

Appeal Decision

Hearing held on 15 June 2016

Site visit made on 15 June 2016

by R M Pritchard MA PhD MRTPI

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

Decision date: 24 June 2016

Appeal Ref: APP/B1740/W/16/3143587

The former Hardley Methodist Church, Long Lane, Holbury, Hampshire, SO45 2PD

- 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 Clydesdale Maintenance Ltd. against the decision of New Forest District Council.
 - The application Ref 15/11337, dated 11 September 2015, was refused by notice dated 4 December 2015.
 - The development proposed is the erection of five dwellings, four x 3-bedroom houses and one x 2-bedroom bungalow to be provided with their associated car parking, storage and general facilities.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of five dwellings, four x 3-bedroom houses and one x 2-bedroom bungalow to be provided with their associated car parking, storage and general facilities at The former Hardley Methodist Church, Long Lane, Holbury, Hampshire, SO45 2PD in accordance with the terms of the application, Ref 15/11337, dated 11 September 2015, subject to the conditions attached as a Schedule to this Decision.

Main Issues

2. I consider the main issues to be the effects of the proposed development on –
 - i. The character and appearance of the surrounding area;
 - ii. The living conditions of the occupants of neighbouring residential properties, namely 215 Long Lane and Melcombe, Tre-Pol-Pen and Clevedon in Lime Kiln Lane;
 - iii. The safety and convenience of highway users; and
 - iv. Whether the proposed development should make a contribution to the provision of affordable housing in the District.

Reasons

Background

3. The appeal site comprises an inverted L-shaped plot of land within the small settlement of Hardley on the eastern edge of the New Forest but outside the
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boundaries of the National Park. The area of the site is some 0.169 hectares and it is currently occupied by a single building, the former Hardley Methodist Church. The Church was built in the early 1960s but closed in 2009. It is neither locally nor nationally listed and is not located within a Conservation Area. Efforts to market the building for alternative community uses have proved unsuccessful and the Council has accepted that Policy CS8 of the adopted New Forest District Core Strategy, which seeks to protect buildings used for community purposes, should no longer apply. Instead, the Council accepts that the most appropriate alternative use for the appeal site is redevelopment for housing.

4. The surrounding area is predominantly residential with phases of development having occurred throughout the latter two-thirds of the 20th century. Immediately adjacent to the south eastern boundary of the site is 215 Long Lane, 'The Old Manse', the occupation of which is now severed from the appeal site. To the south west and west are the back gardens of properties in Lime Kiln Lane, a mix of detached bungalows and some two-storey houses. The northern boundary of the site is formed of a linear copse of trees, some of which are protected by a Tree Preservation Order (TPO), and which separates the appeal site from the late 20th century residential development that lines Harrier Way. This copse would be retained.
5. The proposed development would comprise five new dwellings, four of which would be 3-bedroom, two-storey houses, whilst the fifth would be a 2-bedroom bungalow. One two-storey house would be erected alongside No 215 (Plot 1), whilst the other four properties (Plots 2 – 5) would be grouped around a small courtyard behind No 215. The 2-bedroom bungalow (Plot 5) would be adjacent to the rear boundary of No 215 in a conscious attempt to minimise the degree of overlooking and loss of privacy that might arise for the occupants of that property.
6. Ten car parking spaces would be provided, two for each property. Those for the two-storey house alongside No 215 (Plot 1) would be at the front of the dwelling. The parking spaces for the other four properties would be sited around the courtyard. There would also be space for the secure parking of ten cycles. Access to the site would be from Long Lane (A326) via a private road. This would use the existing entrance to the Church and would be shared with No 215. Provision would be made for a refuse collection point at the junction with Long Lane thereby avoiding refuse collection vehicles having to enter the site.

