



Appeal Decisions

Inquiry opened on 6 July 2010

Site visit made on 15 October 2010

by John Wilde C.Eng M.I.C.E.

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

Decision date: 25 November 2010

Appeal Ref: APP/K0425/A/10/2120704

Land adjacent to Formoso, Kiln Lane, Bourne End, Buckinghamshire, SL8 5JE

- 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 Cookham Construction Ltd against the decision of Wycombe District Council.
 - The application Ref 09/05883/FUL, dated 8 May 2009, was refused by notice dated 15 July 2009.
 - The development proposed is a single dwelling accessed off Kiln Lane.
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Appeal Ref: APP/K0425/A/10/2128368

Land adjacent to Formoso, Kiln Lane, Bourne End, Buckinghamshire, SL8 5JE

- 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 Cookham Construction Ltd against the decision of Wycombe District Council.
 - The application Ref 09/05885/FUL, dated 8 May 2009, was refused by notice dated 22 April 2010.
 - The development proposed is a single dwelling accessed off Grassy Lane.
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Applications for costs

1. At the Inquiry applications for costs were made by Wycombe District Council and Mr M Leay (on behalf of Hawkshill and Widmoor Residents Action Group) against Cookham Construction. These applications are the subject of separate Decisions.

Decisions

Appeal ref: APP/K0425/A/10/2120704 (Appeal A)

2. I dismiss the appeal.

Appeal ref: APP/K0425/A/10/2128368 (Appeal B)

3. I dismiss the appeal

Background common to both appeals

4. The appeal site lies within the Chilterns, an area identified within the Countryside Commission and English Nature publication *The Character of*

England: Landscape, Wildlife and Natural Features. The publication *Countryside Character Volume 7, South East and London (CCSEL)* notes on page 56 that one of the area's key characteristics is a *network of ancient green lanes and tracks including the Ridgeway which links numerous archaeological sites and settlements.* This publication also observes that *when perceived from the extensive network of sunken lanes and tracks the landscape often feels hidden, enclosed and ancient. This gives the Chilterns its special sense of place.* It also observes that *elements of ancient countryside within the Chilterns, such as narrow winding lanes, organic field patterns and mature tree specimens, are particularly vulnerable to change.*

Appeal A

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area with particular respect to Kiln Lane.

Reasons

Character and appearance

6. The proposed dwelling would be accessed from a new driveway created through the embankment in Kiln Lane. The lane is sunken, with steep embankments on both sides and a canopy of trees arching over the road in several places, giving it a distinctively rural character. The height of the embankments varies but at the point where the new driveway is proposed is about 3m. Although the length of the uninterrupted sunken section was the subject of discussion at the Inquiry, it was agreed by the main parties that it extends for about 175m, with an entrance to Formoso at the west end of this section and an entrance to Niplands at the east end. The embankments at the entrance to Formoso are about 1.5m while the entrance to Niplands is at grade.
7. I have been supplied with two landscape assessments, one on behalf of the Council by Mr J Etchells MA BPhil CMLI, and one on behalf of the appellants by Mr S Dale Dip LA CMLI. The former of these is a Landscape and Visual Impact Assessment (LVIA) carried out in general compliance with the methodology given in Guidelines for Landscape and Visual Impact Assessment (GLVIA) produced jointly by the Institute of Environmental Management and Assessment and the Landscape Institute. The latter does not follow the process outlined within the GLVIA to the same extent, and was confirmed by Mr Dale as not being a full LVIA in line with the guidelines. Consequently I give somewhat greater weight to the evidence of Mr Etchells.
8. Mr Etchells surmises that the degree of local landscape change, and the degree of visual change brought about by the proposed development would both be medium. By the application of his methodology and the criteria set out within it he then arrives at the conclusion that the landscape in the area of the proposed driveway has high sensitivity and that the landscape effects would be moderate to high. He also concludes that the site has medium visual sensitivity and that the overall visual effects would be slight.
9. The proposed driveway would be 4.2m wide, similar to some sections of Kiln Lane itself. The creation of the proposed driveway would result in the removal of about 15m of embankment and the trees that grow on top of it. This would equate to a partial loss of a key feature of the local environment, giving the medium degree of change defined in Mr Etchell's methodology.

