



Appeal Decision

Hearing held on 1 November 2022

Site visits made on 31 October and 1 November 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/R3650/W/22/3291680

**Land known as 17 Frensham Road, Lower Bourne, Farnham, Surrey
GU9 8HF**

- 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 P Strange against the decision of Waverley Borough Council.
 - The application Ref WA/2020/1798, dated 16 September 2020, was refused by notice dated 30 July 2021.
 - The appeal development is the erection of a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Parties agree that the development subject to this appeal has already taken place without the benefit of planning permission. The appeal application seeks to regularise the position.
3. Planning permission was granted in 2017 for a dwelling on this site (the 2017 permission). However, the Appeal Development (AD) was constructed further down the slope of the site and was rotated clockwise. It is also taller, has a higher finished floor level and has been built in different materials. Parties agree that the AD does not benefit from the 2017 permission.

The Amended Scheme

4. Following the decision of the Council, the appellant submitted amended drawings which show various alterations to the appeal development, notably a change to external materials and a reduction in overall volume, visible form and surface area. They suggest that this alteration to the scheme should be considered in the alternative under the auspices of this appeal, in the event that the AD is found unacceptable.
5. The Council disagrees with, and objects to this approach.
6. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. There is no suggestion that this option is not available to the appellant to test the Amended Scheme.

7. In considering whether or not to accept the amended drawings, and consider the Amended Scheme, I have had careful regard to the Wheatcroft Principles, more recent caselaw cited by the appellant¹, written submissions on this point and discussion with parties, including third-parties, at the hearing.
8. Both the Council and appellant identify broadly the same test and key legal principle. That is whether the development proposed in the Amended Scheme is so changed that to grant it would deprive those who should have been consulted on it, the opportunity of such consultation. In this particular circumstance, I must essentially consider whether anyone affected by changes to the scheme before me in this appeal, namely those who made representations on the appeal application, would be denied the opportunity to make their position on the Amended Scheme known to me, the decision maker.
9. I cannot deny that the Amended Scheme was clearly set out in appeal submissions from the start of this appeal, and it appears that these documents were published and made available by the Council in the same way as planning application documents. I also note that the appellant carried out their own direct consultation with third-parties, explaining their position and approach.
10. I agree therefore that there was opportunity for interested parties to make their position known, either in writing to the appellant or Inspectorate, or in person at the hearing, where the Amended Scheme was discussed.
11. I agree that it is therefore possible for me to consider, through this appeal, the Amended Scheme submitted by the appellant.
12. However, I do not find that these opportunities automatically mean that I can consider the Amended Scheme without prejudice to the position of those who have already made representations. Although that opportunity existed in this case it is also clear that the level of engagement with the planning application process was significantly and materially greater than with the appeal process.
13. In my experience this is not unusual; many participants engage on the assumption that any subsequent appeal would not be used to evolve proposals, and indeed, the Procedural Guide reinforces that assumption. It appears, and comments at the hearing lend weight to this view, that in this case many parties who engaged with the application understood that there was no further need to comment at the appeal stage. To my mind the appeal notification letters rather reinforce this point; highlighting that any representations already made on the application will be sent to the Inspectorate and that further comments may be made "*if you wish*". In this context, it is entirely understandable that many parties, particularly those not professionally represented, or those with limited experience of the planning system, yet who engaged with the application would not examine the appeal submissions in much greater detail.
14. My attention has been drawn to a previous appeal decision² in which an Inspector took the approach promoted by the appellant here; that the AD be considered in the first instance and then Amended Scheme be considered if the former is unacceptable. I have no reason to disagree with the reasoning or approach taken in that case, and I acknowledge the importance of consistency in decision making.

¹ R (Holborn Studios Ltd) v Hackney LBC [2017] EWHC 2823 (Admin)

² Appeal Decision APP/Q1255/W/19/3230105

15. However, in that case the Council apparently confirmed that although the amended plans did not “*overcome its objections to the development, it had no objection to the amended scheme being considered*” in light of the specific details of that case, including representations which had apparently been made in response to the direct consultation undertaken by the appellant.
16. In both of these regards the appeal before me is different. The Council here is clear that they object to the Amended Scheme being considered for the reasons they set out, and the appellant confirmed that no representations were made to them on their consultation on the Amended Scheme.
17. I accept that this is not a failing of the appellant’s approach or the clarity of their submissions. However, to my mind, the circumstances and detail of this appeal and indeed, the scale of the changes proposed (which one might more reasonably expect to be the subject of a separate application) are so substantial, such that for me to consider the Amended Scheme, would give rise to significant, substantial and material prejudice and at the very least, a perception of significant and substantial unfairness.
18. Taking all of that together, in the interests of fairness and natural justice, consistent with the Wheatcroft Principles and other caselaw set out, I have therefore determined the appeal on the basis of the plans that were before the Council when it made its decision and on which parties were consulted.

