of the proposed development, and the evidence in the Council's Committee Report and from interested parties, including reference to Natural England Standing Advice, there is a reasonable likelihood of protected species, particularly bats, being present on the site. Bat species are a European protected species under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Several bat species are of 'principal importance' under the Natural Environment and Rural Communities Act 2006 (the NERC Act). Bat species are therefore afforded full protection under UK and European legislation.
9. The advice in Circular 06/2005 'Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system', states 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. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances..."*.
10. Taking account of the advice in Circular 06/2005 as above, I therefore consider that the appeal site must be surveyed and any necessary measures resulting from that to protect biodiversity, including bats and their roosts, should be clearly identified and secured through conditions and/or planning obligations, before planning permission could be granted. This would be the case even if the proposal was to be acceptable in all other respects. There is no substantive evidence before me to demonstrate any exceptional circumstances that would justify departing from the advice in the Circular referred to above. In the context of the advice in the Circular, the appellant's views on the likelihood of a European Protected Species license being granted by Natural England do not alter my conclusion.

11. For these reasons, in the absence of substantive evidence to the contrary and having regard to my duty under the Habitats Regulations and the NERC Act, I conclude on this issue that the proposed development would harm biodiversity and protected species, with particular regard to bat species. As such, it would conflict with Policy CP1 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy September 2007, (the CS), and Policy SQ1 of the Managing Development and the Environment Development Plan Document – Part of the Local Development Framework for Tonbridge and Malling April 2010 (the DPD), insofar as they seek to balance the need for development against the need to protect and enhance the quality of the natural environment, including the biodiversity value of the area.

Character and appearance, and the CA

12. The appeal site lies within the CA, which encompasses a substantial area of the settlement of Tonbridge. The character, appearance and significance of this part of the CA is derived from the relationship between the substantial detached and semi-detached residential buildings, and the linear street pattern of Yardley Park Road and Dry Hill Park Road, either side of roundabout junction with the busy Shipbourne Road.
13. In determining this appeal, I shall have regard to my statutory duty under s72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
14. Apart from a few modern buildings fronting Yardley Park Road, the buildings in the vicinity of the appeal site are mostly constructed in a period style and extend across 2 storeys with accommodation in the roofs. Although of individualistic designs, the buildings are constructed from a consistent materials palette of red brick and tiles, with stone detailing and timber boarding. They tend to feature dormer windows and gabled roofs, and display a high level of decorative architectural details, including hanging tiles, timber barge boards and large chimneys.
15. The substantial buildings fronting Yardley Park Road and Dry Hill Park Road are set in rows on strong building lines and behind front boundary walls, hedgerows and planting. Separated by generally narrow spaces, the buildings present a strong built-up frontage and sense of enclosure to the roads. Together, the relationship between the buildings and roads gives the area an attractively formal and well-ordered suburban character and appearance.
16. The appeal property is a 2-storey dwelling with accommodation in the roof, which benefits from a large garden to its side and rear. Compared to the other corner plots at the junction of Dry Hill Park Road and Shipbourne Road, the appeal property stands within an uncommonly spacious plot and is set further back from the Shipbourne Road frontage.
17. The proposed building would represent a denser form of development on the appeal site, with a larger footprint than nearby buildings. Its elevations fronting on to Yardley Park Road and Dry Hill Park Road, would be markedly wider than those of the existing building to be demolished, with a greater scale and massing. When viewed from the approaches to the roundabout junction of Yardley Park Road, Dry Hill Park Road and Shipbourne Road, particularly from the north and west, the scale and massing of the building would be clearly

visible. However, the height of the proposed building would be comparable to the surrounding buildings. The width and massing of its road facing elevations would not be significantly greater than those of the largest semi-detached dwellings that front Yardley Park Road and Dry Hill Park Road.