10. I accept that the trees that would have been situated on top of this 15m section have already been felled. With the embankment in place however, they could in the future either regenerate or be replaced, which would not of course be possible with the removal of the embankment. The proposed driveway would also have new side slopes of 1 in 2 compared to the front of the existing embankment of about 1 in 0.5, and, given the bellmouth and visibility splays, would be seen as a man made entity within an otherwise undisturbed and natural section of lane. There would therefore, be a significant loss of the existing embankment which, in line with the CCSEL, and from my own observations, is a valuable feature within the landscape.
11. The insertion of the driveway into the otherwise undisturbed embankment would be visually intrusive and would have an adverse impact on the landscape. Whilst planting to the top and front of the driveway with indigenous species could to an extent mitigate the loss of the embankment, it could not completely do so. Using the definitions employed by Mr Etchells, this leads to the conclusion that the proposed works would be of moderate significance.
12. In terms of the visual effects of the proposed driveway, the opening up of the lane to give views of the new driveway and the skyline would cause a deterioration in existing views. Mr Etchells concludes that, as it would not be seen from any distance, and views would be confined to passing motorists, who are classed as having medium sensitivity, the severity would be slight adverse.
13. I was made aware at the Inquiry however, and noticed during my visit, that the lane is used by pedestrians who are classified as having high sensitivity. I am also conscious that the lane connects a network of bridleways and is likely to be used by horse riders. Consequently I consider that the visual effects would be slight to moderate adverse.
14. The proposed access would require visibility splays to be created, from a position of 2.4m back from the channel line, of 29.3m to the east and 20.8m to the west. These are attainable and the highway authority have no objection to the proposal on highway grounds. However, it was demonstrated to me at the Inquiry that to retain the required visibility, the embankments would have to be closely trimmed on a regular basis. As the proposed access would be on the inside of a bend I am not persuaded that such trimming would be a normal occurrence at this location. The regular trimming would add to the man made character of the proposed access.
15. In support of their case the appellants have directed my attention to a letter, dated 29 November 2006 from the Chiltern Society to the Council. In this they indicate that it should be possible *to create a safe and satisfactory access* from Kiln Lane. However, this comment does seem to be in the context of the society accepting that one or other of the accesses is inevitable, and hence expressing a view that the Kiln Lane access would cause less harm than the Grassy Lane one. I therefore give very limited weight to this letter.
16. Wycombe District Local Plan (WDLP) contains a policy, C16 that is specific to Hawks Hill/Harvest Hill, the area that contains the appeal site. This policy makes clear that development in the area will not be permitted where it would *necessitate highway improvements which would damage or destroy features which contribute to the landscape characteristics of the area*. The justification for the policy in paragraph 8.67 goes further in identifying that the loss of trees, hedgerows or banks will not be permitted. The removal of part of the

embankment and the formation of a new access off Kiln Lane is in my view a form of highway improvement.

Conclusion on character and appearance

17. The existing embankment has been shown to contribute to the landscape character of the area and its removal would therefore conflict with policy C16 of the WDLP. The proposed development would also conflict with policy G3 of the WDLP and policy CS 19 of the Wycombe Development Framework Core Strategy (WDFCS). The former policy seeks to ensure, amongst other things, that development respects and reflects the local urban or rural context so as to maintain and reinforce its distinctiveness and particular character. The latter seeks to ensure, amongst other things, that development reinforces locally distinctive qualities of place.

Appeal B

Main Issue

18. The main issue is the effect of the proposed development on the character and appearance of the area with particular respect to Grassy Lane.

Reasons

19. Grassy Lane is an unmade track giving access to two dwellings, a stables and the appeal site. The lane comprises two distinct sections, the first of which runs from the junction with Harvest Hill to the sharp bend before the access to the appeal site. This section is an unmade track, varying in width, with pinch points created by trees at the edge of the lane. Although unmade, there is evidence that stone has at some time been added to the natural soil surface on some sections of the lane.
20. The second section of Grassy Lane has the appearance of a sunken lane, with a concave base and banks either side, which are overhung by trees that grow out of the tops of the banks. To my mind this section of the lane is exactly what the CCSEL refers to when it mentions a *network of ancient green lanes*.
21. The proposed works would involve the laying of 100mm of scalpings on top of a geotextile membrane. The scalpings would be retained by timber boards and would have a flat profile. Some reshaping of the lane outside the extremities of the timber boards would be carried out to marry the boards in, and several passing places would be created. I was made aware at the Inquiry that the appellant would only reshape and use timber boards when absolutely necessary, and would in general do the absolute minimum amount of work to achieve a satisfactory running surface. However, drawing 17117 05B clearly shows the work that I have described and I am bound to accept this as works that could be carried out to their full extent.
22. As with appeal A, I have been supplied with two landscape assessments, one on behalf of the Council by Mr J Etchells MA BPhil CMLI, and one on behalf of the appellants by Mr S Dale Dip LA CMLI. Mr Etchells concludes that the degree of local landscape and visual change brought about by the proposed development would be medium, that Grassy Lane is of high sensitivity and that the local landscape effect of the proposed development would be high adverse. In terms of the visual effect of the proposal Mr Etchells concluded that these would be slight to moderate adverse.