The character and appearance of the surrounding area

7. As I have already commented, the surrounding area is predominantly residential and the Council has raised no objection to the principle of redeveloping the site for housing. Nor do I have evidence to suggest that the location of the proposed development is anything other sustainable.
8. The Council's first reason for refusal cites the overdevelopment of the site leading to an unduly cramped appearance '*...out of keeping with the relatively green and spacious nature of the surrounding area*'. The reasons for refusal develop this criticism by citing three particular aspects of the proposed development – the awkward position of the house on Plot 1 confined between the side elevation of No 215 and the access road to Plots 2 – 5; the close proximity of the other four dwellings one to another creating a tight cluster of

- dwelling within what are otherwise spacious back gardens; and the extensive areas of hard standing needed for vehicle parking and access that would give the proposed development an over-harsh appearance.
9. Policy CS2 of the District's Core Strategy focuses on the quality of design. All new development is required to contribute positively to local distinctiveness and the sense of place, whilst being sympathetic to its setting in terms of scale, height, density, layout, appearance and materials. The Council has raised no issues in respect of the detailed design of the individual properties proposed on the appeal site nor in respect of the materials that would be used. I agree.
 10. Rather the Council's criticisms as reflected in its first reason for refusal centre on the layout of the development and its relationship to what it perceives as the dominant character of the surrounding area. Much of this debate focused on the density of the proposed development when compared to other developments in the vicinity. Notwithstanding this debate, the Council has no policy in respect of advised densities and any assessment has therefore to be essentially subjective.
 11. My own impression was that the densities of development around the appeal site vary considerably with a general trend for the more recent developments to have the higher densities. The density of the proposed development would be around 30 dwellings per hectare (dph). The Council's case rests very much on a comparison between the proposed development and the properties along the north side of Lime Kiln Lane that lie to the south of the proposed development. If that were the only comparison that was relevant, I would be inclined to agree with the Council. The properties in Lime Kiln Lane, which probably date from the 1930s, have larger than average plots and reflect average densities of around 10 dph. However, I agree with the appellants that the proposed development should be more appropriately seen in the context of the surrounding area where there are developments with significantly higher densities. The most obvious example is the late 20th century, residential development to the north of the site which is at significantly higher densities than are proposed for the appeal site.
 12. I therefore consider that the density of the proposed development would be acceptable. I agree with the appellants that 30 dph is entirely appropriate for a suburban location such as the appeal site. Moreover, such is the range of densities around the appeal site that I do not accept that development at this density would appear incongruous or out-of-character. Nor do I consider the layout or design of the proposed development to be inappropriate. The character of the surrounding area is not so uniform as to be unable to accept the proposed development. The amenity space to be provided for each dwelling may not compare with the generous back gardens of the properties in Lime Kiln Lane but would be more than adequate for a small family.
 13. In respect of the specific criticisms made by the Council, Plot 1 would be broadly aligned with the existing façade of No 215 and, in the context of views into the site from Long Lane, would appear to be a natural continuation of the properties that line that road further to the south. I accept that Plot 1 would be between No 215 and the access road to the rest of the development. However, such an alignment is by no means uncommon and is reflected in most corner plots. There would be a degree to which Plot 1's rear garden would be affected by passing traffic entering and leaving the rest of the

development. However, I would not expect that to be so frequent as to constitute sufficient harm to undermine the use of this facility.

14. The Council has commented that the proposed development would appear 'cramped' and this is a particular criticism levelled at the layout of Plots 2 – 5. I accept that the four dwellings are closely grouped around the 'courtyard' feature but Plots 3, 4 and 5 sit in a relationship to one another that is, in my view, entirely acceptable. Furthermore, their back gardens would have a southerly aspect ensuring that plenty of light reached both those gardens and the rear elevations of these three properties. Plot 2 would have a different aspect but I do not find its relationship to Plot 3 to be unacceptable in terms of the properties' mutual relationship.
15. I accept that the courtyard around which Plots 2 – 5 would be sited would be largely dominated by the parking spaces of those four dwellings. However, I also recognise that this feature would be screened both from the public domain by Plot 5 and from surrounding properties to the extent that its impact on the character and appearance of the surrounding area would be negligible. In this circumstance, I do not find the comparison to the long front gardens possessed by the properties in Lime Kiln Lane to be particularly appropriate.
16. The Government's National Planning Policy Framework ('the Framework') emphasises the priority to be given to the provision of housing and the need to make the most efficient use of land in achieving this objective. The appeal site is both in a sustainable location and represents previously developed land. There is no objection in principle to its redevelopment for housing.
17. I therefore conclude that in terms of those criteria which Policy CS2 sets in terms of the design of new development, the proposal before me would be acceptable both in its interrelationships within the development and in terms of its impact on the character and appearance of the surrounding area.

