
Appeal Decision

Site visit made on 13 October 2014

by Jacqueline Wilkinson Reg. Architect IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 November 2014

Appeal Ref: APP/A1720/A/14/2222682

23 The Avenue, Fareham, Hampshire PO14 1NT

- 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 Sedgeley against the decision of Fareham Borough Council.
 - The application Ref P/13/0891/FP, dated 14 October 2013, was refused by notice dated 30 January 2014.
 - The development proposed is development of land to the rear of Blackbrook Grove with four detached four and five bedroom houses and access drive and ancillary parking and amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: i) whether the proposal would preserve the setting of the grade II* listed building now known as Blackbrook Grove and if not, whether there would be any public benefit which would outweigh the harm, ii) the effect on Portsmouth Harbour Site of Special Scientific Interest (SSSI) and the Portsmouth Harbour Special Protection Area (SPA)/RAMSAR sites and iii) the effect on protected species.

Reasons

Setting of the listed building

3. For the avoidance of doubt I refer to the whole of the site as the grounds and the woodland garden as the picturesque garden. 23 The Avenue is listed Grade II* under the name of Bishopwood, but is now known as Blackwood Grove. Its key significance lies in its "Gothick cottage orné" style, firstly applied to the remodelling of a former cottage (now the east wing), complete with a "bonnet" thatched roof, tree trunk pillars and a splendid tripartite Gothick bow window facing the garden. The date for this remodelling has not been clearly established, but research concludes that it is likely to be early 19th century. This style was then reinterpreted in various attractive and large extensions in the early 20th century and the 1930's. A 1960's extension on the west wing albeit in the same style is less successful. The building is no longer a cottage, but is a substantial high status residence, set in large grounds.

4. It is proposed to develop the orchard, which is in the south west corner of the grounds, for four dwellings, accessed from Redlands Lane. It is therefore important to understand the relationship of the orchard to the picturesque garden and to assess its role in the setting of the designated asset, the house. To help answer these questions, the detailed research paper for the Hampshire Gardens Trust (2009) was made available at my request and the appellants were given additional time for comments.
5. The appellants point out that the historic maps clearly show that the orchard was always a separate entity and was not part of the "designed" landscape. However, I am not persuaded that the historic research demonstrates this, but even if this were to be the case, the orchard is nevertheless part of the historic curtilage and setting of the main house.
6. The historic maps before 1841 are not sufficiently clear to tell whether the grounds had been laid out by that time nor does the documentary research conclude this. The 1841 map shows that the grounds had been landscaped by then, with a woodland garden in the picturesque style, (with circular inner and outer woodland walks), a long tree lined avenue to the south on the axis of the bow window, a walled kitchen garden, pond and an orchard. In short everything a Hampshire gentleman of the time thought was necessary to be fashionable.
7. The house has no pretensions to be seen from the street. It has no formal drive up to it and no formal front. Instead it faces away from the road and the adjacent house (Blackbrook Lodge), seeking the southward aspect across the grounds. It was originally designed to be seen in the round from the garden and for the garden to be seen from various rooms in the house. A perambulation of the inner and outer walks would have given glimpses of the house from various places. The long tree lined walk to the south (referred to as the avenue) was possibly intended to increase the sense of the size of the grounds by "borrowing" the adjacent landscape, and the end point was likely to have been used as a viewing point over the Solent, giving a strong sense of the wider natural landscape and the sea.
8. Like the house, the grounds have been affected by changes over time. The southern part of the woodland walks and the vista down the avenue have now been severed from the main garden. There are solid high hedges on each side of an unusually wide new access drive off Redlands Lane leading to the orchard. This drive is not on the 1993 map, but is visible on an aerial photo dated 2006. The installation of solid gates and piers along the drive and across the former avenue walk has created a new shorter and more solid southern edge to the garden. A dwelling appears in the south east corner of the former garden on the 1940 map and this is now in separate ownership. Two substantial garages/stores have been built in the grounds and there is a large garage on land between the access drive and the southern boundary. The appeal site is no longer an orchard, but is essentially an open paddock with a scattering of old fruit trees and photos testify to its past derelict state. Nevertheless, the key points of interest as identified by the Trust (the inner and outer circuits through the woodland and the avenue) are still discernible.
9. There is now a cul-de-sac of modern two storey houses to the west of the former kitchen garden (Romyns Court), the roofs of which can be seen from the house, even after the recent planting of a dense evergreen hedge. The