Fall-back

19. It was discussed and agreed between the parties that the 2017 permission has now expired and can no longer be implemented. It was agreed that the differences between the 2017 permission and the AD are such that the construction of the AD does not represent implementation of that 2017 permission. As such, the AD does not benefit from planning permission and no fall-back position exists.
20. However, it was also agreed that the 2017 permission has established the principle of residential development on the site as well as the form, height, scale, appearance and design ethos of *an* acceptable form of such development. It is important to note, and a point with which I agree, that the 2017 permission is not the *only* form of such development which could be acceptable on the site.
21. As such, parties agree that whilst it is appropriate to draw comparisons between the AD and the 2017 permission, differences which arise from such comparisons are not necessarily in and of themselves harmful. It is rather, the specific effects of the AD, assessed against the development plan as a whole, with the 2017 permission as an established principle which stands to be considered.

Main Issues

22. As a result of the above, the main issues are the effect of the appeal development on
 - the character and appearance of the area, and
 - the setting and significance of nearby heritage assets.

Reasons

Character and appearance

23. As set out above, the principle of residential development on this site has been established, and it is not at issue that a suitably designed dwelling, which had appropriate effects on the character and appearance of the area could be acceptable.
24. The area around the appeal site is mixed in character and appearance. There is a broad variety of buildings, in various uses, both public and private. In particular, I note that there is a wide variety of scale (including height), form, material, relationship to the road, relationship to other buildings and age. The relatively steep-sided river valley gives many buildings greater visibility and prominence from a wide range of viewpoints than might be otherwise expected.
25. Despite the number of buildings, the area around the appeal site is also very well-wooded and verdant, giving rise to an informal semi-rural character. This particular character and appearance is specifically acknowledged in and protected by Policy FNP8 of the Farnham Neighbourhood Plan 2013-2032 (the FNP), as well as by the Farnham Design Statement 2010 (the Design Statement). Policy FNP8 in particular defines the surroundings as an Arcadian Area, in which landscape is the dominant visual element.
26. The AD is a part three-, part two-storey building, with its tallest part closest to the road. Although part of the lower ground-floor is obscured by the boundary fence and entrance gates, the visual impression of the AD from the public domain is of a three-storey building with an oversailing top floor, further projecting balcony and a substantial set of steps and earthworks to the front.
27. Because the boundary fence follows the falling ground level along Frensham Road, the AD appears to increase in height and prominence towards the front and more open part of the site. In views southwards, down the hill beyond the site and the AD, the height is emphasised, with the very visible rear and side elevations and roofline appearing to gain height and prominence above the steeply falling level of the road.
28. In particular, I find that the large, flat, fenced-in garden area to the rear of the AD, along with the visibility of the rear elevation emphasises both the height of the AD and its proximity to the road. To my mind, this proximity to the road, particularly of the three-storey section adds to the apparent height and scale of the AD increases its visibility and prominence.
29. The close relationship and visibility of the balconied section, earthworks beneath it, side elevation, and stark boundary fencing to the public right of way at the bottom of the hill also add to the apparent height and prominence of the AD. To my mind, this gives the impression of a structure looming over the well-used public right of way, rather than being set within the slope, and surrounded by trees.
30. Taken together, in views from the other side of the valley, the public rights of way, the side roads and indeed Frensham Road, the AD appears prominent and dominant, an effect emphasised by the oversailing top floor at the front and side.

31. I accept in this that the 2017 permission would have been visible in these same views. However, it was lower in height, had a lower floor-level and had a much closer relationship to the original ground levels, with less of the building above that original ground level. In addition, the tallest parts of it were further away from the road and public rights of way, reducing its apparent bulk and height.
32. I also accept that there are other dwellings in the area, and indeed, within some of the same longer views as the AD, which are both visible and which stand above the road, notably 13 and 15 Frensham Road. However, in my opinion, they have a very different relationship to the public domain, with a smaller height difference to the road, and a softer visual appearance due to their pitched-roof form and materials. The evidence of the appellant also demonstrates this, notably in their annotated street-scene which shows the roofline of the AD being higher above the road than 15 Frensham Road. As a result of the above, I find that the siting and height of the AD does create an unduly prominent and visually dominant dwelling.
33. In long views across the valley and along Frensham Road, and notably within views which include the appeal development, there are several buildings in light or bright colours similar to the appeal development. Indeed, along Stream Farm Close I saw composite timber-effect cladding, as used on the AD.
34. As such, I do not consider that the particular colour and choice of materials used on the AD are necessarily unacceptable given the established character and appearance of the area around the site. However, in combination with its siting and height, the materials used add to the prominence and visual dominance of the AD, such that its overall effect is unduly, unacceptably prominent and visually dominant.
35. In reaching this conclusion, I have considered, in line with paragraph 55 of the National Planning Policy Framework (the Framework), and it was discussed at the hearing whether or not a condition regarding materials could make the AD acceptable. A condition requiring the submission, approval and implementation of materials more akin to the 2017 permission, could be imposed. I also have evidence which shows that such materials could reduce somewhat the visibility of the dwelling at certain times of year. However, such a change would not overcome the harm identified above in terms of the effects of the siting and height of the AD as that would remain unchanged.
36. Like the Council, and indeed, the appellant, I agree that it is possible for a contemporary dwelling to be acceptable and successful on the appeal site, and I agree that the 2017 permission did that. I also agree, and it was agreed at the hearing, that the 2017 permission does not represent the only form of development acceptable at the site.
37. In my opinion, the appeal development simply does not benefit from the features of the previously approved scheme which led to its acceptability. As a result of its position proud of the slope in comparison to the original, its rotation towards the road, its additional height and the higher finished floor level, the appeal proposal is prominent and incongruous.