18. Set back from the boundary with Shipbourne Road by a greater distance than the building on the opposite corner of Dry Hill Park Road, and by following the existing building line to Yardley Park Road, the proposed building would respect the alignment of the existing built form that fronts the roads. The gap between it and 2A Yardley Park Road (Springhill Cottage), would not be unduly narrow in comparison to the spaces between buildings in the row.
19. Architecturally, the arrangement of projecting gables, dormer windows and the composition of the varied materials and finishes would provide relief to its massing. These details would reflect the traditional styles and materials of many of the buildings in the area. The brick boundary wall with railings above and between the piers would reflect the predominant boundary treatments in the area.
20. Space would remain between the roads and the buildings to accommodate some of the existing trees along with new planting, particularly at the corner of the junction. This would soften the development and reflect the planting that lines the fronts of properties on both sides of the road. Existing trees along the southern boundary, including the substantial tree T12, which the evidence suggests is a horse chestnut, would be retained. When in leaf, these trees would be likely to provide screening or filtering of views of the south facing elevations of the building. Likewise, they would mitigate the modest urbanising effect of the hard surfaced car parking and turning area. The revised drawings and Tree Survey showing the retention of additional trees along the Shipbourne Road frontage does alter my conclusion on this issue as even without the additional trees being retained, the proposal is acceptable in this regard.
21. For these reasons, the scale and massing of the proposed building would not overwhelm this spacious plot. Viewed in the context of the rows of generally tightly spaced and substantially sized existing buildings, the proposed building and its boundary walling would not appear dominant or intrusive in the street scene, and it would reinforce the strong built-up frontage to the roads. Together with its traditional style and architectural detailing, I find that the proposed building would be in-keeping with the attractively formal and well-ordered suburban character and appearance of the area.
22. The density of development would increase the number of households occupying the site. However, the site is located on the corner of a relatively busy road junction, where traffic creates noticeable noise levels. In this context, the nature and intensity of the proposed residential use would be consistent with the character of the CA.
23. In terms of the existing buildings to be demolished, nothing I have seen or read in the evidence before me would justify reaching a different view to the main parties on the significance of those buildings to the CA. Even if I were to accept the Council Officer's view that they make a very minor contribution to the significance of the CA, I find that demolition and replacement with the proposed building would, in totality, preserve the character, appearance and significance of the CA, for the reasons given above.

24. For these reasons, I conclude on this issue that the appeal proposal would not harm the character and appearance of the area. Taking the CA as a whole, the proposal would have a neutral effect and would thereby preserve (leave unharmed) the character and appearance of the CA. As such, the proposal would be consistent with Policy CP24 of the CS, and Policy SQ1 of the DPD, insofar as they require the scale, density, layout, siting, character and appearance of a development respects its site and surroundings, and conserves and where possible enhances the character and local distinctiveness of the area, including its historical and architectural interest.

Living conditions

25. In the flank elevation of Springhill Cottage (SC) and facing the appeal site are a clear glazed ground floor window and an obscurely glazed first floor window. Although the side wall of the proposed building would be closer to SC than the existing dwelling, the obscure glazing in the first-floor window would be expected to substantially restrict the occupiers outlook from the room it serves. As such, the proposed building would not have dominant or overbearing effect on the occupiers' outlook from this room in SC.
26. The outlook from the ground floor window of SC is partly towards the tall brick boundary wall and the side wall of the existing dwelling on the appeal site. The wall and existing building serve to restrict the occupiers' outlook from this window and the amount of light reaching this window in the room it serves. In this context, although set closer to SC than the existing dwelling, the flank wall of the proposed building would not have an unacceptably dominant or overbearing effect in views from this window. Furthermore, compared to the existing situation it would not result in a significant and harmful reduction in the amount of light reaching this ground floor window or the first floor obscurely glazed window.
27. The rear wall of SC has a south facing aspect across a relatively long rear garden which is bordered to the appeal site by a tall brick wall. The L-shaped layout of the proposed building would see a significant part of its built form projecting beyond the rear wall of SC. However, this element of the proposed building would be set back from the common boundary by a sufficient distance to avoid it from having a dominant or overbearing effect on the outlook of the occupiers of SC, in views from their rear facing rooms and garden.
28. The evidence does not include a technical assessment of daylight and sunlight, and the Council's appeal statement references access to light to SC. The part of the proposed building that would project beyond the rear wall of SC, would be set well away from the common boundary, and thus it would leave space between the buildings, through which sufficient light would continue to reach the part of the rear garden closest to the rear wall of SC. Furthermore, given its south facing aspect, sufficient sunlight would continue to reach the garden and rear windows of SC for a large part of the day as the sun moves through the sky. More so when the sun is highest in the sky during summer months.
29. The proposal's density would lead to a consequential increase in levels of activity, including comings and goings. The layout of the proposal would focus these activities to the outdoor amenity area and car park located alongside the rear garden of SC. However, the site is located on the corner of a relatively busy road junction, where traffic noise was clearly audible, particularly as vehicles accelerate away from the junction, and largely continuous. As such,

the garden environment at the appeal property was not quiet or tranquil. Representations from interested parties attest to the traffic conditions in the area.