23. The application of the surfacing to Grassy Lane would change its nature, particularly on the second section. The appearance of the base of the lane would change in its texture, colour and shape. The lane is used by walkers and horse riders and is a valuable unspoilt rural amenity. I acknowledge that over time the changes brought about by the proposed development would soften due, amongst other things, to leaf fall. Notwithstanding this however, I consider that the change would be harmful to the character of the lane, a character that contributes to the landscape characteristics of the area. The surfacing works proposed to the lane would also introduce a more urban character. Overall, I concur with Mr Etchell's conclusions regarding the effects of the proposed works on landscape and visual impact. The proposed development would, therefore, damage or destroy features which contribute to the landscape characteristics of the area. In so doing it would conflict with policy C16 of the WDLP.
24. The proposed development would also conflict with policy G3 of the WDLP and policy CS 19 of the Wycombe Development Framework Core Strategy (WDFCS). The former policy seeks to ensure, amongst other things, that development respects and reflects the local urban or rural context so as to maintain and reinforce its distinctiveness and particular character. The latter seeks to ensure, amongst other things, that development reinforces locally distinctive qualities of place.

Other matters

25. It was brought to my attention that there are areas of Grassy Lane that would be subject to works that are within the ownership of parties other than the appellants. However, the ownership of the lane is not before me, and is a matter for the respective parties.
26. It was indicated by the appellants that because Grassy Lane is a public right of way, they may be entitled to carry out the proposed works, or alternatively they could be carried out under permitted development rights. During closing submissions by the Council I was provided with extracts from *Mills and Another v Silver and Others* (Court of Appeal 1990), and from *Cowen v Secretary of State for the Environment and Another* (Court of Appeal 1999). However, whatever may or may not be possible under either easement rights or permitted development, my role is to determine the appeal on the information before me.

Other matters common to both appeals

27. My attention has been drawn to previous local plan enquiries, with particular reference to the removal of a clause from policy C16 and the removal of green space designation from the site. The clause of policy C16 in question resisted development in the Hawks Hill/Harvest Hill area where it would *result in the loss of open undeveloped areas or other features which contribute to the landscape character of the area*. The Local Plan Inspector considered this to be overly restrictive, but also concluded that the wording of the remaining policy would be perfectly adequate to protect the character of the area.
28. In respect of the removal of green designation, policy L3 specifically referred to urban areas of the district, and the Inspector concluded that this was inconsistent with regard to the appeal site. Whilst I acknowledge that the Inspector was aware of the likely access points for the appeal site, he had no specific proposal before him and was therefore unaware of the degree of any

proposed changes to either Kiln Lane or Grassy Lane. Furthermore, his function was entirely different from that of an Inspector determining an appeal. I cannot therefore accept that the Local Plan Inspector, in recommending amendments, *effectively allocated* the site for housing, or that, because of his decision, I am bound to allow one of the present appeals. The Inspector was quite specific that what remained of policy C16 contained *sufficient environmental safeguards concerning character, access, materials etc.*

Conclusions

Appeal A

29. By virtue of the above reasoning I conclude that the proposed development would be harmful to the character and appearance of the area. Having regard to all other matters raised, I dismiss the appeal.

Appeal B

30. By virtue of the above reasoning I conclude that the proposed development would be harmful to the character and appearance of the area. Having regard to all other matters raised, I dismiss the appeal.

John Wilde

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Williams of Counsel	2-3 Gray's Inn Square, London
He called	
Mr T Gabriel	Wycombe District Council, Queen Victoria Road, High Wycombe, Bucks, HP11 1BB
Mr J Etchells	Jon Etchells Consulting Ltd, Barn A, Dixies, High Street, Ashwell, Herts, SG7 5NT

FOR THE APPELLANT:

Mr C Mynors of Counsel	Francis Taylor Building, Temple, London, EC47 7BY
He called	
Mrs J Lampert	Jennifer Lampert Associates Ltd, Orchard House, Paxton, Berwick on Tweed, TD15 1TE
Mr S Dale	ACD, Rodbourne Rail Business Centre, Grange Lane, Malmesbury, Wilts, SN16 0ES
Mr I Brazier	Abington Consulting Engineers, 4 Coldstream Lane, Hardingstone, Northampton, NN4 6DB

INTERESTED PERSONS:

Mr M Leay	Martin Leay Associates, Cirencester Office Park, Unit 12, Tetbury Road, Cirencester, GL7 6JJ
Dr C Havelock	Hylands, Harvest Hill, Bourne End, Bucks, SL8 5JE

DOCUMENTS

- 1 Letter dated 29 November 2006 from the Chiltern Society to Wycombe District Council.
- 2 Letter dated 2 July 2010 from Abington Consulting Engineers to Mr J Brearley.
- 3 Appeal decision APP/K0425/A/00/1049864.
- 4 Officer's report recommending permitting development of 3 bed dwelling on land adjacent to Formoso.
- 5 Land Registry Title Deed No BM318672
- 6 Extract from Court of Appeal ruling Mills v Silver
- 7 Extract from Court of Appeal Ruling Cowen v Secretary of State for the Environment and another.
- 8 Extracts from Guidelines for Landscape and Visual Impact Assessment (second edition).
- 9 Hawkshill and Widmoor Residents Action Group closing/summary points.

PLANS

- A Plan Nos 10056/103, 10056/102, 03039/301 and 03039/201.
- B Plan of the Hawks Hill/Widmoor area indicating those who have mandated their support for the Action Group.