

COLD ASH 11/011081/outd Pins Ref 2177084	Fox Lea, Hermitage Road, Cold Ash	New dwelling	Delegated Refusal	Dismissed 27.12.12
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### Procedural Note

There is considerable variation in the appeal papers as to whether the dwelling currently in the appeal site is referred to as Foxlea or Fox Lea. The Inspector used the former throughout his decision as that is the mode of address used by the appellants in their original application.

### Main Issues

The Inspector considered the main issues to be whether –

- a. The proposed development would represent an unacceptable threat to trees on the site, including those protected by a Tree Preservation Order (TPO);
- b. The private amenity space provided for the proposed dwelling would be satisfactory for the living conditions of its future occupants; and
- c. The proposed development would make adequate provision or mitigation on or off site to accommodate its impact on local infrastructure and services.

### Procedural Matters

The appeal follows the refusal to grant outline planning permission for a single detached dwelling within the rear garden of an existing property, Foxlea. Access, appearance and landscaping were reserved matters.

Layout is a matter to be decided at this stage and, with regard to this issue, the appellants e-mailed the Inspectorate on 9 August 2012, attaching two revised plans. Both plans carried the same description, *Site Plan – Retained and Removed Trees*, notation, *896/01/Site TS 2*, and date, *August 2012*, but were marked Revisions B and C and showed alternative positions for the proposed dwelling.

The e-mail stated that the plans had been sent to the Council in anticipation that the revised position of the dwelling would overcome its previous objections and that the Council would acknowledge this in any final comments it made before the deadline of 4 September. The Inspectorate acknowledged the receipt of the plans on 14 August and copied its letter, but not the plans, to the Council. However, the Council submitted no final comments. Moreover, when the Inspector checked the relevant plans at the site visit, it emerged that the revisions were not on the Council's file and the officer present, who was not the original case officer, had no knowledge of them.

In these circumstances, the Inspector was reluctant to accept the revised plans, which it is undisputed were not the basis for the original decision, without written confirmation that the Council has considered them. He therefore decided the appeal on the basis of the submitted plans, Refs 896/01/Site TS1, TS2 and TS3.

### Reasons

*The effect on trees on the site, including those protected by a Tree Preservation Order (TPO)*

The appeal site is within the identified boundaries of the settlement of Cold Ash where Saved Policy HSG.1 of the adopted West Berkshire District Local Plan allows limited residential development. The surrounding area predominantly comprises detached houses standing in large plots.

The land to the rear of Foxlea is covered by an Area TPO (Ref 201/21/189), which was made in the 1970s and post-dates the construction of Foxlea. However, recent years have seen the approval of a series of individual dwellings – the appellants suggest eight – that apparently have

been sited wholly or partly within its boundaries. As a consequence, a number of trees within the area of the TPO have been removed, though whether always with the Council's consent is unclear.

The Inspector's site visit suggested that the woodland within the area of the TPO has not been especially well managed. There are some good, mature trees within the rear garden of Foxlea – notably at least one oak and one Scots pine – but he agreed with the appellants' Arboricultural Report (Ref:R-IBC-1110401 B) that many of the specimens present are of poor quality, not in the best of condition and almost certainly post-date the making of the TPO. Moreover, there is a thick under-storey of holly, in particular, that contributes little to the amenity of the immediate area.

He also accepted the appellants' contention that the context of the TPO has been substantially altered by the development that has taken place since it was made. The rear of Foxlea is virtually invisible from any public viewpoint and, whilst it retains a sylvan feel, this derives less from any sense of a coherent and distinctive area of woodland as much as from a character typically associated with large houses, whose grounds combine surviving specimen trees with hedging and other garden species.

Saved Policy OVS.2 of the adopted West Berkshire District Plan requires proposed development to retain and protect important landscape features. In this context, the appellants state that their intention is to retain the maximum number of trees whilst screening the proposed dwelling from neighbouring properties. Moreover, the Council's appeal statement does not dispute that the proposed dwelling and its access could be constructed without unacceptable harm to protected trees on the site. Rather the Council contends that the proximity of the woodland to the proposed dwelling would generate future pressures to fell or prune protected trees, either because of perceived concerns over safety or because of excessive shading of its garden.

