



Appeal Decision

Site visit made on 25 January 2022

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 January 2022

Appeal Ref: APP/D3125/W/21/3283756

Lansdowne, Bruern Road, Milton-Under-Wychwood, Oxfordshire OX7 6LL

- 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 J Fox against the decision of West Oxfordshire District Council.
 - The application Ref 21/01229/FUL, dated 31 March 2021, was refused by notice dated 26 August 2021.
 - The development proposed is the demolition of the existing bungalow and erection of two detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing bungalow and erection of two detached dwellings at Lansdowne, Bruern Road, Milton-Under-Wychwood, Oxfordshire OX7 6LL in accordance with the terms of the application, Ref 21/01229/FUL, dated 31 March 2021, subject to the conditions in the attached schedule.

Procedural Matters

2. In my heading above I have used the description of development on the decision notice as it is more succinct and accurate than that given on the application form.
3. The appellant has confirmed that the proposed floor plans as submitted should be read as the mirror image to be consistent with the proposed site layout and elevations. A corrected version of drawing no. 1918/200 has been provided for clarification. It appears that the Council have interpreted the plans in that way¹ and I am satisfied that no party would be seriously prejudiced by my determining the proposal on this basis.

Main Issues

4. The main issues are:
 - Whether the proposal would provide a suitable location for residential development having regard to local planning policies, and;
 - The effect on the character and appearance of the area including the Cotswolds Area of Outstanding Natural Beauty (AONB).

¹ Section 2, Council's Appeal Statement

Reasons

Location

5. The appeal site accommodates a detached bungalow and grounds on the northern periphery of Milton-Under-Wychwood, which is a settlement recognised as a 'village' in the West Oxfordshire Local Plan 2031, September 2018 (LP)². Policy OS2 of the LP is headed 'Locating development in the right places.' It states that such villages are suitable for limited development which respects the village character and local distinctiveness and would help to maintain the vitality of these communities. It goes on to outline general principles that are applicable to all development. By contrast, it also contains a more restrictive approach to development in the small villages, hamlets and open countryside.
6. Policy H2 of the LP reinforces this by outlining four circumstances where new dwellings will be permitted at villages, subject to the general principles in policy OS2. This covers both previously developed and undeveloped land within or adjoining the built-up area of a village. The policy also sets out specific exceptions to the general resistance to new dwellings in the open countryside.
7. The parties disagree as to which parts of policies OS2 and H2 are applicable to the proposal before me. Essentially, this is because they dispute whether the appeal site falls within the built-up area of Milton-Under-Wychwood or not. The Council assert that for the purposes of the LP, the site ought to be considered as open countryside.
8. The LP does not contain a defined settlement boundary for the village. It follows that whether an individual site is within the built-up area of a settlement is ultimately a matter of judgement. My assessment on this point primarily turns on the position on the ground and the pattern of the settlement.
9. The West Oxfordshire Design Guide, Supplementary Planning Document, 2016³ (SPD) categorises the village as having both a nucleated and dispersed settlement pattern. The description given refers to the original dispersed form of the village having been consolidated over time. I observed that the main body of the village certainly lies to the south of the appeal site which is consistent with the descriptions given in some of the representations received. Nevertheless, there is a notable northern linear projection of built form along Church Road, which logically extends to contain the short section of ribbon development along the eastern side of Bruern Road within which the appeal site sits.
10. The appeal site is flanked either side by residential development. Both Lansdowne and the adjacent Threeways are detached bungalows built in the latter half of the twentieth century. Their form and generous plot size resonate with the pattern of development further to the south along Church Road. Therefore, although separated by Lyneham Road and close to open countryside, they nevertheless read as a continuation of residential development in the village rather than as an obviously separate grouping.
11. Hence, when approaching the village from the north, it is the converted Heath Barn that signals the edge of the village on the eastern side of Bruern Road.

