

APPEALS

A. LODGED

4/02578/15/FUL Mr Hazell
ALTERATIONS TO THE LISTED CURTILAGE BOUNDARY WALLING AND
CONSTRUCTION OF NEW FENCING TO FORM NEW LANDSCAPED AREA
FOLLOWING THE REMOVAL OF 1 NO. COMMON ASH TREE
BLUE COURT, 1 CHURCH LANE, KINGS LANGLEY, WD4 8JP
[View online application](#)

B. WITHDRAWN

None

C. FORTHCOMING INQUIRIES

4/00488/16/ENA MR A MATHERS
APPEAL AGAINST ENFORCEMENT NOTICE, CONVERSION OF ONE
DWELLINGHOUSE TO SEVEN FLATS
1 AIREDALE, HEMEL HEMPSTEAD, HP2 5TP
[View online application](#)

D. FORTHCOMING HEARINGS

None

E. DISMISSED

4/03769/15/FUL RiverGate Homes Ltd and Paul and Elizabeth Rooksby
8 DWELLING UNITS - FOUR 3 BEDROOM HOUSES AND
FOUR 1 BEDROOM FLATS WITH ASSOCIATED PARKING
AND LANDSCAPING
26 STATION ROAD, BERKHAMSTED, HP4 2EY
[View online application](#)

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D. FORTHCOMING HEARINGS

None

E. DISMISSED

Full decision below

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

- the effects of the proposal on the character and appearance of the Berkhamsted Conservation Area with particular regard to the layout of the development and its effects on existing trees;
- whether the proposal would offer satisfactory living conditions for future occupiers with regard to the provision of external space and noise and disturbance.

Reasons

Conservation Area – Layout

3. The significance of the Conservation Area lies, in part, in its pleasing mix of housing and other buildings of varying ages and styles, interspersed with

established landscaping. This creates a mature and historic character which reflects the evolution of the area over time.

4. The appeal site comprises a long, relatively narrow area of land on the north side of Station Road. The land slopes up from south to north. Apart from a sub-station, the site is free of substantial built development and contains scrub planting. A row of mature trees runs just beyond its northern boundary. A strip of land between the site and Station Road is used for parking.

5. Due to the openness of the appeal site, the trees to the north are particularly prominent in the street scene. Together therefore, the appeal site and the adjoining trees contribute positively to the character and appearance of the Appeal Decision APP/A1910/W/15/3141028

2

Conservation Area and its significance. The somewhat unkempt appearance of the site and the presence of parked cars detract only slightly from this value. The Berkhamsted Conservation Area Appraisal and Management Proposals (BCAA) recognises that trees play a role in defining the character of the Conservation Area, whether singly, in clusters or groups, or in private, semi-public or public spaces.

6. Opposite the site, the south side of Station Road is lined by a stepped terraced of nineteenth century, two storey houses with short front gardens. The rear gardens are, however, relatively long. This built form and layout gives the street scene an urban character whilst offering glimpses of the larger spaces to the rear of buildings. These characteristics are also identified in the BCAA.

7. The appeal proposal would comprise a semi-detached pair of two storey houses and a terrace made up of two houses and four flats. The new buildings would follow the building line of the houses to the west and their scale, form and appearance would be generally in keeping with the houses opposite. However, the space to the rear of the new houses would be very narrow and, due to the rising ground level, dominated for much of its length by retaining structures. These characteristics would be apparent in the gaps between and at the ends of the new buildings, as well as from Gravel Path to the north which offers an elevated view of the rear of the site.

8. The layout of the development would, therefore, appear cramped and at odds with the characteristic pattern of development to the south. Whilst it would follow the alignment of the pair of semi-detached houses to the west, the open area adjoining that building, including the appeal site, lend it a spacious setting which would be largely lost as a result of the appeal proposal. Moreover, given their size and extend, the new buildings and retaining structures would close down the space in front of the existing trees and thereby diminish their contribution to the character and appearance of the Conservation Area.

