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# Appeal Decision

Site visit made on 26 July 2022

**by A Berry MTCP (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 September 2022**

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**Appeal Ref: APP/F3545/W/21/3286825**

**Milton House, Thurlow Road, Withersfield CB9 7SA**

- 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 Mssrs Lansdown and Daniels, of Timber & Stone Properties Ltd against the decision of West Suffolk Council.
  - The application Ref DC/21/0367/FUL, dated 21 February 2021, was refused by notice dated 25 June 2021.
  - The development proposed is described as “demolition of modern 2-storey house. New residential development of 5 houses (net gain of 4 houses)”.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. Reason for refusal 1 of the Council’s decision notice refers to the loss of a significant tree on the frontage of the site. However, it is clear from the submitted Arboricultural Impact Assessment (AIA) that in fact two trees are to be removed from the frontage: trees T2 and T3. In addition, other trees within the remainder of the site would be felled that the Council, in their appeal statement, consider would not preserve or enhance the appearance of the Conservation Area. I have therefore considered the appeal on this basis.
3. Reason for refusal 3 of the Council’s decision notice refers to plot 6. However, there is no plot 6. It is clear from the narrative that the Council are referring to plot 5. This has also been noted by the appellant in their appeal statement. I have therefore considered the appeal on this basis.

## Main Issues

4. The main issues are the effect of the proposed development on:
  - a) the living conditions of the occupiers of neighbouring properties; and
  - b) the character and appearance of the area, with particular reference to preserving or enhancing the Withersfield Conservation Area; and
  - c) biodiversity assets.

## Reasons

### *Living Conditions*

5. The appeal site is located between the dwellings known as Thistledown Cottage and Griffins to the south and The Old Bakery to the north. The Old Bakery comprises an L-shaped two-storey dwelling that has ground and first floor windows serving main living areas that directly face towards the rear garden of the appeal site. These windows currently have a verdant outlook. The proposed dwelling on plot 5 would be sited so that its rear elevation would be in close proximity to the boundary shared with The Old Bakery and would extend almost the full length of the existing property's front courtyard garden. The proposed dwelling would have an asymmetrical pitched roof with an eaves height that is lower than that of The Old Bakery and a ridge height that is higher. Ground and first floor windows within The Old Bakery would directly face the proposed dwelling, whilst others would have an oblique view. Notwithstanding the separation distance between The Old Bakery and the proposed dwelling on plot 5, the siting and scale of the proposed dwelling would result in an enclosed and overbearing outlook to the living conditions of the occupiers of this property.
6. Windows and doors, including rooflights would be positioned within the rear elevation of the proposed dwelling on plot 5 and a small section of garden would be sited between the proposed dwelling and the shared boundary. I acknowledge that there would be some increase in noise levels from the proximity of the proposed dwelling to The Old Bakery, however, the majority of the proposed openings would serve rooms that would not comprise the main living areas of the dwelling. Furthermore, the size of the garden between the two properties is of a scale that is unlikely to be actively used, especially given the proposed dwelling would have a larger garden located to its side. The proposed development would not therefore result in noise and disturbance that would be unduly harmful to the living conditions of the occupiers of The Old Bakery.
7. Thistledown Cottage has two ground floor windows in its side gable elevation as well as ground floor and first floor windows/patio doors in its rear elevation. The side windows serve a room which also has a window to the front and patio doors to the rear. The outlook from these side windows is partially obscured by an existing closed boarded boundary fence and by an existing detached outbuilding on the appeal site. These windows would directly face the parking area serving plot 1 and therefore only an oblique view of the proposed dwelling would be gained. The proposed dwelling on plot 1 would not result in a loss of light or an overbearing effect on these windows that would be unduly harmful to the living conditions of the occupiers of Thistledown Cottage.
8. The proposed dwelling on plot 1 would be sited in close proximity to the boundary shared with Thistledown Cottage and would be positioned so that its rear elevation would face the neighbouring property's rear garden. As with the proposed dwelling on plot 5, the dwelling on plot 1 would have an asymmetrical roof with a similar eaves height to Thistledown Cottage and a higher ridge height. The proposed dwelling would extend almost the full length of Thistledown Cottage's rear garden and due to its siting and scale, it would result in an enclosed and overbearing outlook when viewed from the patio