traffic noise experienced in parts of the garden now brings the hustle and bustle of modern life into the once tranquil space. A new block of flats to the south has an unwelcome visual presence on the southern boundary. When the adjacent development on the adjacent college grounds is complete there will be an even greater awareness of the activity in the grounds due to the close proximity of extensive car parks and new outdoor sports facilities, all of which are likely to be used after dark. There will be a large number of new dwellings to the south west, the height of which I understand is yet to be decided. The path along the southern edge of the appeal site will become a key pedestrian route.

10. The evidence now before me leads me to conclude that the orchard was laid out at the same time as the picturesque garden. Its role may have been two-fold, firstly to be a functioning orchard to supply the house, but secondly to provide a "borrowed" landscape setting for the woodland walks. At the site visit I saw that it now plays an important role in the setting of the house, acting as a buffer between the picturesque garden, which is more intimately linked to the house and the fast urbanising adjacent areas to the south and west.
11. I visited the site on an early autumn day, when the leaves were mostly still on the trees, but even so I estimated that the upper floors of the proposed dwellings on plots 1 and 2, albeit some 92m at the closest, would be partially visible between the woodland trees from the main house. The proposal would therefore directly impact on views from the main house and a significant proportion of the former grounds would be lost to suburban development. Whilst the roofs of Romyns Court can also be seen, the proposal would add to the harmful effect of encroachment of suburban development on the open garden setting of the house.
12. The proposed houses would be likely to be clearly visible through the tree trunks from a number of locations in the garden, but most crucially from points along the inner and outer walks closest to the orchard and from points along the former avenue. Additional landscaping (which could be required by condition) would be unlikely to effectively screen the upper floors or roofs of the proposed dwellings. The proposed dwellings are exceptionally large and are likely to attract a higher level of vehicular activity than an average dwelling. All these vehicles would traverse the southern part of the picturesque garden. Notwithstanding the high hedges which have been grown on either side of the access drive, the noise and lights of these vehicles would significantly intrude into the tranquillity of the garden.
13. The appellants maintain that the garden does not merit being considered as a heritage asset and point out that English Heritage has declined to place it on the National Register of Historic Parks and Gardens. Nevertheless the Council is entitled to take the view, informed by the Trust's research, that it is of local interest as a non-designated asset. The Planning Practice Guidance¹ explains that these are areas or landscapes which have a degree of significance which merits consideration in planning decisions.
14. The garden is on the Hampshire Register of Local Historic Parks and Gardens. The historic grounds around the house (including the orchard) are identified in policy HE10 (*Historic parks and gardens*) of the Fareham Borough Local Plan

¹ Paragraph 039.

Review 2000. Policy DSP6 (*Protecting and enhancing the historic environment*) of the Fareham Borough Local Plan Part 2: Development Sites and Policies, also identifies the grounds of the house as an historic park, non-designated asset. However, this latter policy is still subject to examination and I give it limited weight at this stage.