9. As such, the proposal would cause less than substantial harm to the character and appearance of the Area and, in this regard, contrary to Policies CS12 and CS27 of the Council's Core Strategy 2013 (CS). Policy CS12 requires development to integrate with the streetscape character and respect adjoining properties in terms of layout and site coverage, among other things. Policy CS27 requires development to positively conserve and enhance the appearance and character of Conservation Areas. Nor would the proposal accord with paragraph 131 of the National Planning Policy Framework (the Framework) to the extent that it has similar aims.

10. The first reason for refusal also cites CS Policy CS10. However, this policy deals with design quality at the broad settlement level, rather than with the neighbourhood level and site specific concerns identified above.

Conservation Area - Trees

11. The second reason for refusal states that the proposal has failed to demonstrate that trees and landscape features would be satisfactorily retained and that there would be pressure to lop, top or fell the trees. I have already concluded that the trees to the north of the site make a positive contribution to the character and appearance of the Conservation Area. However, the application was supported by an Arboricultural and Planning Integration Appeal Decision APP/A1910/W/15/3141028

3

Report1. Notwithstanding that the Council's Conservation Officer appears not to have seen it, correspondence confirms that the Council did receive the Report2. It was also included in the appeal submissions and, therefore, I have taken it into account.

1 GHA Trees Ref GHA/DS/13360:15

2 Emails to the then applicant dated 16 November 2015 and the Planning Inspectorate dated 25 April 2016.

12. The Report is based on a survey of the affected trees and includes an assessment of their size, life expectancy and value. It also makes recommendations for works to the trees and protection measures. Based on my site visit observations and the evidence available, I have no reason to doubt the Report's findings on arboricultural matters. As such, I conclude that the proposal would not be detrimental to the character and appearance of the area by virtue of its direct effect on the trees within and adjoining the site. To this extent it would accord with CS Policy CS12 insofar as it requires proposals to retain important trees. The proposal would also meet the aims of Policy CS27 and Framework paragraph 131 in this regard.

13. However, for the reasons set out below, I consider that there would be pressure from future occupiers of the proposed dwellings to lop, top or fell the trees. Whilst the Council would have control over such works, if the effect of the trees was considered to be unreasonable, that would need to be taken into account. A significant reduction in the height of the trees would adversely affect their contribution to the Conservation Area, thereby causing less than substantial harm to its significance. Such an outcome would bring the proposal into conflict with CS Policies CS12 and CS27 and Framework paragraph 131.

14. The second reason for refusal also cites CS Policy CS10 and my comment above on this policy also applies to this issue. I deal with the question of the interaction between the trees and future occupiers below.

Living Conditions – External Space

15. Private external spaces would be provided to the rear of the proposed dwellings. Appendix 3 of the saved Dacorum Borough Local Plan adopted 2004 (LP) provides guidance on the layout and design of residential areas, including gardens and amenity spaces. For infill sites it advises that garden depths equal to adjoining properties would be acceptable. However, it goes on to state that the width, shape and size of the space should be functional. I recognise that other properties in the area have relatively short rear gardens. The site is also located reasonably centrally within Berkhamsted, although I have not been made aware of any public open spaces which would be readily accessible to future occupiers.

16. Neither party has provided detailed information on the depth or areas of the proposed external spaces. The appellant argues that the depth of the proposed

spaces would be comparable with others in the area. Nevertheless, as well as their restricted overall size, the proposed spaces would accommodate steeply sloping ground levels, resulting in the use of retaining structures. In some cases (for example plot 2) this would divide the limited depth into still narrower spaces, in other cases (for example plot 8) it would result in the end of the space being enclosed by a tall retaining wall. In addition, the canopies of the trees on the land to the rear of the site would overhang or extend as far as the boundary of the external spaces. The Arboricultural Report indicates that these Appeal Decision APP/A1910/W/15/3141028

4

trees are between 10m and 18m in height. They are also located on ground which would be at a significantly higher level than the external spaces.

