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# Appeal Decision

Hearing held on 10 July 2013

Site visit made on 10 July 2013

**by R J Marshall LLB DipTP MRTPI**

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

**Decision date: 31 July 2013**

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**Appeal Ref: APP/V3120/A/12/2188869**

**Woodpecker House, Orchard Lane, Boars Hill, Oxford, OX1 5JH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Sir Derek and Lady Morris against Vale of White Horse District Council.
  - The application Ref P12/V1758/FUL, is dated 2 August 2012.
  - The development proposed is "Demolition of existing dwelling. Erection of a replacement dwelling".
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## Decision

1. The appeal is allowed and planning permission is granted for "Demolition of existing dwelling. Erection of replacement dwelling" at Woodpecker House, Orchard Lane, Boars Hill, Oxford, OX1 5JH in accordance with the terms of the application, Ref P12/V1758/FUL, dated 2 August 2012, and the plans submitted with it, subject to the conditions on the attached list.

## Application for costs

2. At the Hearing an application for costs was made by Sir Derek and Lady Morris against the Vale of White Horse District Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues in this appeal are **first**: whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy; **second**, the effect of the proposed development on the openness of the Green belt and its character and appearance; and **third**, if the proposed development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.
4. The issues differ slightly from those given the hearing in light of all I heard.

## **Reasons**

### ***Inappropriateness***

5. The appeal site lies within Boars Hill, a small settlement in the Green Belt around Oxford. Boars Hill is comprised predominantly of low density housing in an undulating and well wooded setting. Housing in this area is of varied, design, size and age. It ranges from some modest cottages to larger more modern detached houses, some of which appear only recently to have been constructed.

### ***First issue***

6. Policy GS2 of the Vale of White Horse Local Plan 2011 (2006) states that the aim of Green Belt policy is to keep land permanently open and that new development in such areas will therefore be restricted. It says that there is a general presumption against inappropriate development in the Green Belt. This policy was drawn up in the context of previous government guidance in Planning Policy Guidance Note 2: Green Belts (PPG2). This stated that inappropriate development is by definition harmful to the Green Belt and should not be granted except in very special circumstances.
7. Policy GS2 says that development is inappropriate unless for limited types of development which include the replacement of existing dwellings. It says that such development would be acceptable provided the new dwelling is not generally larger than the existing dwelling. For the purposes of this Policy the house is taken as being as was at October 1995.
8. Local Plan Policy GS3 offers guidance on what would be "materially larger". It says that for a dwelling larger than 121 sq. metres, which is the case in this appeal, a replacement may be up to 30% larger than the original dwelling.
9. Although drawn up in the context of PPG2 the above Local Plan Policies in my view clearly accord with the Framework as that is itself is largely consistent with PPG2. I am of this view notwithstanding a rather convoluted argument by the appellant to the contrary.
10. The proposed development would be approximately 73% larger in volume than the original house. It would, therefore, clearly be inappropriate in Policy terms.

### ***Openness and character and appearance***

11. The proposed development would be a substantial increase over and above the size of the existing dwelling. As such, looking at the area as a whole there would, subject my observations on other matters below, be a moderate adverse impact on the openness of the Green Belt.
12. The proposed house is well designed and in keeping with other more modern development in the area. It would be well set back from the road and generally well screened by trees and hedgerows. As such the additional size of the proposed house would cause no harm to the pleasant rural character and appearance of Boars Hill.

### ***Other matters***

13. I now turn to those matters which taken together may constitute very special circumstances sufficient to justify harm through inappropriateness and any other harm.

### ***Fallback***

14. This is the key other consideration from which other alleged benefits would arise.
15. The appellant purchased the site approximately 3 years ago with a view to it being his, and his wife's, retirement property. They currently occupy a large house in the centre of Oxford, which the appellant as provost of an Oxford college, will need to vacate on his imminent retirement. A similar amount of space is sought in the retirement property.
16. The appellant has investigated the potential to extend the appeal property. He has obtained planning permission for its extension. In addition plans have been prepared to show further extensions that could be constructed under permitted development rights. A lawful development certificate has been obtained in relation to these. Subject to clarification below these works constitute the full-back position put forward by the appellant.
17. The houses as it could be extended would meet the requirements both in terms of floor space provision and the type of accommodation sought. The appellant is adamant that if planning permission is not forthcoming for the replacement dwelling the fallback position would be implemented. His architect has confirmed that he has been instructed, given the delay that has already occurred, to begin detailed drawings as soon as the appeal decision is known, whether that be for the new build or the fallback as appropriate. This has been factored into the firms work schedule.
18. On the evidence before it at application stage the Council had been concerned that the full-back position was not a realistic proposition largely on two counts. First, that some of internal room layouts proposed in the scheme showing what could be undertaken as permitted development were unworkable and that as permitted development some first-floor bedroom windows would need to be a obscure glazed. However, the appellant subsequently submitted floor plans showing how, within the limits of what may lawfully be constructed, entirely acceptable internal room layouts may be provided. The first floor bedroom windows would be so far removed from the boundary of a neighbouring property that any subsequent proposal for them to be clear glazed would be difficult to resist.
19. Taking all of the above into account I am satisfied that there is a strong likelihood of the fallback position being implemented were this appeal to be dismissed. In looking therefore at the various advantages alleged by the appellant for the scheme it is appropriate assess the proposed development against the fallback position.

