

Appeal Decision

Hearing held on 14 June 2016

Site visit made on 14 June 2016

by R C Kirby BA (Hons) DipTP MRTPI

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

Decision date: 13 October 2016

Appeal Ref: APP/K1128/W/16/3142708 **Land at St Ann's Chapel, Bigbury, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by C and S Rodger, R and E Ogilvie-Smals, C and L Hall and J Davies against the decision of South Hams District Council.
 - The application Ref 05/0570/15/O, dated 20 February 2015, was refused by notice dated 11 November 2015.
 - The development proposed is residential development of circa 8 dwellings along with point of access, open space and associated infrastructure.
-

Decision

1. The appeal is dismissed.

Costs Application

2. An application for costs was made at the Hearing by C and S Rodger, R and E Ogilvie-Smals, C and L Hall and J Davies against South Hams District Council. This is the subject of a separate Decision.

Procedural Matters

3. The planning application was submitted in outline and the application form makes it clear that approval is being sought for access only at this stage. Although the application was accompanied by a Sketch Masterplan and Proposed Drainage Strategy, the appellants confirmed at the Hearing that these were for illustrative purposes only. I have treated them accordingly.
 4. During the course of the application, the proposed access onto the adjoining highway was amended several times. The Council determined the application on the basis of drawing No 4060/001 rev D, and I have determined the appeal on the same basis as the Council.
 5. During the course of the appeal a Statement of Common Ground (SoCG) was submitted setting out matters of agreement and dispute between the appellants and the Council. This included that the Council had withdrawn its second reason for refusal relating to visibility at the proposed pedestrian access.
 6. Shortly after the Hearing, a completed S106 Agreement was submitted setting out matters to address the Council's third reason for refusal in respect of
-

affordable housing provision, public open space and other infrastructure. This is considered later in my decision.

Main Issue

7. In light of the above the main issue in this case is the effect of increased pedestrian activity associated with the site on highway safety, having particular regard to visibility at the junction of the C252 (the C road) with the B3392 (the B road).

Reasons

8. The appeal site is located outside of, but adjacent to the settlement boundary for St Ann's Chapel. It is within the countryside for planning policy purposes.
9. The Council has indicated that as it is unable to demonstrate a 5 year supply of housing land, its policies for the supply of housing are not up-to-date. Whilst noting local opposition to new housing upon the site, the Council consider that given the site's proximity to the services and facilities of St Ann's Chapel, the principle of new housing upon it is acceptable. This is subject to a number of other matters being satisfactorily addressed, including highway safety.
10. Policy DP7 of the South Hams Local Development Framework Development Policies Development Plan Document (DPD) requires development to provide, amongst other matters, a safe and adequate means of access and egress for all modes of transport. It also requires safe, easy and direct movement for those with mobility difficulties, with priority being given to pedestrians, cyclists and users of public transport. This policy broadly accords with paragraph 35 of the National Planning Policy Framework (the Framework) which requires developments to be located and designed where practical to create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, and consider the needs of people with disabilities by all modes of transport.
11. At the centre of St Ann's Chapel, the B road forms a 5-lane crossroads. There are no pavements or street lighting within the vicinity of the appeal site and the roads are lined by tall Devon hedge banks on either side. The shop and post office are located on the opposite side of the B road to the C road, as is the bus stop, village hall and playground. The Pickwick Inn is located at the junction of the C road with the B road.
12. The scheme has been designed to include a pedestrian only access onto the C road, to encourage the intended future occupiers of the scheme to use this road to access the services and facilities in the village, rather than the B road. Whilst it is preferable for pedestrians to walk along a less heavily trafficked road with lower speeds, the C road is very narrow between the Pickwick Inn and Little Combe. Furthermore, the junction of the C road with the B road has restricted visibility in a northerly direction, as a result of the proximity of buildings to the carriageway.
13. The Council is concerned that the narrowness of the C road between the Pickwick Inn and Little Combe would result in conflict between pedestrians associated with the scheme and vehicles using the highway. There is dispute between the main parties in respect of the carriageway width at this point.