17. Therefore, as well as the restricted overall size of the external spaces, the height and proximity of the retaining structures and trees would have an overbearing effect on the outlook of occupants. This combination of factors would significantly reduce the attractiveness of the spaces and their functionality for day to day activities such as sitting out and clothes drying. Moreover, the proposed three bedroom houses would be suitable for households with children and these deficiencies would also reduce the attractiveness of the external spaces as areas for play. In these circumstances it is foreseeable that future occupiers would seek to have the trees to the north of the site lopped, topped or felled.

18. Consequently, I consider that the proposal would not provide satisfactory living conditions for future occupiers with regard to the provision of external spaces. As such, it would not accord with LP Appendix 3 or paragraph 17 of the Framework to the extent that it requires development to seek a good standard of amenity for future occupiers.

Living Conditions – Noise and Disturbance

19. Beyond the trees to the rear of the appeal site is a builder's merchant's yard and, beyond that, a main railway line. Both of these uses have the potential to lead to noise and disturbance for future occupiers of the proposed dwellings. The appellant submitted a Noise and Vibration Assessment³ as part of its appeal submissions. The Council and interested parties have, therefore, had an opportunity to comment on it.

3 Cass Allen Ref RP01-15352

20. The noise assessment is based on a survey and the methodology set out in British Standard 8233:2014. It calculates that, with suitable glazing and ventilation installed, internal noise levels in the proposed dwellings would be within the level considered acceptable the British Standard. Noise within the external areas would be slightly above the level recommended in the British Standard even after the installation of an acoustic boundary fence. The Assessment also finds that day and night time ground vibration levels at the site fall below the 'Low probability of adverse comment' level set out in British Standard 6472-1:2008.

21. There is no substantive evidence to suggest that the Noise and Vibration Assessment does not provide a reasonable analysis of the noise and vibration effects of the builder's merchant's yard and railway line on living conditions of future occupiers. Nor do the observations from my site visit lead me to a different conclusion. Whilst the noise in the external spaces would be just above the recommended level, I consider that, of itself, this would not justify withholding planning permission. Had I been minded to allow the appeal, the mitigation

measures suggested in the Assessment could have been secured by condition. Therefore, I find that future occupiers would experience satisfactory living conditions with regard to noise and disturbance. In this regard it would accord with Framework paragraph 123 which requires planning decisions to avoid noise giving rise to significant impacts on health and quality of life. Appeal Decision APP/A1910/W/15/3141028

5

22. The third reason for refusal refers to CS Policy CS12. However, this policy is primarily concerned with matters of site design and the relationship of development to its surroundings. Therefore, it adds little to my consideration of this issue.

Other Matters

23. The appellant has also provided an alternative Replacement Tree Planting Plan. Nevertheless, I have found that the proposal would not directly harm the existing trees. The removal and replacement of the trees would be likely to improve the outlook for users of the external spaces to a degree. However, in view of the other constraints identified above, I consider that such an improvement would not be sufficient to overcome my concerns regarding the effect of the proposal on the living conditions of future occupiers.

24. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Planning Balance and Conclusion

25. Framework paragraphs 7 and 8 require the three roles of sustainability to be considered together. I have not been made aware of any economic benefits of the proposal. Whilst paragraph 47 of the Framework seeks to boost the supply of housing, there is nothing to suggest that there is an unmet need for new housing in the area. Nevertheless, the creation of eight additional units would provide a social benefit, although this would be tempered by the unsatisfactory external spaces available to future occupiers. Moreover, the proposal would have a detrimental effect on the environmental role of sustainability by virtue of its impact on the character and appearance of the Conservation Area.

26. Therefore, I consider that the adverse impacts of the proposal outweigh the benefits of the creation of the additional dwellings. As such, the proposal would not be a sustainable form of development and does not benefit from the presumption in favour of sustainable development set out at Framework paragraph 14.

27. In terms of the assessment required by paragraph 134 of the Framework, although the harm to the Conservation Area would be less than substantial it would not be outweighed by the public benefit of the additional dwellings.