- doors within the property's rear elevation, resulting in harm to the living conditions of the occupiers of this property.
9. The roof of the dwelling would have 4 rooflights that would face towards the neighbouring property's rear garden. A cross-section of the proposed dwelling on plot 1 has been included that demonstrates that these rooflights would be positioned so that only a view of the sky would be gained and therefore there would be no harm to the living conditions of the occupiers of Thistledown Cottage from a loss of privacy or overlooking from these windows. In the event the appeal was allowed, the siting of the rooflights could have been conditioned accordingly.
  10. I therefore find that the proposed development would not have an unacceptably harmful effect on the living conditions of the occupiers of The Old Bakery from noise and disturbance, or the living conditions of the occupiers of Thistledown Cottage from a loss of light or overbearing effect on the ground floor side windows, or a loss of privacy. However, the proposed dwellings on plots 1 and 5 would have an overbearing effect on the occupiers of The Old Bakery and when viewed from the patio doors within the rear elevation of Thistledown Cottage, to the detriment of their living conditions. The proposed development would therefore be contrary to Policy DM2 of the Joint Development Management Policies Document (JDMPD) which, amongst other things, seeks to protect residential amenity.

#### *Character and Appearance*

11. The appeal site is located within the village of Withersfield and within the Withersfield Conservation Area (WCA). Therefore, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
12. The village is split into two halves with open fields separating the two. Each half of the village has a grassed open 'green' that is bordered by buildings, which extend along the adjacent roads. WCA does not have a Character Appraisal. From my site visit, the dwellings in the northern part of the village are mixed in design, style, age and materials, with varying plot sizes. Most dwellings are set back from the road frontage, whereby only glimpses of the properties can be seen from the street scene due to the presence of boundary hedges and mature trees. It is the varied character of the buildings and the leafy appearance of this part of the village that contributes to its importance as a designated heritage asset.
13. The appeal site comprises a detached two-storey dwelling set back from the road frontage by a large front garden containing a shed and a parking/turning area. From the evidence before me and my own observations of the area, I am satisfied that the loss of the existing building would not result in harm to the character, appearance or significance of the WCA. The existing dwelling is located within an irregular-shaped plot that has a narrow frontage onto the road that widens towards the rear. There are no views through the appeal site from WCA or out of WCA from the appeal site, and views into the appeal site are limited. This is due to the narrowness of the plot frontage; the siting of the adjacent buildings close to the road; and existing mature trees and hedgerows to the boundaries.

14. The proposed development would comprise five dwellings arranged around a hard landscaped courtyard and therefore they would be inward facing. Plot 1 would be located closest to Thurlow Road, but it would be set back behind a parking area with a small, landscape strip adjacent to the road frontage. The adjacent buildings are sited further forward of the proposed dwelling on plot 1 and together with the narrowness of the appeal site frontage and mature trees, the proposed dwelling would not appear prominent within the street scene. The proposed dwellings on plots 2 - 5 are substantially set back within the appeal site and therefore they would not be readily visible from the street scene.
15. Although more hardstanding is proposed within the appeal site than currently exists, views of it would be limited due to the narrowness of the road frontage and the existing and proposed planting to the front and side boundaries. In addition, evidence has been submitted by the appellant that demonstrates that the level of hardstanding per dwelling is lower than other neighbouring properties and the Council has not disputed these findings. I therefore do not consider that the proposed development would be incongruous with the surrounding area or the character or appearance of WCA.
16. I agree that most of the buildings within the northern part of the village front onto Burton Hill or Burton Green. However, there are also examples of dwellings that do not follow this pattern of development, namely the adjacent dwelling known as "Griffins" which is sited behind the dwellings fronting onto Burton Hill; a development of bungalows on a cul-de-sac on Burton Hill; and a backland house on the northern side of Burton Green. The siting of the proposed dwellings in an inward facing configuration behind those that front onto Burton Hill would therefore not be incongruous.
17. The proposed development would be contained within the garden of the existing dwellinghouse, and the plots of the adjacent dwellings extend further into the countryside than the appeal site. The erection of dwellings on the garden area of the existing dwelling would therefore not result in an unduly urbanising effect. Plot sizes in the surrounding area vary and the proposed development would be commensurate with some of the existing properties.
18. It is proposed to fell two trees along the road frontage of the appeal site, annotated as T2 and T3 within the accompanying AIA. The AIA concludes that both these trees are Ash and have Chalara Ash Die-back (ADB), which I witnessed on my site visit. The report concludes that both trees have a remaining lifespan of less than 10 years, and both have an amenity value classification of "U: trees not worthy of retention because of their condition". I agree with the conclusions of the AIA.
19. The loss of the two frontage trees would result in some visual impact to the character of the street scene and WCA. However, these trees have sparse crowns due to ADB and both would ultimately be lost even if the proposed development did not proceed. Furthermore, trees T2 and T3 form a group with several other mature trees (annotated as T1 and T4-T9 within the AIA) that are to be retained. Therefore, the loss of trees T2 and T3 within this group would not significantly affect the visual amenity of the area. There would also be some loss of trees to the rear of the appeal site, however these all have an amenity classification of "C: trees of low quality" and due to their siting, they do not make a significant contribution to the visual amenity of the area. I

therefore do not consider that the loss of these additional trees would adversely affect the character, appearance or significance of WCA.