The living conditions of the occupants of neighbouring residential properties, namely 215 Long Lane and Melcombe, Tre-Pol-Pen and Clevedon in Lime Kiln Lane

18. Policy CS2 of the District's Core Strategy, as well as providing advice on the design of new development, also requires that it should not cause unacceptable effects by reason of visual intrusion, overlooking or overshadowing. The proposed development's critical relationships are to the east with the rear of No 215 and to the south with the most adjacent properties in Lime Kiln Lane, namely 'Tre-Pol-Pen', 'Melcombe' and 'Clevedon'.
19. In respect of the three properties in Lime Kiln Lane, I accept that their outlook would change as a result of the proposed development and I can appreciate why the residents of these properties feel that there would some loss of privacy as a result of overlooking from Plots 3, 4 and 5. Nevertheless, the relationship that would be created between the new development and the closest properties in Lime Kiln Lane seems to me to be acceptable in the context of the area. Plot 5, as a bungalow, would have only a limited impact on both the garden and rear elevation of 'Tre-Pol-Pen' and the key issue here is the relationship of the two-storey houses on Plots 3 and 4 to the existing properties in Lime Kiln Lane.
20. In respect of both 'Tre-Pol-Pen' and also 'Clevedon', the closest distances between these dwellings and the facing elevations of the proposed dwellings on Plots 3 and 4 would be around or in excess of 30 metres. I therefore conclude

that any overlooking of the rear elevations of 'Tre-Pol-Pen' and 'Clevedon' would be negligible in its impact and no greater than is commonplace in urban and suburban areas. 'Melcombe' would be closer but with a separation distance of around 25 metres, I still consider the resulting relationship to be acceptable. I therefore reject the claim that the proposed development would result in unacceptable overlooking into the rear elevations of the nearest properties in Lime Kiln Lane.

21. The relationship of 215 Long Lane to the proposed development is somewhat different. Plot 5 would sit immediately behind this property with its eastern elevation located hard up against their mutual boundary. The appellants are clear that their decision to locate a bungalow on this plot is deliberately designed to minimise the overlooking and loss of privacy as might affect No 215. Furthermore, the roof profile has been designed to push the ridge back to the west, again seeking to minimise the loss of light to No 215.
22. The outcome would be that the eaves of the proposed bungalow would rise around a metre above a standard head-high boundary fence. The Council has presented 'shadow diagrams' that suggest that, despite the design elements adopted by the appellants, there would be a significant loss of late afternoon and evening sunlight to the back garden of No 215. I accept this, although I also consider that in the summer when the garden is most likely to be in use the effects would be substantially less. I also note that there is no suggestion that the proposed bungalow would have a major impact on light actually reaching the facing elevation of No 215.
23. My overall conclusion on the issue of the effect of the proposed development on neighbouring properties is that there would be some loss of privacy in respect of the back gardens of Melcombe, Tre-Pol-Pen and Clevedon and some loss of light in respect of the back garden of No 215. However, I am not persuaded that these effects would result in the scale of material harm to the living conditions of the occupants of any of these properties sufficient to justify the dismissal of this appeal.
24. I am also of the view that the principle of residential development having been accepted on the appeal site – as it has by the Council and, as I was told at the Hearing, by many local residents – there would inevitably be changes in its relationship to the surrounding properties. Those changes would probably result in some degree of loss of privacy to neighbouring properties.
25. I therefore conclude that, whilst there would be changes in the relationship of the appeal site to the adjacent properties in both Long Lane and Lime Kiln Lane, the consequences would not result in the scale of material harm to breach the relevant provisions of Policy CS2.

