The Planning Inspectorate

Appeal Decision

Site visit made on 5 September 2023

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18.10.2023

Appeal Ref: APP/Y3940/W/23/3317841
Werg Garden, Werg, Mildenhall, Wiltshire SN8 2LY

- 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 and Mrs Lawson against the decision of Wiltshire Council.
- The application Ref PL/2022/09014, dated 21 November 2022, was refused by notice dated 31 January 2023.
- The development proposed is a 3 bedroom detached eco-house.

Decision

1. The appeal is allowed and planning permission is granted for a 3 bedroom detached eco-house at Werg Garden, Werg, Mildenhall, Wiltshire SN8 2LY in accordance with the terms of the application, Ref PL/2022/09014, dated 21 November 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description in the banner heading is taken from the planning application form. Whilst I note the application is the resubmission of a previous application, I have removed the superfluous words that are not acts of development.

3. An updated Preliminary Ecological Appraisal (PEA) was submitted as part of the appeal. It includes drawing 'Proposed Site Plan A100 Rev C' in lieu of drawing 'Proposed Site Plan showing roof A100 Rev A'. This provides clarification regarding the extent of hedge along the rear boundary to be replanted. Whilst I note the Council's comment that they have not had sight of this document, given that the only amendment was the updated plan, a copy of which previously formed part of the planning application, no injustice would arise should I consider the updated PEA. I have determined the appeal accordingly.

Main Issues

4. The main issues are the effect of the proposed development on:

   - the character and appearance of the area bearing in mind it would be within the Mildenhall Conservation Area and the North Wessex Downs Area of Outstanding Natural Beauty; and

   - features of nature conservation value and biodiversity, in particular the existing boundary hedge.

Reasons

Character and appearance

5. The appeal site lies within the Mildenhall Conservation Area (CA) and the North Wessex Downs Area of Outstanding Natural Beauty (AONB). It comprises a corner plot on the inside of a sharp bend in the road at the end of a short row of residential properties which extend outwards from the main part of the village. The land is vacant aside from a dilapidated single storey building adjacent to the rear boundary of the site. The River Kennet and river meadows lie to the rear of the site, with open countryside on the opposite side of the road beyond the front and side boundaries. The appellant proposes the construction of a 2 storey detached dwelling of a contemporary design.

6. An earlier appeal was dismissed on the same site for a replacement dwelling[1]. The Inspector described the CA as being characterised by a mixture of fields with a relatively sparse scattering of predominantly residential buildings of a variety of designs and materials, most commonly red brick and slate. The Inspector also noted that the density of development is greater in the north-western part of the CA and also along the main road through the village, including buildings being three storeys in height. I have no reason to disagree.

7. The Mildenhall Conservation Area Statement, dated June 2004, identifies the views across the Kennet valley as an important characteristic of the CA. Insofar as is relevant to the appeal and consistent with the findings of the previous Inspector, the significance of the CA is derived from the historical architectural detailing of the buildings within the village, set within an attractive rural landscape, including the river meadows.

8. Whilst the dwellings in the wider vicinity are a mix of architectural styles and ages, including several buildings of historic importance, those in the immediate context of the site comprise of detached dwellings of a contemporary design and external materials. The innovative designs contribute positively to the established character and appearance of the area in this part of the CA. In this regard the appeal site is now in a different context to that observed by the previous Inspector.

9. The modern design of the proposed dwelling, including large areas of glazing, would reflect the nearby properties, creating a degree of consistency. It would be similar in height to the neighbouring property at Toad Hall, which has recently been extended and updated and has a contemporary appearance.

10. The height of the proposed dwelling would be slightly greater than the neighbouring property at Waters Edge, but not to such a degree that it would be discernible in the wider street scene. Whilst the proposal would include a greater bulk at first floor than Waters Edge when viewed from the front, this is tempered by the incorporation of a setback to part of the first floor from the main front elevation. The staggered frontage and roof heights, use of a range of facing materials including vertical cladding, render, natural stone cladding, and grey metal would break up the overall mass of the proposed dwelling. Moreover, given the scale and siting of the proposed rooftop solar array, subject to a suitable planning condition to agree details, it could be

[1] APP/Y3940/W/17/3179704

sympathetically designed and located, without detriment to the overall appearance of the proposed development.