30. In this context, the character of noise and disturbance from vehicles entering and exiting the proposed car park and manoeuvring within it, including the running of vehicle engines and the intermittent closing of vehicle doors, would not be 'alien' in character. It would be consistent with the residential nature of the area. There would be nothing to prevent use of the car park during the night when most people would be sleeping and when background noise levels would be lower. However, the capacity of the car park is relatively modest, and it would be set away from the rear wall of SC. Vehicles would not pass close-by the walls and windows of the dwelling at SC, and the proposed building and SC would be separated by a tall brick wall on the common boundary, which would likely have an attenuating effect on noise levels.
31. The intensity of the normal domestic activities associated with the proposed residential units would, to an extent, be limited by the size of the communal garden area. In the context of the noise environment that I observed, it would not be expected to cause levels of noise and disturbance that would harm the living conditions of the occupiers of SC.
32. Fitting obscure glazing to the east facing upper floor windows serving the lobby areas of the proposed building would prevent views out of the building and across SC, thus safeguarding the occupiers' privacy.
33. For these reasons, I conclude that the proposed development would not harm the living conditions of the occupiers of SC, with particular regard to outlook, access to light, and noise and disturbance. For these reasons, it would be consistent with Policies CP1 and CP24 of the CS, which, insofar as is relevant to the appeal proposal, require development to preserve residential amenity and that development which would be detrimental to amenity will not be permitted.

Other Matters

34. As I am dismissing the appeal for other reasons, I need not consider the submitted Section 106 agreements in detail. The obligations in those agreements are aimed at mitigating the negative impacts of the development, including on social infrastructure, which are neutral factors that weigh neither in favour nor against the development.
35. The appellant raises concerns regarding the Council's determination of the planning application, including committee proceedings and the timing of the decision relative to elections. However, these concerns have not influenced my decision and should be referred to the Council in the first instance.

Planning Balance and Conclusion

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. In the context of the development plan, I have found conflict with the protecting biodiversity objectives in Policy CP1 of the CS, and Policy SQ1 of the DPD. Given that Bat species are protected by law, I give substantial weight to the conflict with these development plan policies in this regard.

37. There is no dispute that the Council cannot currently demonstrate a 5-year supply of housing land in its area. The appellant quotes a housing land supply of some 2.2 years, which has not been contested by the Council. As such, planning permission for the proposed development should be granted unless, under Framework Paragraph 11.d)i., the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development or, under Framework Paragraph 11.d)ii., any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
38. The list of protected areas or assets of particular importance to which Framework Paragraph 11.d)i. applies, includes designated heritage assets. I have already concluded that the proposed development would preserve the character or appearance of the CA as a designated heritage asset. Therefore, the application of the Framework's policies that protect heritage assets, do not provide a clear reason for refusing the development proposed.
39. The Framework sets out the Government's objective of significantly boosting the supply of homes. Given the significant housing shortfall in the Council's area, the proposed residential units, which include smaller units affordable to a greater number of persons, would make a valuable contribution to housing supply on a small site where there is good access to a range of services, facilities and employment opportunities, and where housing is supported in principle. The proposal has received some local support in these respects. Framework Paragraph 69 states that small sites can make an important contribution to meeting housing requirements and are often built-out relatively quickly. In this context the appeal proposal's contribution to the supply of housing weighs significantly in its favour.
40. Furthermore, construction and occupation of the proposed development would generate short-term employment opportunities and economic activity, together with long-term economic and social benefits through the new resident households supporting businesses, facilities and services within the area. Given the scale of the proposed development, these benefits attract significant weight in its favour.
41. Any environmental benefits arising from the proposal, including through on-site renewables and enhancement to biodiversity would be relatively modest and outweighed by the overall harm to protected species that I have identified above. Even if I were to agree that the appeal proposal would not give rise to any other harms, an absence of harm including to the character and appearance of the area, and the CA, and the living conditions of nearby occupiers would be neutral and would not weigh positively in favour of the development.
42. The adverse impacts of the proposal would be confined to the harm I have identified to biodiversity and protected species, with particular regard to bat species. This would result in conflict with Paragraphs 174 and 180 of the Framework, which state that development should minimise impacts on biodiversity and local planning authorities should refuse planning permission if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for. In having regard to my duties in respect of the

Habitats Regulations and the NERC Act, I attach very substantial weight to this harm and the conflict with the Framework.