The safety and convenience of highway users

26. Policy CS24 of the Core Strategy deals with the transport considerations of new development. In respect of parking provision for both cars and bicycles, no issue has been raised by the Council or by the Highways Authority, Hampshire County Council. Nor has the latter expressed any concerns about access to the public highway providing this can be achieved in a forward gear. Visibility in both directions at the point where the access to the proposed development meets Long Lane (A326) is good – in excess of 100 metres in both directions along a straight, flat road. Moreover, the Highway Authority accepts that the

total use of the access may be no greater as a result of the proposed development than it would have been when the church was in use, although the time distribution of use would, of course, be different.

27. The Highway Authority has, however, raised two issues about the internal layout proposed for the development that it considers would result in undue additional risk to the future occupants of the development and visitors.
28. The first would be possible conflict between the use of the two car parking spaces to be located in front of Plot 5 and the existing access to No 215. The Highway Authority comments, correctly in my view, that the likelihood is that persons using these two spaces would enter in a forward gear but then have to reverse out. In those circumstances, their visibility of anyone leaving No 215 would be limited, especially in respect of the more southerly of the two spaces, because of the latter's boundary wall.
29. Having looked at the proposed arrangements for parking for Plot 5 and their relationship to No 215, I accept that there could be an element of increased risk. However, that element would be mitigated in my view by the slow speeds likely for both vehicles leaving Plot 5 and No 215 and the infrequency with which both accesses would be likely to be used at the same time. It also seems likely to me that occupants of both properties would soon become accustomed to the issues and that this would also reduce the risks.
30. The second issue is whether it would be possible for larger vehicles to enter and leave the site in a forward gear. It is clear to me that private cars and most vans would be able to do so. It has also been established that refuse collection vehicles would not need to enter the site as a point from which bins could be collected would be established at the Long Lane entrance. There is no doubt in my mind that larger vehicles – for example furniture removal vans – might not be able to reverse within the 'courtyard' in front of Plots 1 – 4. They would then have to reverse along the access road. However, I see that as a matter of convenience rather than safety and the Highway Authority's principal concern is that they might have to reverse out on to Long Lane.
31. The turning space in front of Plot 5 and the access to No 215 is substantial and I suspect that some vehicles that might be too large to turn within the 'courtyard' would, nevertheless, be able to turn in this area. However, vehicles of the largest size, which would be able to turn neither in the courtyard nor in the turning space in front of No 215, are likely to be the least frequent visitors to the proposed development and thereby be an infrequent hazard.
32. The Highway Authority told me at the Hearing that it believes that changes could have been made to the design and layout of the development that would have eliminated its concerns. My position is, however, that I must come to a decision based on the proposal before me. In respect of the possible conflicts between the use of Plot 5's parking spaces and the use of the existing access to No 215, I consider the risks are sufficiently limited to be set aside. In respect of the use of the access to the proposed development by larger vehicles, I accept that there would be a small and infrequent chance that manoeuvres would have to be carried out that would carry some risk. However, my evaluation of that risk is that it is not so great as to breach the provisions of Policy CS24.

Whether the proposed development should make a contribution to the provision of affordable housing in the District