11. The siting of the proposed dwelling would be sympathetic to the layout of the neighbouring properties in terms of its position on the plot and distance from the road to the front. Moreover, it would be set in from the side boundary of the site which would ensure it would not appear unduly imposing when viewed from the highway to the side.

12. The appeal submissions indicate that the existing hedgerow to the side boundary of the site is to be retained, with new trees and hedge planting proposed to the front boundary. The existing hedge to the rear boundary of the site is to be partly replaced. The removal of the existing hedgerow to the rear boundary would mean that visually, the presence of the new dwelling would be more pronounced from local vantage points, as well as in longer distance views. However, any harm in this regard would be time limited due to the proposed replacement planting, the extent of which could be agreed through a suitable planning condition.

13. Moreover, even if the replanted hedgerow was shorter in length than the exiting boundary planting, in longer distance views towards the site the proposed dwelling would be viewed in the context of the existing development in the row, where it would be seen as a continuation of the existing built form. The overall scale and design of the proposed dwelling would be similar to that of the neighbouring properties and as such it would not be an anomalous feature when viewed within the immediate context of the site, nor would it be unduly prominent in the wider landscape setting. In that regard it would not detract from the landscape setting of the village, including views across the valley towards the site, and consequently would not undermine the contribution the site makes to the significance of the CA.

14. Paragraph 176 of the Framework explains that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs which have the highest status of protection in relation to these issues. Core Policy 51 of the CS requires development proposals to demonstrate that, among other things, the special qualities of AONBs have been conserved and where possible enhanced through sensitive design, landscape mitigation and enhancement measures.

15. The appeal site is visible from the wider open countryside as well as several public vantage points in the locality, including from the public rights of way in the area. Nevertheless, it has a close relationship to the existing residential development that extends along the lane beyond the extent of the main built-up part of the village. Given that the proposal would be viewed in the context of these nearby residential properties and would be similar in terms of scale, design and appearance, there would be no harm to the visual qualities and essential characteristics of the AONB in terms of its landscape and scenic beauty.

16. For the foregoing reasons, I conclude the proposed development would not harm the character and appearance of the area. Moreover, it would preserve the character and appearance of the CA and would not give rise to harm to its significance as a heritage asset. It would also conserve the landscape and scenic beauty of the AONB.

17. In that regard it would accord with Core Policy 57 of the Wiltshire Core Strategy adopted January 2015 (CS), which among other things expects development to create a strong sense of place through drawing on the local context and being complimentary to the locality and to relate positively to its landscape setting and the exiting pattern of development, as well as Core Policy 51 of the CS. The proposal would also accord with the aims and objectives of the National Planning Policy Framework (the Framework) in respect of the historic environment and with regards to conserving AONBs.

18. Whilst not referred to specifically in the Council's first refusal reason, the officer report alleges conflict with Core Policy 58 of the CS due to the harm to the significance of the CA. However, for the reasons set out above I have found that such harm would not arise.

Nature conservation and biodiversity

19. The Council's third refusal reason relates to concerns regarding the removal of hedging/trees on the site which are an h2a priority habitat and as such should be protected. However, the appellant's Habitat Survey Plan at Appendix 3 of the appellant's Preliminary Ecological Appraisal by Arbtech dated October 2022 (PEA) confirms the hedgerow to the side boundary of the site, which is an 'h2a hedgerow priority habitat', is to be retained as part of the proposals. This is not disputed by the Council. The PEA also sets out that this hedgerow would be improved and enhanced with native species to infill existing gaps, although its height is restricted for highway safety reasons.