² Table 4b

³ Section 5, page 8

Although not determinative, the position of the village entrance signs nearby reinforces my impression. Combining these factors, I find that the appeal site comprises part of a northern spur on the edge of the village, which forms part of the built-up area of the settlement.

12. It is brought to my attention that historically there was no development north of Lyneham Road other than small agricultural holdings. Be that as it may, my assessment is based on the present situation. To my mind the small section of residential development that now exists north of Lyneham Road is an example of how the settlement pattern has been consolidated over time as described in the SPD. Furthermore, the short section along the eastern side of Bruern Road that contains the appeal site is distinct from other development found further to the north⁴ due to a combination of its proximity to the remainder of the village and an absence of intervening agricultural land along the eastern side. Consequently, they read as a continuation of development.
13. I am aware that my finding on this point differs from the views of some local residents who object to the proposal. Perhaps it is unsurprising that there is not universal agreement on whether the appeal site is within the built-up area of the settlement given the multiple elements that comprise the unique characteristics of any given place. Nevertheless, I must exercise my own judgement having carefully weighed the evidence including my observations. My finding on this point is specific to the appeal site and therefore, the references made in the representations to various other sites in or near the village have only limited relevance to my assessment. However, it follows on that basis that such a finding would be unlikely to establish a general precedent for additional future development in other locations. In any event, development proposals are primarily considered on their individual planning merits, which is the approach I have taken in this case.
14. The removal of the existing bungalow and its replacement with two dwellings would make more efficient use of land already in residential use, and a net gain of one dwelling would be accurately described as limited development. Hence, in principle, the proposal would be permitted by policies OS2 and H2 of the LP. As it relates to a built-up area of the village, there is no further policy requirement to demonstrate a particular housing need, nor is there any specific restriction to prevent the loss of existing bungalow accommodation.
15. Whether the proposal meets the general principles in policy OS2 relating to character and appearance is a matter I shall consider as part of the next main issue. However, in relation to this main issue I find that the proposal would provide a suitable location for residential development having regard to local planning policies as it would comply with the locational strategy for new dwellings contained in policies OS2 and H2 of the LP.

Character and appearance

16. In aesthetic terms Lansdowne is an unobjectionable building but it makes few concessions that are locally distinctive. However, its low profile, established gardens and proximity of open land to the east and west result in a spacious and verdant character.

⁴ Highlighted in map on Page 38, Council's Appeal Statement

17. The proposal would remove the existing dwelling and subdivide the plot to provide two detached two storey dwellings. This would increase the height and volume of built form across the site. Nevertheless, the proposals would retain the spacious and verdant qualities of the site due to the following factors.
18. Firstly, there is sufficient space within the site to comfortably accommodate the more compact footprint of two storey houses whilst allowing for reasonable spacing between them, as well as to the side boundaries. As such, when seen from the road the development would still allow for some glimpses of greenery between the buildings. This is illustrated in the street scene elevation provided⁵.
19. Secondly, the dwellings would be well set back from the road, in a broadly similar alignment to the existing bungalow. This would retain a sense of spaciousness to the frontage. Moreover, as the dwellings would share the existing access, the existing front boundary hedgerow and frontage trees would be retained. As such, there would be limited change to the most prominent part of the site adjacent to the road.
20. Thirdly, the effects of the increase in height would be successfully moderated by utilising the roof space to provide accommodation, thereby maintaining a relatively low eaves level and keeping the overall ridge heights comparable to Heath Barn. The massing of the built form would be reduced by the use of dormers and lower height sections. Finally, the design would reflect a more sympathetic locally distinctive approach drawn from the vernacular form, detailing and materials.
21. Therefore, overall, the design would retain important characteristics whilst providing a modest aesthetic improvement. For the reasons outlined it would form a logical complement to the existing scale and pattern of development and the character of the area, as required by the general principles in policy OS2 of the LP. In this respect the proposal would adhere to the requirements of paragraph 130 of the National Planning Policy Framework (the Framework) that developments should add to the overall quality of the area and are sympathetic to local character, including the surrounding built environment and landscape setting, while not preventing appropriate change (such as increased densities).
22. The Council assert that the development would have a significant harmful impact on the natural, scenic beauty and character of the AONB. I am mindful that paragraph 176 of the Framework, the general principles contained in policy OS2 and policy EH1 of the LP all stipulate that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. The special qualities of the AONB include its rich, diverse high quality landscape primarily derived from the Cotswold hills and underlying limestone geology. Amongst other things this has resulted in attractive rolling agricultural grassland, valleys and woodland and the distinctive form and materials evident in many buildings.
23. The limited scale of the proposal would be contained within an existing residential plot in the village and so would have little impact on the scenic qualities of the wider landscape. It is not shown that the proposal would interfere with or notably feature in long views identified as important. Any localised impact would generally be a positive one as the proposals employ a