38. I note the comparisons drawn between the 2017 permission and the AD in terms of their volume and the overlain elevations with normalised ground-floor finished floor levels and site position. However, these do not satisfy me that the AD is so closely related in terms of siting and height, such that it has essentially the same, acceptable effect on the character and appearance of the area. Whilst the volumetric comparisons show only a relatively small overall increase, I consider that the overlain elevations have the opposite effect to that intended. Coupled with the site section overlay³, in my opinion, they clearly demonstrate that the combination of a taller building, on higher ground located further down, and proud of the hillside is significantly and substantially more prominent. To my mind, the Verified Visual Images reinforce this conclusion.
39. In detailed evidence on Landscape and Visual Matters, the appellant's consultant acknowledges that the AD has additional localised landscape, townscape and visual effects. These effects are described as "*no more than slight adverse*"
40. The table of *Significance Criteria for Landscape Effects* appended to that evidence sets out typical criteria for such an effect. Whilst I acknowledge that the criteria in that table are indicative and are not intended to be definitions to be applied in full or literally in all cases, they do nevertheless give an indication of the types of situations in which slight adverse landscape effects can arise. To my mind, those situations describe well the harmful effects of the AD which I have found.
41. The subsequent conclusion of that evidence is that the additional harm does not lead to "*significant*" conflict with policy. However, having carefully considered that evidence and visited the site, I disagree, finding that conflict to be significant.
42. In my opinion, the combination of the siting of the appeal development closer to the boundary and further down the slope, with its additional height (in the building itself and its finished floor level) lead me to find that as a result, the area does not retain its informal rural character and well-wooded appearance. The appeal development is not unobtrusive, and as a result of its increased prominence, I find that landscape is no longer the dominant visual element, which the FNP in particular seeks to maintain.
43. I have found that the materials used in the appeal development, their colour and visibility are not, in themselves harmful. However, I consider that in combination with the siting and height of the appeal development they do have a significant, unacceptable effect, causing substantial harm to the established character and appearance of the area.
44. For the reasons set out above, in my opinion, the combination of the siting, height and materials of the AD cause it to be unduly prominent and visually dominant. As a result, it causes significant, substantial and unacceptable harm to the character and appearance of the area.

³ Drawing number 1332/P-107 "*As Built Site Section A-A and Site Section Overlay*"

45. This is contrary to Policy TD1 of the Waverley Borough Local Plan Part 1 2018 (the 2018 Local Plan), Policy FNP1 of the FNP and retained, saved Policies D1 and D4 of the Waverley Borough Local Plan 2002 (the 2002 Local Plan). These policies seek, amongst other things, to ensure that the character of an area is protected by development, which is appropriate for the established character and appearance, makes a positive contribution to it and integrates well.
46. The AD also significantly conflicts with Policy FNP8 of the FNP which seeks to maintain the informal rural character and well-wooded appearance of the area around the site and explicitly requires development to fit unobtrusively with the surrounding street-scene. As a result of the harm I have identified, the AD also conflicts with the Design Statement, which seeks to supplement other policies in the development plan with specific design guidelines for the area.
47. The AD also therefore conflicts with guidance in the Framework around achieving well-designed places, specifically the requirements for development to add to the overall quality of an area, be sympathetic to context whilst not discouraging innovation and for development to reflect local design policies.