33. Policy CS15 of the adopted Core Strategy sets out the Council's policy towards contributions to increasing the supply of affordable housing in the District and can be seen in the context of the more general policy towards developer contributions set out in Policy CS25. The overall objective for developments such as that proposed here is to secure 40% of new dwellings as affordable, i.e. two of the five dwellings proposed here. Policy CS15 does set out some exceptions to the affordable housing requirement but none of the categories mentioned applies, e.g. starter home provision.
34. The appellants, however, submitted a viability appraisal for the scheme that sought to demonstrate that the required affordable housing contribution would make it unviable. The Council disagreed with this assessment and submitted a contrary appraisal prepared by its own Senior Valuer.
35. Although there was a brief discussion at the Hearing as to why the appellants' and Council's viability appraisal reached different conclusions, this matter has been somewhat pre-empted by other events because the issue of contributions towards affordable housing where small sites are concerned has been the subject of Ministerial guidance and legal challenge. In particular, two Written Ministerial Statements of 28 November 2014 and 10 February 2015 altered the Government's policy on these matters as set out in its Planning Practice Guidance (PPG) such that affordable housing contributions should not be sought on housing schemes of less than 10 units. The second Statement confirmed that this was a change in policy that local planning authorities were expected to take on board.
36. However, following a challenge by West Berkshire and Reading Councils, a judgment of 31 July 2015¹ was given in which the Courts held that the Secretary of State failed to take into account a number of material considerations in making the changes to the PPG. Following the Courts' judgment, a declaration Order was issued on 4 August 2015 confirming the policies in the Statements and PPG must not be treated as a material consideration in the exercise of powers under the Planning Acts. This was the position at the commencement of this appeal in April 2016.
37. The Secretary of State sought leave to challenge the judgment and the Court of Appeal upheld the challenge in all respects². The effect of the appeal judgment has been to restore as national planning policy the Written Ministerial Statements of 28 November 2014 and 10 February 2015 that affordable housing obligations should not be sought from small-scale sites (i.e. those under 10 units or less than 1000m² in extent)³.
38. The Council sought to persuade me that it should in some way be excepted from the effects of the judgement because of the particular circumstances of its local housing market and the demand for affordable housing. Whilst I recognise those demands, it is clear to me firstly that the Ministerial statements have as their objective to boost the supply of new housing on small sites, irrespective of the affordable housing position, and secondly that there is

¹ West Berkshire District Council and Reading Borough Council v SSCLG [2015] EWHC 2222 (Admin)

² SSCLG v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

³ Following the appeal decision, amendments to paragraphs 012-023 of the Planning Practice Guidance (PPG) have been substantially restored.

no indication that an area such as that containing the appeal site should be exempted from its provisions⁴.

39. I therefore conclude that the position is now that Government policy is that affordable housing contributions should not be sought by local planning authorities on schemes – such as that before me – which comprise less than 10 units and are less than 1000m² in extent. I also take the view that Government policy is a material consideration, as referred to in Section 38(6) of the Planning and Compulsory Purchase Act 2004, to which I should afford substantial weight. I therefore conclude that the Written Ministerial Statements should override Policy CS15 of the adopted Core Strategy. Furthermore, the absence of a Unilateral Undertaking in respect of a contribution towards affordable housing cannot be a matter that should weigh against the proposed development. Nor, in these circumstances, do I consider it necessary for me to assess the viability of the scheme in respect of whether such contributions might have been justified.

Conclusion

40. For the reasons given above I conclude that the appeal should be allowed.

Conditions

41. I have considered the agreed conditions put before me by the Council and the appellants that they would wish me to impose were the appeal to be allowed in the light of policies towards conditions as now set out in the Government's Planning Practice Guidance (PPG), the model conditions included in the still extant Annex to Circular 11/95, *The Use of Conditions in Planning Permissions* and the discussion at the Hearing.
42. In this case, apart from the standard conditions that set a time limit on the commencement of the development and ensure that it is carried out in accordance with the submitted plans, conditions are required that before development begins, the Council should give prior approval to the slab levels of the development hereby permitted and to a landscaping scheme. The latter was not forward by either the Council or the appellants but was suggested by a local resident as a means of ameliorating the impact of the proposed development on adjacent properties. I agree that this would be a useful condition and I shall impose it as well as that requiring the prior approval of slab levels. Both main parties also put to me the proposal that the first floor window on the west elevation of the building proposed for Plot 3 should be obscurely glazed. I agree that this would be of benefit to the living conditions of adjacent occupiers and I shall impose such a condition.
43. Before the development hereby permitted is first occupied, the car and cycle parking arrangements should be in place and I shall impose a condition to ensure this. The development also should be carried out in accordance with both the Ecological Survey and the Arboricultural Impact Appraisal and Method Statement prepared before the submission of the original application and I shall also impose a condition to ensure that this is so.
44. Finally, the Council has carried out an Appropriate Assessment of the impact of the development hereby permitted on two, nearby European Nature

⁴ The statements and the PPG advice do exempt land in National Parks and AoNBs and 'rural exception sites'. The appeal site qualifies as none of these.