### ***Sustainability***

20. A detailed professional assessment has been carried out to compare the sustainability, in terms of energy demand and carbon dioxide emissions, between the proposed house and the fallback position.

21. It is concluded that the proposed replacement house would achieve better standards of insulation, better air tightness and better thermal detailing of connections and junctions. As result the primary energy demand for the replacement house would be approximately 59% less than with the fallback position. Carbon dioxide emissions for the replacement house would approximately 59% less than an extended house under the full-back position. No evidence has been provided to the contrary.
22. The above calculations have not taken into account the proposed use of renewable energy sources because such sources could be used both for the replacement dwelling and the house as extended.
23. The reduced energy demand and lower carbon dioxide emissions that would result from the proposed development compared to the fallback position are significant. Developing in this way would accord with guidance in the Framework on minimising waste and pollution and moving to a low carbon economy.

### ***Design***

24. The existing house is a moderately attractive, but rather unsympathetically extended, Edwardian style property. As proposed to be extended under the fallback position, whilst not unacceptable in design, it would have a rather piecemeal appearance. By contrast the proposed replacement house, in the current modern style, would be a notably attractive and well proportioned property. As such, it would be a marked improvement in design terms compared with the fall-back position. It would accord more with some of the higher quality housing in the area including some recent attractive houses of modern design.
25. Given guidance in the Framework that it is necessary always to seek high-quality design I attach substantial weight to the better quality design of the replacement house.

### ***Neighbour's amenity***

26. The proposed replacement house would be set back slightly further from the boundary of the neighbouring property to the south than the extended house in the fallback position. However, the level of intrusion in the fallback position would not be unacceptable and the degree of improvement would be marginal.

### ***Openness of the Green Belt***

27. Compared to the fallback position the replacement house would have 19% less footprint, 5% less floorspace and 5% less volume. Given this, and the more compact design of the replacement house there would be a limited improvement to the openness of the Green Belt if this house was constructed rather than the extensions under the fallback position.

### ***Final Balancing***

28. The proposed development is inappropriate development which is by definition harmful to the Green Belt. The Framework requires that substantial weight must be attached to that harm. I have also found that there would, setting aside for a moment the fallback position, be moderate harm to the openness of the Green Belt but no harm to the character and appearance of the area. For

the appeal to succeed the combined weight of the other considerations must clearly outweigh the totality of the harm arising.

29. Of the other matters to take into account the fallback position is key. Having regard to this there are significant sustainability advantages in the proposed development and advantages in design terms on which substantial weight should be placed. There would be a limited benefit to the openness of the Green Belt and a marginal benefit with regard to neighbours' living conditions. Taken as a whole, and given the weight I have attached to the sustainability and design considerations, I consider that the other matters clearly outweigh the harm by reason of inappropriateness so as to amount to very special circumstances to justify the proposed development. There would be no conflict with Policies GS2 and GS3 of the Local Plan.

### **Conditions**

30. As I am minded to allow the appeal I have considered what conditions should be imposed in addition to the standard condition on the time limit for the commencement of development.
31. To protect the character and appearance of the area and the openness of the Green Belt I shall remove permitted development rights for extensions. For the former reason alone I shall also require the submission of external materials for approval even though details of materials have been given on the application. In the interests of nature conservation and the protection of trees I shall require work to be undertaken in accordance with submitted arboricultural and ecological surveys. To ensure that the proposed house is built as intended I shall require details to be provided of proposed floor levels. In the interests proper planning I shall impose a condition that development must be carried out in accordance with the approved plans.
32. Given the location of the site and existing planting I see no need for a landscaping condition, a point now accepted by the Council. Like the Council I see no need for a condition restricting the use of an existing garage on site. Given the observations of both parties I see no need for a drainage condition.