Heritage assets

48. Close to the appeal site is the Grade II listed Fox Public House. Parties agree that its significance as a heritage asset lies in its age, its architectural history and features, as well as its use and location; a well-established public house on the main route south from Farnham. As such, the appearance of its setting, and the other development within it, particularly development not immediately adjacent to it, plays a relatively minor role in the significance of The Fox as a heritage asset. The appeal site contributes to the setting insofar as it provides a partially wooded backdrop to it when viewed from the south. Seen from other directions and in closer views, the appeal site has a neutral effect on its setting.
49. As The Fox is old, with elements dating back to the 17th century, its setting has seen significant change, with buildings in a variety of styles, scales, form, material, prominence, visibility and spatial relationship being added to it. Despite that change, the significance of The Fox, found in its historic fabric, form, function and spatial relationship to the road in particular, has in my opinion remained unharmed.
50. To my mind, the AD is simply another changed element within that setting. The elements of the setting which contribute to the significance of The Fox as a heritage asset, being its historic fabric and location on the main road within the well-wooded outskirts of Farnham are fundamentally unchanged by the AD. The AD has a minor effect on the visual contribution which the setting makes to the significance of The Fox but has no effect on the functional and historic aspects of the contribution of the setting to the overall significance of The Fox as a heritage asset.
51. As such, having had special regard to the desirability of preserving the setting of The Fox and given great weight to the asset's conservation, I find that the AD does not harm the setting or significance of The Fox.
52. I turn now to the non-designated heritage assets, Dogfludd House and The Club Hall. For the same reasons as above, I find that the AD does not harm their setting or significance as non-designated heritage assets.

53. As such, I do not find that the AD conflicts with Policy HA1 of the Local Plan, Policies FNP1 or FNP9 of the FNP, or retained Policies HE2 or HE3 of the 2002 Local Plan. These seek, amongst other things, to ensure that the significance of heritage assets is conserved, that their setting is appropriately managed, and that development is otherwise appropriate to the surrounding historic environment. The AD would also not conflict with guidance in the Framework on conserving and enhancing the historic environment.

Planning Balance

54. The Council has confirmed that it currently does not have a five-year supply of housing land. As such the provisions of paragraph 11 of the Framework apply. I have not found that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development applied for.

55. However, I have found that the AD has an unacceptably harmful effect on the character and appearance of the area. To my mind, this adverse impact significantly and demonstrably outweighs the benefit of a single private dwelling, on a site where planning permission has previously been granted for a development which would not cause that harm. The AD does not therefore benefit from the presumption in favour of sustainable development set out in the Framework.

Other Matters

56. In light of the note in the Officer Report which says "*Pass File to Enforcement YES*", after the conclusion and recommendation, the implications of Article 8(1) of the Human Rights Act 1998 were discussed at the hearing. Plainly, this decision relates to an application for planning permission, and not to any current enforcement action or process. It was therefore agreed by all parties that my decision on this appeal would not interfere with the qualified rights set out in Article 8 and the point need be considered no further in this decision.

Thames Basin Heath Special Protection Area

57. The site lies within the 5km buffer zone of the Thames Basin Heaths Special Protection Area (the SPA). The SPA is heathland which supports important breeding bird populations. The conservation objectives of this SPA are to ensure that the integrity of the SPA is maintained or restored as appropriate.

58. Parties have agreed that through the submission of a Unilateral Undertaking (UU) under section 106, payments can be made towards the Council's Strategic Alternative Natural Greenspace and Strategic Access Management and Monitoring initiatives, in line with the Thames Basin Heaths SPA Avoidance Strategy Review 2016, April 2021 Update. Parties have also now reached agreement on the difference between payments previously made and now due. They now agree that as a result, the proposal would have no likely significant adverse effect on the integrity of the SPA.

59. However, notwithstanding the submission of the signed UU and the agreement of the parties on likely effects, there is no need for me to consider further the implications of the proposal on the protected site because I have found that the proposal is unacceptable for other reasons.

Conclusion

60. I have found that the effect of the AD on the setting and significance of nearby heritage assets is acceptable. However, I have also found that overall, the AD causes substantial and significant harm to the character and appearance of the area.

61. To my mind, for the reasons given above this harm is such that the AD conflicts with the development plan as a whole. I have found no material considerations of such weight to indicate that a decision be taken other than in accordance with the development plan.

62. The appeal should therefore be dismissed.

S Dean

INSPECTOR

Appearances

FOR THE APPELLANT:

Robert Walton KC	Counsel
Tim Emery	Michael Conoley Associates
James Deverill	Michael Conoley Associates
Jody O'Reilly	Heritage Collective (HCUK)

FOR THE LOCAL PLANNING AUTHORITY:

Carl Housden	Senior Planning Officer
Sarah Wells	Planning Projects Team Leader
Sophie Piper	Principal Conservation Officer

Cllr Carole Cockburn
Cllr Peter Clark

INTERESTED PARTIES:

Liz Chart	Local resident
David Howell	Local resident
Colin Shearn	Local resident