43. The proposal's adverse impacts identified above would therefore significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. Consequently, the proposed development does not benefit from the Framework's presumption in favour of sustainable development.
44. I have found that the proposed development would not cause harm to the character and appearance of the area or to the living conditions of the occupiers of nearby properties. The character or appearance of the CA would be preserved. However, for the reasons given above, the proposal would adversely affect biodiversity and protected bat species, which brings it into conflict with Policy CP1 of the CS, and Policy SQ1 of the DPD, and therefore the development plan as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. Having considered all matters raised, I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR



Costs Decision

Site visit made on 11 July 2023

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Costs application in relation to Appeal Ref: APP/H2265/W/22/3302608 2 Yardley Park Road, Tonbridge TN9 1NE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by 9 The Spinney Ltd for a full award of costs against Tonbridge and Malling Borough Council.
- The appeal was against the refusal of planning permission for the demolition of the existing buildings and the erection of 13no. apartments with associated access, landscaping, parking and infrastructure.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals.
3. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; and where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant seeks a full award of costs on the basis that refusal of the application by the Planning Committee was made on unsubstantiated grounds contrary to the professional advice provided by the Planning Officer and statutory consultees at the application stage. The applicant contends that the Council's decision was based on vague, generalised or inaccurate assertions about the proposal's impact, which are unsubstantiated and unsupported by any objective analysis. In so doing, the Council's behaviour was unreasonable and has prevented or delayed development which should clearly have been permitted.
5. The appellant has provided a link to the video recording of the Planning Committee Meeting, however, Paragraph 9.4.7.1. of the 'Procedural Guide:

Planning appeals – England’, states that audio or video evidence will not be accepted and that a written summary should be provided. Therefore, I have not viewed the recording of the Planning Committee meeting and my decision on this application for costs is based on the written evidence before me. Concerns over the behaviour and conduct of Planning Committee Members during the meeting are matters to be taken up with the Council.

6. It is acknowledged that the Planning Committee is not required to accept the advice of its professional officers and is entitled to exercise its own planning judgement and reach a different conclusion. However, if a different conclusion is reached, the Council has to demonstrate, on planning grounds, why a proposal is unacceptable and provide clear evidence substantiating that reasoning.
7. Matters relating to the effect of a proposal on the significance of a designated heritage asset, and the character and appearance of an area, and effects on living conditions are broadly subjective matters, involving planning judgement. The applicant has referred to the Council’s decision as being made against the advice of statutory consultees. However, the applicant has not specified which statutory consultees the Council disagreed with in reaching its decision.
8. In reaching its decision and aided by the evidence before it, including the Committee Report, the Committee referred to the relevant development plan policies, and it clearly recognised the location of the appeal site as within the Conservation Area, and the sizes and styles of the existing buildings in the locality of the appeal site. The Council’s statement provides an explanation of the scale of the proposed building relative to the existing dwelling on the site and others in the locality, including a recognition of the prominence of the appeal site in public views and its siting relative to the road. The scale of the proposal would have been clear from the drawings.
9. Although the Council’s finding of ‘poor design’ is dealt with in relatively broad terms in its statement, scale is an aspect of design, and the Council has explained why the scale, bulk and massing of the proposal would, in its view, have caused harm to the significance of the Conservation Area and to the character and appearance of the area. Despite disagreeing with the Council in my main decision on the appeal, there is nothing inherently unreasonable with the Council’s assessment of these matters, and it has adequately substantiated the relevant reasons for refusal.
10. The Council’s concerns over the effects of the proposal on the living conditions of the nearby occupiers of Springhill Cottage are adequately substantiated with reference to an objective analysis of the existing conditions at that property. This includes any analysis of the outlook from this property with respect to its window openings and its relative to the scale and position of the proposed building, and the increased levels of activity at the proposed development. Therefore, the Council’s assessment of this matter and its finding of harm was not unreasonable and it has adequately substantiated this reason for refusal.
11. The balancing exercise is a matter of planning judgement. The Committee clearly recognised the need to balance the benefits against the harms, with particular regard to Paragraph 11.d) of the National Planning Policy Framework as referenced in the refusal reason and taking account of its conclusion on the proposal’s effect on the designated heritage asset. The Committee were assisted by the Committee report setting out the benefits of the scheme and

the Council's housing land supply position. Although expressed in relatively brief terms in the Council's refusal reason and statement, the outcome of the balance was nonetheless substantiated with specific reference to the harms identified by the Council. Accordingly, the Council's assessment of this matter was not unreasonable.

12. I acknowledge that I have reached different conclusions in my main decision to those reached by the Council. However, I am satisfied on the evidence before me that the Council adequately substantiated its refusal reasons through a sufficiently detailed and objective analysis of the proposal's impacts, and why it would not be acceptable, having regard to relevant development plan policies. It has exercised reasonable planning judgement when balancing the relevant benefits and disbenefits of the proposal, and it did not prevent or delay development which should clearly have been permitted. Consequently, I find that the applicant has not incurred unnecessary or wasted expense in the appeal process.

Conclusion

13. I am satisfied that the Council's Planning Committee did not behave unreasonably in reaching its own conclusions on the planning application. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

G Sylvester

INSPECTOR