⁵ Drawing number 201

more sympathetic form closer to the distinctive appearance of built form of the locality than the present bungalow. Combined with the careful use of local materials it would connect the development with local identity more firmly. Therefore, overall, the proposal would conserve the special qualities of the AONB.

24. Accordingly, I find that the proposal would have a small positive effect on the character and appearance of the area and would not result in harm to the AONB. Therefore, I find no conflict with policies OS2, H2, EH1 or EH2 of the LP, which, amongst other matters, seek development that respects the existing pattern of development and conserves and enhances the character and distinctiveness of West Oxfordshire's natural environment, including the special scenic qualities of the AONB.

Other matters

25. In coming to my views, I have taken account of the representations received both for and against the proposal. Many of the matters raised have been covered when dealing with the main issues. However, there are some additional areas of concern raised that are not disputed by the main parties, most of which were addressed in the Council's committee report⁶ concluding that there would be no material harm in these regards. Little substantiated evidence has been submitted that leads me to any different view.
26. Nevertheless, relative to the existing situation an additional dwelling would only be likely to marginally increase the amount of traffic in the area. Furthermore, it would use the existing access arrangement and I am mindful that, subject to conditions, no objection was raised by the Highway Authority with regards to the safety of the access, nor the likely effects of traffic from the development on the wider road network. Given their expertise and local knowledge, this attracts considerable weight and I have little basis to find otherwise.
27. Given the separation distances, orientation and position of windows, I am satisfied that subject to securing obscure glazing in the first floor side elevation bathroom and en-suite windows, the privacy of adjacent residential occupiers would not be unreasonably compromised. Other concerns regarding drainage and impact on ecology can be adequately addressed by the imposition of conditions.
28. I note that the parish council would prefer a scheme for a single dwelling but as I have not found harm would arise from the proposal before me, it would be too prescriptive to insist upon a single dwelling and disproportionate to seek to prevent the development based on a generalised wider concern regarding future possible development at other sites.

Conditions

29. The Council suggested 17 conditions which I have considered against the Framework and Planning Practice Guidance. It is the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification. Therefore, in some cases, I have amalgamated conditions and/or simplified the wording to contain less detail to align with national guidance.