20. The hedge to the western boundary, which is identified as an 'h2b other hedgerow', is to be removed and only partly replaced. Its replacement, whilst not in full, would be a considerable proportion of the existing stretch of hedgerow. The PEA advises the existing privet hedge is of low ecological value, and that its replacement with a more species rich native hedgerow would offer benefits in terms of biodiversity value in the longer term.

21. Furthermore, the PEA concludes that the proposed development would not have any direct impacts on protected species, habitats or flora, subject to tree protection measures as well as best practice and precautionary working methods during construction. Details of such could be secured through suitable planning conditions to agree ecological enhancement measures as part of the landscaping of the site.

22. My attention is drawn to an earlier PEA which was submitted in relation to a previous planning application on the site. Whilst the suggested mitigation measures therein may differ to that now proposed, I am required to determine the appeal based on the most up to date survey information and recommendations. Whether any trees or hedgerows may have been removed in the interim period is a matter for the parties to resolve outside of the appeal process.

23. For the foregoing reasons I conclude that the proposed development would not have an adverse effect on features of nature conservation value and biodiversity, in particular the existing boundary hedge which is a priority habitat. In that regard it would accord with Core Policy 50 of the CS, which among other things requires development proposals to demonstrate how they protect features of nature conservation and incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats and

seek opportunities to enhance biodiversity. It would also accord with Core Policy 57 of the CS in so far as it requires a high standard of design through the retention and enhancement of existing important landscaping and natural features such as trees and hedges in order to take opportunities to enhance biodiversity.

Other Matters

24. Concerns have been raised by the Parish Council regarding the effect of noise from the proposed air source heat pump on the living conditions of the occupiers of the neighbouring property. The Council are satisfied that noise levels could be controlled through a suitable planning condition, and I have no reason to disagree.

Conditions

25. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance. In addition to the standard condition relating to the commencement of development, it is necessary to specify the approved plans to provide certainty.

26. A condition to require the demolition of the existing buildings is necessary in the interests of the character and appearance of the area, as are conditions to secure details of external materials and the proposed solar array. For the same reason a condition to require details of hard and soft landscaping is also necessary, however I have excluded reference to details already shown on the plans or those not relevant to the proposal.

27. Conditions to require the implementation of flood resilient measures and a surface drainage strategy are necessary to reduce the risk of flooding to the development and to ensure the development does not exacerbate flooding in accordance with Core Policy 67 of the CS. The appeal submissions indicate that foul drainage will connect to the mains sewer, in the absence of any reason as to why this would not be feasible, a condition is therefore not necessary.

28. To ensure the proposal protects the natural and visual qualities of the site, and in the interest of biodiversity, a condition is imposed that requires tree protection measures. To minimise impacts on and provide net gains for biodiversity, in accordance with advice in the Framework and Core Policy 50 of the CS, a condition is necessary to secure details of the recommended mitigation and enhancement measures set out in the submitted PEA.

29. A condition to agree details of any external lighting is necessary to minimise light spillage in the interest of the character and appearance of the area and disturbance to bats. The suggested condition includes detailed information requirements. However, I have omitted these so that the parties can agree the precise requirements based upon relevant guidance and site circumstances at the time that the details are agreed.

30. Given the potential for archaeological interest on the site, a condition is necessary to secure an appropriate scheme of archaeological work, in accordance with Core Policy 58 of the CS. Conditions relating to the provision of visibility splays and surfacing of the access are necessary in the interest of

highway safety. A condition is also necessary in relation to noise generated by the air source heat pump to safeguard the living conditions of the occupiers of the neighbouring property.

31. In the absence of any substantive evidence that it is a realistic possibility that contamination may come to light as part of the development works, a condition requiring details of remediation which may be required is not necessary.

32. Conditions have been put to me which would restrict permitted development rights from the proposed dwelling under Schedule 2, Part 1 (Classes A-G) and Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The PPG states that "Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity."