Conservation Sites. It concluded, and I agree with this conclusion, that mitigation for the effects of the development must be provided. I shall therefore impose a condition requiring such mitigation to be agreed before development begins, probably by means of an Undertaking made under section 106 of the Town and Country Planning Act 1990, and that the Council confirms in writing that the appropriate mitigation has been secured before the development begins.

R M Pritchard

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PO1, PO2, PO3, PO4, PO5, PO6, PO7A, PO8A, PO9, PO10A, PO11A, PO12A, PO13A and PO14.
- 3) No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include hard surfacing materials, a planting plan and all boundary treatments. The landscaping works shall be carried out in accordance with the approved details prior to the occupation of any part of the development hereby permitted or in accordance with the programme agreed with the local planning authority.
- 4) No development shall take place until proposed slab levels have been submitted to and approved in writing by the local planning authority. The slab levels shall be expressed in relation to existing ground levels set to an agreed datum and development shall take place in accordance with the approved levels.
- 5) The dwellings hereby permitted shall not be first occupied until the spaces for the parking of motor vehicles and cycles have been laid out in accordance with Drawing No PO7A. The spaces shall be retained thereafter and shall be used for no purpose other than the parking of motor vehicles and cycles.
- 6) The development hereby permitted shall be carried out in strict accordance with the methodology, details and recommendations set out in section 5 of the Ecological Survey prepared by David Leach Ecology Ltd and dated August 2015.
- 7) The development hereby permitted shall be carried out in strict accordance with the provisions of Arboricultural Impact Appraisal and Method Statement (Ref. AIA.AMS-KC.HARDLEYMETH/001) in section 5 of the Ecological Survey prepared by David Leach Ecology Ltd and dated August 2015.
- 8) The first floor window on the west elevation of the dwelling hereby permitted on Plot 3 shall be obscurely glazed and shall be fixed shut at all times other than a fan light opening.
- 9) No development shall take place until proposals for the mitigation of the impact on the New Forest and Solent Coast European Nature Conservation Sites of the development hereby permitted have been submitted to and agreed in writing by the local planning authority. Such proposals must provide –
 - a. For mitigation in accordance with the New Forest District Council's Mitigation Strategy for European Sites Supplementary Planning Document (SPD), as adopted in June 2014 (or any amendment to or replacement for that document) or for mitigation to at least an equivalent effect; and

- b. Details of the manner in which the proposed mitigation is to be secured, and monitoring of any Suitable Alternative Natural Green Spaces (SANGs) that form part of the proposed mitigation measures together with arrangements for public access thereto.

The development shall be carried out in accordance with the approved proposals and the local planning authority shall confirm in writing that the proposed mitigation has been secured before the development hereby permitted commences.

APPEARANCES

FOR THE APPELLANT:

Kevan Netherwood
Matthew Holmes
David Quest
Jon Huggett

Clydesdale Maintenance Ltd
Chapman Lily Planning
Quest Surveyors and Valuers
Paul Basham Associates

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas Straw
Derek Willis

Appeals Officer, New Forest District Council
Senior Estates & Valuation Officer, New Forest
District Council
Highways Dept., Hampshire County Council

Ken Dudley

INTERESTED PERSONS:

Mrs Pamela Huxham

Local resident, 'Melcombe', Lime Kiln Lane,
Holbury

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Notes on affordable housing and the recent Court of Appeal judgement⁵.

⁵ SSCLG v West Berkshire DC and Reading BC C1/2015/2559; [2016] EWCA Civ 441.