15. Reference has been made to an appeal decision in 1997². Five dwellings were proposed at the time, with access from Romyns Court. The appeal was dismissed on two grounds. Firstly that the setting of the listed building would be harmed and secondly on highway safety grounds, relating to the proposed access onto the main road. This decision was made before the detailed research was carried out by the Hampshire Gardens Trust, before the introduction of the current local plan and before the publication of the National Planning Policy Framework (the Framework). The proposed dwellings were closer to the main house than is currently proposed. However, I note that the Inspector commented on the garden as an oasis of tranquillity with a strong sense of place. He suggested that the number of dwellings “needs to be fundamentally reassessed”. It seems to me that whilst the highway issues are important, the current scheme not only has not fundamentally reassessed the numbers of dwellings, but also has added to the harm to the setting of the listed building by routing all the vehicular activity through the picturesque garden.
16. The choice of style is the appellants’ prerogative and the Framework³ cautions decision makers about imposing architectural styles. However the Framework does state that it is proper to seek to promote or reinforce local distinctiveness and that designs should respond to local character. The neo-Georgian/Edwardian styles, however well executed in terms of detailed design and materials, are misconceived in this location. What also comes with this choice of styles is a considerable height and bulk. These are grand houses, 4 and 5 bedrooms plus home offices, multiple reception rooms and attic rooms. These are “look at me” houses, but they are not placed in appropriately generous plots in a formal setting on a public street. Instead they are arranged in a staggered layout around a cul-de-sac which would be dominated by the garage blocks at the front. This design approach and suburban layout would poorly relate to the special character and setting of the appeal site. This adds to my conclusions that the proposal would harm the setting of the listed house.
17. I therefore conclude that the proposed development would fail to preserve the setting of the listed building, as required by Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990. It would also be significantly harmful to the character and setting of the non-designated picturesque garden, which would adversely affect the setting and significance of the designated asset.
18. I also conclude that the proposal would be contrary to the objectives of policy CS17 of the Fareham Borough Core Strategy (Core Strategy) and policy DG4 of the Fareham Borough Local Plan Review 2000. These policies broadly accord with similar requirements set out in Section 12 *Conserving and enhancing the*

² Ref APP/A1720/A/96/265748/P4.

³ Section 7, paragraph 60.

historic environment of the Framework and guidance set out in the Planning Practice Guidance, paragraph 13.

Effect on Portsmouth Harbour Site of Special Scientific Interest (SSSI), Portsmouth Harbour Special Protection Area (SPA)/RAMSAR sites

19. The Conservation of Habitats and Species Regulations 2010 implement the Habitats and Birds Directive into UK law and provide statutory protection for the SPA and Ramsar sites. The Habitat Regulations require that decision makers must be satisfied before granting permission, that the proposed development will not adversely impact on the integrity of these sites. As the proposed development is not directly connected with the management of protected sites the Habitats Regulations require that I must first ascertain whether there will be a significant effect on these sites, alone or in combination with other plans or projects.
20. Local Plan Part 2: Development Sites and Policies Feb 2014 policy DSP15 *Recreational disturbance on the Solent Protection Areas* sets out an approach to mitigation of the effects on species through the provision of a financial contribution. The Local Plan Part 2 is currently under examination. I have not been informed whether there are any objections to this policy so I cannot give significant weight to it at this stage.
21. Natural England outlines its broad concern that an increase in the number of dwellings within proximity of the above sites would be likely to have a significant effect on species, due to pressure for recreational visits. Natural England supports the use of a strategic impact avoidance scheme to prevent harm to these protected sites.
22. The appellants refer in their final comments to a Unilateral Undertaking, but instead a cheque for £688 was paid to the Council on the 22 September 2014, using a Habitats Mitigation Contribution form provided by the Council. However, I have no details before me of a strategic scheme and I cannot be satisfied that this means of payment would properly secure the mitigation for the effect on the Solent Protection Areas. I cannot therefore take the payment into account. Moreover, I understand that the Council adopted a CIL Charging Schedule on the 1 May 2013, and that a new draught charging schedule will be examined towards the end of 2014. This has not been put before me, so I cannot conclude that the suggested contribution would satisfy the CIL Regulations.
23. I have no evidence before me to dispute the view of Natural England. In accordance with the Habitat Regulations I must therefore take a precautionary approach when considering whether the proposal is likely to have a significant effect on these sites. I conclude that in combination with other residential developments in the District, the proposed development would be likely to have significant effects on the interest features of the SPA and Ramsar sites.
24. Where it is ascertained that a proposal would be likely to have significant effects, the Habitats Regulations require that an appropriate assessment of the implications for the site in view of its conservation objectives should be undertaken before any planning permission can be granted. Given my conclusions on the main issue, the circumstances that could lead to a grant of permission are not present and further consideration of the duties set out in the Habitats Regulations is not required.