14. Whilst the road is narrow, I observed on my site visit that it is wide enough to allow a car and pedestrian to use this stretch of road at the same time. Visibility is good in both directions and traffic speeds are likely to be low because of the proximity of the road junction and the proximity of the buildings to the carriageway. Pedestrians walking within the road would be able to see an approaching vehicle and vice versa. It is reasonable to assume that if either the pedestrian or driver of a vehicle considered it unsafe to use the stretch of the road at the same time as another highway user that they would wait to allow the other to pass. Accordingly, this matter is not a determining factor in this case.
15. The appellants' Highway Statement states that vehicle speeds within the locality were generally lower than the 30 mile per hour speed limit. The Council does not dispute this. The appellant has calculated that there would be 16 pedestrian trips from the scheme on a daily basis. Whilst this is not a significant number, it is likely that some of these movements would be children catching the school bus by the shop, parents with push chairs or those members of the community with mobility issues.
16. In order to access the services on the opposite side of the B road, the intended future occupiers of the scheme would need to cross the road at a point where there is severely limited intervisibility. Given the location of the shop opposite the Pickwick Inn, it is likely that pedestrians from the scheme would take the most direct route to it; that is from the northern side of the C road. The same is likely to be so for children from the scheme catching the school bus. In order to cross the road, a person would need to stand within the carriageway of the C road and peer around the side of the Pickwick Inn to check if it was safe to cross. Drivers of vehicles travelling along the road towards Bigbury would be unlikely to see a pedestrian crossing the road until the pedestrian was within the carriageway of the B road.
17. Furthermore, children catching the school bus would be crossing the B road at a time of day when the road would be likely to be busy with people travelling to work. As such, and given the severe limitations in visibility at the junction of the C road with the B road, there would be a high probability of conflict between pedestrians and other highway users. The potential conflict would be likely to be more so during inclement weather or when it was dark, and would equally apply for those in a wheelchair or with a pushchair.
18. The appellants have looked at various options to improve pedestrian facilities in the vicinity of the junction with the B road, including the provision of a footway along the frontage of the Pickwick Inn. However, their submitted Road Safety Audit recommended that such provision would be unsuitable and unsafe. Accordingly, the appellants propose road markings to provide an area of defensible space for pedestrians at the junction of the C road with the B road.
19. Whilst such markings would be likely to deter drivers from driving up close to the front elevation of the public house, this provision does not improve the visibility for pedestrians wishing to cross the B road. The mirror on the opposite side of the junction cannot be relied upon as it is located on private land and there is no guarantee that it would remain in perpetuity. Furthermore, its effectiveness could be reduced by glare from sunlight and not all pedestrians, particularly those with limited vision or experience may be able to judge effectively whether it was safe to cross the road.

20. I acknowledge that there are other dwellings with pedestrian access onto the C road, including a number opposite the northern boundary of the appeal site. There is no restriction on occupiers of these dwellings using the C road to access the services and facilities on the opposite side of the B road. However, I was told at the Hearing that occupiers of the cottages opposite the site also have a rear access, and it is this access that is used to access the services in the village, because of safety fears associated with crossing the road by the Pickwick Inn on the C road.
21. There is also a public footpath which leads onto the C road, close to the proposed pedestrian access. Whilst it is likely that some walkers may turn right out of the footpath and cross the B road, I have not been provided with evidence of the likely probability of this occurring or the frequency of such movements. I am therefore only able to attach limited weight to this matter in my overall Decision.
22. The appellants submit that there have been no recorded accidents over 5 years within the vicinity of the appeal site. These figures were not disputed by the Council. Whilst noting this matter, on the evidence before me, it is likely that the C road is not a regular dependent thoroughfare for pedestrians. As such, and given my findings above, I remain unconvinced that the location of the proposed scheme would provide for a safe access to the services and facilities in the village.
23. In light of the foregoing, I am not satisfied that the relationship of the appeal site to the services and facilities within the village would allow for a scheme that would minimise conflicts between traffic and pedestrians, including those intended future occupiers that may have mobility difficulties. The likely increase in the number of pedestrian movements across the B road at a point where there is a significant limitation on visibility would result in a severe and detrimental effect on the highway safety of users of the road. This would be in conflict with the safety objectives of DPD Policy DP7 and the Framework. The lack of pavements within the village and other villages in the area, does not justify the proposal.
24. The benefits of the scheme, including the provision of both market and affordable housing and jobs associated with their construction, the provision of allotments and improvements to open space in the village, and the support the intended future occupants of the scheme would give to the local shop and other facilities, do not significantly and demonstrably outweigh the harm that would be caused to highway safety.