⁶ Appendix 2, Appellant's Statement of Case

30. A condition relating to the commencement of development is necessary, as is reference to the approved plans in the interests of certainty. To ensure the design quality of the proposal I acknowledge it is necessary to agree the materials to be used and the detailing of fenestration reveals. For similar reasons, conditions are imposed to agree and implement a landscaping scheme, including boundary treatments.
31. To protect and enhance biodiversity, particularly in relation to bats which are a protected species, conditions are imposed to fulfil the recommendations of the ecological reports submitted. A specific condition is imposed to require the submission and agreement of an ecologically sensitive lighting scheme.
32. In the interests of highway safety, there is a need to secure the proposed vehicular access, parking and turning prior to the first occupation of the development and their retention thereafter. Furthermore, to ensure that the site is appropriately drained, a surface water drainage scheme should be agreed and implemented. In order to be effective, I am satisfied that it is justified that such details should be agreed in advance of construction commencing.
33. Securing obscure glazing in the side windows of first floor bathrooms and en-suites would prevent unreasonable overlooking to neighbouring residential occupiers. Finally, to accord with the prudent use of natural resources outlined in policy OS3 of the LP, a condition is imposed to secure water efficiency measures.
34. The Council also suggested a condition in relation to land contamination. However, given that the site is currently in residential occupation, there is little basis to suppose that the risk of hazardous contamination would be anything other than low. I am also mindful that paragraph 184 of the Framework confirms that where a site is affected by contamination, responsibility for securing a safe development rests with the developer and/or landowner. In these circumstances, I am not persuaded that such a condition would be necessary to make the proposal acceptable in planning terms. Therefore, I have not imposed it.

Conclusion

35. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. For the reasons given above, I conclude that the proposal accords with the development plan, and there are no material considerations that would lead me to find otherwise. Therefore, the appeal should be allowed.

Helen O'Connor

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Topo Survey & Site Location, drawing no. 100; Proposed Site Layout Plan, drawing no. 202; Proposed Floor Plans, drawing no. 200 (as corrected) and Proposed Elevations; drawing no. 201.
- 3) Before above ground building work commences, a schedule of materials (including samples) to be used in the elevations of the development shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved materials.
- 4) The window and door frames shall be recessed a minimum distance of 75mm from the face of the building unless otherwise agreed in writing by the local planning authority.
- 5) No dwelling shall be occupied until the access and gravelled driveway providing parking and turning area space has been laid out within the site in accordance with drawing no. 202 (Proposed Site Layout Plan) and that space shall thereafter be kept available at all times for those purposes.
- 6) Development shall not commence until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to the first occupation of either dwelling there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all retained trees and hedgerows on the land and shall specify the boundary treatments proposed.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of either dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) The development shall be completed in accordance with the following documents:
 - a) The recommendations, bat method statement, proposed mitigations and enhancements in Section 7 of the Preliminary Bat Survey and Walkover Survey, dated 2nd December 2020 prepared by 4 Acre Ecology Limited;
 - b) The recommendations, bat method statement, proposed mitigation/compensation and enhancements in Section 7 of the Bat Emergence Surveys, dated 22nd July 2021 prepared by 4 Acre Ecology Limited;
 - c) Drawing no. 300 (dated July 2021) – Bat mitigation measures; and

- d) All measures outlined within the Forest Of Dean District Council's Precautionary Working Method Statement guidance note dated 16th May 2012 available at:
<https://www.fdean.gov.uk/media/wjth1ruj/precautionary-method-of-working-for-reptiles.pdf> .

All the recommendations shall be implemented according to the specified timescales, as modified by a relevant European Protected Species Licence, unless otherwise agreed in writing by the local planning authority, and thereafter permanently retained.

- 10) Before the erection of any external walls, a "lighting design strategy for biodiversity" shall be submitted to and approved in writing by the local planning authority. All external lighting shall be installed in accordance with the specifications and locations agreed and shall thereafter be maintained as such. No other external lighting shall be installed.
- 11) Before the erection of any external walls, details of the provision of integrated nesting opportunities for birds within the walls of the new buildings, as well as the provision of holes/gaps through new fences/walls, shall be submitted to the local planning authority for approval. The details shall include a drawing/s showing the types of features, their locations within the site and their positions on the elevations of the buildings, and a timetable for their provision. The approved details shall be implemented as agreed and thereafter permanently retained.
- 12) Before first occupation of the dwelling concerned, the first floor windows in the side elevations serving the en-suite and bathroom shall have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. The obscured glazing shall be retained thereafter.
- 13) No dwelling hereby approved shall be occupied until measures to ensure a maximum water consumption of 110 litres use per person per day for that dwelling has been provided. Such measures shall be retained in perpetuity thereafter.