33. Whilst there are specific exceptions for some classes where permitted development rights do not apply, the GPDO does not withdraw all permitted development rights for land within a CA or AONB, but rather requires planning permission to be sought for specific development. It can therefore be surmised that the development within a CA or AONB for which permitted development rights remain intact is regarded by the Government as being no different in terms of the application of permitted development rights to land outside of it. Consequently, I have not been presented with compelling reasons why permitted development rights should be withdrawn in this case.

34. I have amended the suggested pre-commencement conditions relating to external materials, demolition of the existing building, surface water, hard and soft landscaping, and external lighting as there is no justification for them to be pre-commencement conditions. However, conditions relating to archaeology, tree protection measures and ecological mitigation measures are pre-commencement conditions as the agreed details are required to be implemented before any work on site takes place.

Conclusion

35. For the reasons set out above I conclude that the appeal should be allowed, subject to the conditions set out in the attached schedule.

E Worley

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan A001 Rev A, Existing Site Plan A002, Proposed Site Plan showing roof A100 Rev C, Proposed GF Site Plan A101 Rev B, Proposed Floor Plans A102 Rev B, Proposed Elevations A301 Rev B and Proposed Streetscene A302 Rev B.

3) Prior to the first occupation of the dwelling hereby permitted, the existing buildings on the site shall be demolished in accordance with the approved plans and all demolition materials and debris resulting there from shall be removed from the site.

4) Prior to any development above slab level, details and samples of the materials to be used in the construction of the external walls and roofs of the dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and permanently retained thereafter.

5) Prior to the first occupation of the development hereby approved details of the solar panel array shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling and permanently retained thereafter.

6) Prior to the first occupation of the development hereby approved the flood resilience measures shall be implemented in full, in accordance with the approved Flood Risk Assessment by Calibro, Ref. 22-0402-60 dated 31 October 2022. The finished ground floor level of the dwelling shall be set no lower than 122.0m AOD.

7) Prior to the first occupation of the development hereby approved a scheme for the disposal of surface water (including surface water from the access/driveway), by means of a sustainable drainage system shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the occupation of the development and permanently retained thereafter.

8) Notwithstanding the approved plans, prior to the first occupation of the development hereby approved a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority, the details of which shall include:

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of existing trees and hedgerows to be retained, removed or replaced;

- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- all hard and soft surfacing materials; and
- refuse and other storage units.

All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwelling or the completion of the development whichever is the sooner. Any trees or plants which, within a period of 5 years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

All hard landscaping shall also be carried out in accordance with the approved details prior to the first occupation of any part of the development and shall be permanently retained thereafter.

9) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees as shown on the approved plans (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

10) Prior to the commencement of the development hereby approved, an appropriate Ecological Mitigation and Enhancement Strategy, including a timetable of implementation, based on the recommendations made in the Preliminary Ecological Appraisal by Arbtech dated 27 October 2022 shall be submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details and timetable and shall be permanently retained thereafter.

11) Prior to the installation of any external lighting on the site a low impact lighting strategy (including for the demolition/construction phases) shall be submitted and approved in writing by the local planning authority. Only the approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

12) No development shall commence within the red line area indicated on Site Location Plan (A001 Rev A) until: a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the local planning authority; and b) The approved programme of archaeological work has been carried out in accordance with the approved details. The monitoring is to be carried out following the standards and guidelines for such work as set out by the Chartered Institute for Archaeologists (CIfA).

13) Prior to the first occupation of the dwelling hereby approved the visibility splays shown on the approved plans shall be provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be permanently maintained free of obstruction thereafter.

14) Prior to the first occupation of the dwelling hereby approved the first 5m of the access, measured from the edge of the carriageway shall be consolidated and surfaced (not loose stone or gravel) in accordance with details to be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and permanently retained thereafter.

15) Prior to the installation of an air or ground source heat pump on the site, details of the heat pump, including acoustic data to demonstrate that there will be no increase in the background noise level and that there will be no tonal noise emitted from the unit, the location of the unit(s) and the distance to the closest dwelling, shall be submitted to, and agreed in writing by, the local planning authority. The development shall be carried out in accordance with the approved details and permanently retained thereafter.

******end of conditions******