### **Overall conclusion**

33. For the reasons given above the appeal is allowed.

*RJ Marshall*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr H Venners BSc Hons MA MRTPI	Of JPPC
Sir Derek Morris MA DPhil	Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr M Deans BA (Hons) BTP MRTPI	Team Leader (Applications)
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## **DOCUMENTS**

- 1 Letter of notification of appeal and those notified.
- 2 Volume calculation drawings.
- 3 Extract from Vale of White Horse Local Plan 2011 (2006).
- 4 Drawing No. 11107- SU02.
- 5 Drawing No. 11107- SK14.
- 6 Drawing No. 11107- SK13B.
- 7 Letter from The Chief Planning Officer -18 September 2012.
- 8 Appeal decision – APP/V3120/A/10/2125140.
- 9 Costs decision - APP/V3120/A/11/2158497.
- 10 Introduction of Vale of White Horse Local Plan (2006).
- 11 Letter to the appellant from The Anderson Orr Partnership Chartered Architects.

## Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no enlargement of the dwellinghouse as described in Schedule 2, Part 1, Class A of the Order shall be constructed.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall be undertaken in accordance with the arboricultural method statement in the Sarah Venners Arboricultural Report of June 2012 rev.1.
- 5) The development hereby permitted shall be undertaken in accordance with the mitigation strategy for bats in the Windrush Ecology bat survey of October 2011.
- 6) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the finished floor levels above ordnance datum. Development shall be carried out in accordance with the approved details.
- 7) Subject to the requirements of any of the aforementioned conditions the development hereby permitted shall be carried out in accordance with the following approved plans:
  - 16057/1
  - 11107 – SK10
  - 11107 – PO1
  - 11107 - PO7
  - 11107 - PO8
  - 11107 – PO9
  - 11107 – LO1



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## Costs Decision

Hearing held on 10 July 2013

Site visit made on 10 July 2013

**by R J Marshall LLB DipTP MRTPI**

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

**Decision date: 31 July 2013**

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### **Costs application in relation to Appeal Ref: APP/V3120/A/12/2188869 Woodpecker House, Orchard Lane, Boars Hill, Oxford, OX1 5JH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Sir Derek and Lady Morris for a full award of costs against Vale of White Horse District Council.
  - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for "Demolition of existing dwelling. Erection of a replacement dwelling".
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Sir Derek and Lady Morris**

2. The submissions were made partly in writing and in part verbally.
3. The essence of the claim is that the Council failed to engage, as they are encouraged to in the National Planning Policy Framework (the Framework), in a constructive dialogue with the appellant. The Council had no good reason not to believe the appellant's stated intention regarding the fallback position, especially given the appellant's letter of 26 October 2012 saying why the fallback position would be implemented if planning permission was refused for the replacement dwelling. This letter included a drawing showing how fallback plans could be modified to give the accommodation required.
4. Discussions at the hearing indicate that the Council made only a cursory examination of relevant plans. Having regard to the costs decision APP/V3120/A/11/2158497 the Council should have been aware of the importance to attach to the fall-back position.

### **The response by Vale of White Horse District Council**

5. It is accepted that the Council could have done more to keep the appellant informed of the progress of the application. However, the Council placed significant weight on harm to the Green Belt, and this was a legitimate reason for delay in determining the application.
6. The Council had to make a judgement on the likelihood of the fallback position being implemented, an especially important consideration given the Green Belt implications. In making this judgement the Council considered the fallback position.



### **Appellant's final response**

7. The fact that the site is in the Green Belt makes no difference to determining the likelihood of implementing the fallback position.

### **Reasons**

8. The Council should have kept the appellant better informed of progress on the application and of its concerns on it. In my view there was no justification for the delay in determining the application. The fact that the site is in the Green Belt makes no substantial difference in determining the likelihood of the fallback position being implemented.
9. As explained in my decision on the appeal the Council had legitimate concerns on the likelihood of the fallback position being implemented when taking into account solely the plans for the Certificate of Lawfulness.
10. It appears that those concerns were not expressed that the appellant and the target a date of 10 of October when the decision should have been made was missed. On 26 October the appellant wrote to the Council explaining why he would undertake fallback position and enclosing plans showing how the house could be extended via the approved extension and as permitted development whilst meeting his needs. The Council's delegated report of 4 December shows that this letter was taken into account.
11. However, it is not possible to say with sufficient certainty that the Council acted unreasonably following receipt of the 26 October letter. This is because a copy of the plan attached to that letter was not made available for the hearing. Although it was said on behalf of the appellant that it was not thought that those plans differed greatly from those submitted in January 2013, and relied on at the hearing in relation to the merits of the case, there is no supporting evidence to that effect.
12. The Costs Decision referred to by the appellant in the cost claim relates to specific evidence of that case and does not alter my judgement on this claim.

### **Conclusion**

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated and that an award of costs is not justified.

*RJ Marshall*

INSPECTOR