25. I therefore conclude that the proposal would be contrary to the requirements of the Habitats Regulations and to the broad aims of the Framework, paragraph 118, and Core Strategy policy CS6, which are to conserve and enhance biodiversity.

Protected species

26. A local resident refers to a survey carried out in the grounds of the college on the adjacent site, where the appeal site boundary was identified as a feeding line for four species of bats. Concern is expressed about the use of lighting. The hedging referred to is overgrown and may also be partly outside the appeal site, but there are no proposals to remove it as part of this proposal. Any lighting of the playing fields or the path adjacent to but outside the appeal site would be a matter for the owners of that land or the Council when discharging any conditions attached to the recent planning permission for redevelopment, which has commenced.
27. The Council is concerned that the level of ecological information provided with the application is insufficient to ascertain whether or not there would be harm to protected species on the site itself. The appellants submitted a Phase 1 Ecological Survey, June 2013 and this was updated February 2014. This concluded that no protected species would be harmed and I accept this conclusion. Subject to further landscaping details and ecological enhancement measures, which can be obtained by condition, I am satisfied that the proposed development would protect protected species.
28. I conclude that the requirements of Fareham Borough Local Plan Review 2000 policy C18 (*Protected species*) would be satisfied.

Overall conclusions

29. To quote from the Hampshire Gardens Trust Research paper "The garden is a piece with the house and is uncommon survival of a picturesque garden matched to a picturesque house". The historic maps indicate that the orchard area was likely to have been laid out at the same time as the picturesque garden and is therefore an integral part of the landscape setting of the main house and has been part of the historic grounds since the restyling of the original cottage.
30. Although the extent of the original grounds to Blackbrook Grove has been reduced and adjacent housing development is now visible from within the grounds of the house, this is not an argument in favour of adding to this harmful impact. I conclude that in the current circumstances there is a strong need to protect the setting of the house from further harmful development in order to preserve the significance of the main house.
31. I have found that the proposed development would be visible from the main house and would be especially dominant in the setting of the picturesque garden. In addition, the special tranquillity of the picturesque garden setting of the main house would be harmed by the comings and goings of the occupiers of the proposed dwellings and their visitors through this part of the grounds.
32. By comparison to the 1997 appeal scheme, I have concluded that this proposal, although further away from the main house, would bring additional harm to the garden setting of the listed building by the introduction of vehicular movements through the southern part of the picturesque garden.

33. I have also found that the proposed designs and the layout of the dwellings would not reinforce local distinctiveness or respond to the character of their setting, which would add to the harmful visual impact of the proposed dwellings on the setting of the main house.
34. With reference to the effect on SPA and RAMSAR sites, I have found that without information about a strategic avoidance scheme, and in the absence of a legally binding undertaking to make a contribution towards such a scheme, the proposal would fail the requirements of the Habitats Regulations and the Framework.
35. Paragraph 134 of the Framework requires me to balance the harm I have identified to the significance and setting of the listed building against any public benefit. Paragraph 132 of the Framework states that great weight should be given to the conservation of heritage assets.
36. The appellants point to a lack of a five year housing supply in the District. Paragraph 14 of the Framework states that in such circumstances planning permission should be granted unless there are any adverse impacts of doing so, including the effect on heritage assets. I have concluded that there would be demonstrable harm to the setting and significance of the listed building.
37. The provision of four large high value dwellings would not make a significant contribution to the supply of housing or affordable housing in the area. I therefore conclude that there would be no public benefit to outweigh the harm I have identified to the setting and significance of the Grade II* listed building.
38. I have had regard to the comments received, both for and against the proposal, and the objection from English Heritage, who are the statutory advisors.
39. For the reasons given above I conclude that the appeal should be dismissed.

Jacqueline Wilkinson

INSPECTOR

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