In respect of any concern over safety, he agreed with the appellants' Arboricultural Report that the impact of the proposed development would depend on the detail of which specimens were initially cleared and the manner in which the remaining trees were managed in the future. Nevertheless, he was not persuaded that the siting of the proposed dwelling would result in an unacceptable future risk to the safety of its occupants.

As to the impact of the neighbouring trees on the light entering the proposed dwelling's garden and whether that would generate unacceptable pressures in the future to fell protected trees, he addressed this matter in the context of the acceptability of the private amenity space to be provided.

*Whether the private amenity space provided for the proposed dwelling would be satisfactory for the living conditions of its future occupants*

There is no suggestion that the scale of the private amenity space to be provided for the proposed dwelling would be inadequate in size. The rear garden that would be provided would be more than adequate for a property of the size proposed and in line with the space standards suggested in the Council's Supplementary Planning Document (SPD) on *Quality Design, Pt. 2, Residential Development*, which was adopted in 2006. However, paragraph 1.16.4 of the SPD stresses that the quality of the space provided often matters as much or more than its size. In the context of the proposed dwelling, the Council contends that the degree of shading to which the rear garden would be subject would significantly diminish that quality and thereby generate future pressures to fell or prune.

There is no doubt that the ambience of the proposed development would be dominated by the adjacent tree cover. The appellants suggest that the overriding impression created would be of seclusion and dappled shade. Others might assess the proposed dwelling's rear garden as being excessively subject to overshadowing. The Inspector accepted, as suggested by the appellants' Arboricultural Report, that work could be undertaken to increase light entering the proposed dwelling's garden, though he concluded that such work would have to be limited if it were not

fatally to compromise either those elements of the TPO that should be preserved or the essential character of the immediate area.

The Inspector understood that the appellants' intention may be to sell Foxlea and to move into the proposed dwelling if this appeal is allowed. They are clearly comfortable with the environment that would be created in the new dwelling's rear garden. However, the Inspector must be concerned with the longer term. Although, any future purchaser would be aware of the environment of the property, he was not persuaded that all could be reasonably expected to respect that in the future. In these circumstances, unacceptable additional pressures to fell protected trees could be generated that the Council might find difficult to resist. He therefore concluded that the private amenity space to be provided would be contrary to Saved Policy OVS.2 and to the advice in the SPD.

#### *The lack of a Unilateral Undertaking*

West Berkshire adopted its Core Strategy in July 2012. Policy CS5 sets out the requirement to identify and deliver the necessary infrastructure and services needed to facilitate new development. The policy is reinforced by the Council's Supplementary Planning Guidance (SPG) 4/04, *Delivering Investment from Sustainable Development*, originally adopted in 2004 and updated in 2010. SPG 4/04 is supported by a series of Topic Papers that set out, in detail, how contributions will be calculated in terms of the impact of the proposed development on individual services.

The appellants have suggested that a single new dwelling will provide no material impact on the infrastructure of the local area. However, SPG 4/04 states unambiguously that '*...the creation of a single new dwelling results in significant local pressures on local services, infrastructure and facilities that should be addressed by developer contributions,*' and, accordingly, sets the threshold for residential development contributions at a single dwelling. The Inspector was satisfied that the contributions required for adult social care, libraries, public open space, education, highway improvements, and healthcare are all necessary and that the monies secured would be devoted to specific local schemes that are relevant to the proposed development. They would therefore meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, 2010.

Despite their comment on the supposed lack of impact of a single dwelling, the appellants have also stated they have agreed to make financial contributions '*...to the Parish...*' and towards improvements to pedestrian, bus and cycle facilities and highway safety in Cold Ash. However, no Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 has been submitted to either the Council or to the Inspector. In these circumstances, the proposed development remains in conflict with the policies of the recently adopted Core Strategy and with the supporting material provided through SPG 4/04.

#### **Conclusions**

For the reasons given above he concluded that the appeal should be dismissed.

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