20. The Proposed Site Plan is annotated to state that a replacement broad-leaved tree would be planted along the frontage of the appeal site to compensate for the loss of trees T2 and T3. The updated letter from the arboriculturist states that the replacement tree should be of a large mature stature to properly compensate for the loss of the two Ash trees. In the event the appeal was allowed, this could have been conditioned accordingly. The proposed replacement planting would ensure that the minor impact to visual amenity would only be in the short-term until the replacement tree matures.
21. For the reasons detailed above, I conclude that the proposed development would not harm the character or appearance of the surrounding area, and consequently would preserve the character and appearance of WCA. Therefore, in respect of the second main issue, the proposal would comply with Policies DM2, DM17 and DM22 of the JDMPD which, amongst other things, seek to respect the area's character and setting, and maintain or create a sense of place and/or local character.

### *Biodiversity*

22. The amount of hardstanding would increase within the appeal site for the parking and turning of vehicles and the amount of built development would also increase. However, the submitted "Update Preliminary Ecological Appraisal" (PEA) indicates that there would be no harm to wildlife species or valuable habitats. Furthermore, it concludes that the majority of the appeal site is low in ecological value. There would be some loss of trees, however these have been assessed as either Category C or Category U and new tree planting would form part of the proposed development and therefore I am not concerned from an ecological perspective.
23. There would be some potential loss of bat foraging habitat through the removal of some trees, but a large number of trees and hedgerows would be retained, and additional tree and hedge planting is proposed that would ultimately increase the amount of bat foraging habitat within the appeal site. The overall risk to bats would therefore be low and not unacceptably harmful. The PEA suggests several potential enhancements that could be secured by condition, such as bat boxes, bird boxes, hedgehog domes, hedgehog friendly boundary fencing, native soft landscaping including hedge planting between plots and two habitat piles.
24. On this basis, I consider that there would be no unacceptable impact on biodiversity assets and that appropriate mitigation and a net gain in biodiversity could be achieved by the proposed development. Accordingly, I conclude that the proposal would comply with Policy DM12 of the JDMPD that, amongst other things, seeks to ensure that all proposals include enhancements for biodiversity, commensurate with the scale of the development.

### **Other Matters**

25. On the opposite side of Thurlow Road from the appeal is the Grade II Listed 'Guildhall'. I therefore have a statutory duty under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the setting of this listed building. Due to the distance between the

listed building and the appeal site, the intervening mature landscaping, and the setting back of the proposed dwellings within the site, I do not find harm to the setting of Guildhall.

26. I have had regard to the comments of a third party, as well as the benefits of the proposal as detailed by the appellant at paragraph 6.8 of their appeal statement. In respect of those matters not already covered, no evidence has been provided to substantiate the view that the proposed development would provide much needed additional housing within the village, however, it is agreed that the provision of 4 additional dwellings would bring about general social and economic benefits to the village. There would also be some potential net biodiversity gain.
27. The demolition of the existing dwelling would result in the loss of a first floor window within the gable of Milton House that the appellant states would result in a reduction in overlooking to Thistledown Cottage. However, no information has been provided as to what room this window serves. In addition, this window is not located in close proximity to the shared boundary and a number of trees are positioned that would filter the view from this window. I therefore consider that the removal of this window may result in some benefit to the living conditions of the occupiers of Thistledown Cottage, but it would be to a limited degree. I note that the proposal has the potential to resolve an existing drainage issue that results in localised flooding which would be of some benefit to the area. However, taken as a whole, these benefits do not outweigh my findings in respect of the first main issue.
28. There has been no objection from the Highway Authority or by the relevant Officers in respect of drainage, archaeology, environmental health, air quality and conservation. However, these are neutral factors.
29. I note that Planning Officers were supportive of the proposed development. However, elected Members are not bound by the recommendations of their Officers and are entitled to come to a different view.

### **Conclusion**

30. I have found for the appellant in regard to the second and third main issues and their compliance with the development plan. However, this would not be sufficient to outweigh the conflict with the development plan in respect of effect of the proposal on the living conditions of the occupiers of The Old Bakery and Thistledown Cottage. There are no material considerations worthy of sufficient weight to indicate a decision should be made other than in accordance with the development plan. The appeal should therefore be dismissed.

*A Berry*

INSPECTOR