Other Matters

Effect on Heritage Assets

Heritage Assets

25. The Pickwick Inn is a grade II listed building and the new housing would be seen in association with this heritage asset when approaching the village from Bigbury.
26. The starting point for consideration of the impact of the proposal on the setting of listed buildings are the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Section 66(1) requires the decision-

maker, in considering whether to grant planning permission for development that affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

27. DPD Policy DP6 and CS Policy CS9 support proposals that conserve, preserve or enhance the quality of the historic environment. These policies broadly reflect the Framework and its core planning principle to conserve heritage assets in a manner appropriate to their significance.
28. The Council did not refuse the planning application on the basis that the proposal would be harmful to the setting of the Pickwick Inn. Matters including appearance, layout and scale are reserved for future consideration. As part of a subsequent planning application the Council would have the opportunity to ensure that the details of the scheme were appropriate to the setting of the listed building.
29. In light of the above, I find that the appeal proposal would not be harmful to the setting of the Pickwick Inn. The presence of new housing would not alter the sense of this public house located in the centre of the village to any harmful degree. On that basis, I concur with the Council that the proposal would not adversely affect the setting or significance of this heritage asset. As such there would be no conflict with DPD Policy DP6, CS Policy CS9, the Framework or the Act.

Section 106 Agreement

30. The submitted Section 106 Agreement would make provision for a number of matters including the provision of either on or off site affordable housing, on and off site public open space and a contribution towards the cost of school transport. I am obliged to consider whether such provision is in accordance with paragraph 204 of the Framework, and the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
31. Policy CS6 of the CS requires new residential development to provide affordable housing, having regard to amongst other matters, an identified local need. The Agreement would make provision for a range of size, tenure and location of affordable units and would ensure that the units would remain affordable. At the Hearing I was told that the 2011 Housing Needs Survey for Bigbury identified a local need for 24 homes. A new survey is not expected until later this year. Although the survey is somewhat dated, I have not been provided with convincing evidence that there is not a requirement for affordable homes in the area. Accordingly I am satisfied that the provision of affordable housing as part of the scheme is reasonable and necessary to make the proposal acceptable.
32. CS Policy CS8 requires that infrastructure needed to service and deliver sustainable development must be in place or provided. Such infrastructure includes public open space, drainage, green infrastructure and transport. DP Policy DP8 sets out the requirement for new development to make either on or off site open space provision; Policy DP5 requires ecological mitigation or compensation to be provided as does CS Policy CS10. DP Policy DP4 requires development to be sustainably constructed.

33. Given the distance of the appeal site to the nearest primary and secondary schools (Modbury Primary School and Kingsbridge Academy) and the likelihood that school age children would live in the new dwellings with their families, it is reasonable and necessary that a contribution is made towards education transport. Furthermore, the intended future occupiers of the scheme would be likely to place a demand on the open space within the village. I am satisfied that the provision of on-site open space and the contribution sought towards off site open space (which would be used to improve facilities at the play area and football pitch within the village) is necessary to make the development acceptable. The statutory tests are therefore met.
34. The removal of the Devon hedge bank to facilitate the vehicular access into the site would need to be mitigated against. The enhancement of biodiversity through a landscape and ecology management plan would secure this. The provision of allotments would need to be managed as would a SUDS scheme if utilised, and the Section 106 Agreement would provide for this. I find that the statutory tests are met in respect of these matters.

Conclusion

35. Although the scheme would deliver a number of benefits as set out; I have concluded that the increase in pedestrian activity that would result from the site would be harmful to highway safety. Accordingly the scheme would not comprise sustainable development for which the Framework indicates there is a presumption in favour.
36. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Rufus Ogilvie Smals	Appellant
Mr Louis Dulling	PCL Planning Ltd
Mr Martin Brady	PCT Transport Planning

FOR THE COUNCIL

Mrs Wendy Ormsby	South Hams District Council
Mr Richard Jackson	Devon County Council
Miss Cassandra Harrison	South Hams District Council

INTERESTED PARTIES

Mr David Kelly	Local Resident
Mr Kate Snook	Local Resident
Mr Richard Brook	Local Resident
Mrs Helen Bronstein	Local Resident
Mr Simon Bronstein	Local Resident
Mrs Clare Lewis	Local Resident
Mr Tom Westrope	Representing Mr and Mrs Vanstone
Mrs Huntley	Parish Councillor

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Policy DP15

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Section 106 Agreement dated 15 June 2016