The Planning Inspectorate

Appeal Decision

Site visit made on 6 December 2016

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 14 December 2016

Appeal Ref: APP/X1925/W/16/3158998
Site at Police Row, Therfield, Herts SG8 9QE

- 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 Mr and Mrs N Ross against the decision of North Hertfordshire District Council.
- The application Ref 15/02010/1, dated 13 October 2015, was refused by notice dated 22 February 2016.
- The development proposed is an outline application for residential development and new access position.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was originally submitted in July 2015 as an outline proposal with all matters reserved, except for access, for `up to 26 dwellings'. After reviewing the submission the Appellants were asked to submit an exact layout and landscaping scheme under the Development Management Procedure Order 2015 as it was considered that the site was too sensitive to adequately assess a planning application without knowing, in detail, what form the development might take. The Appellants did not agree to the request to submit further details.

3. Following further discussions with the Appellants and concerns raised by the Council in relation to the proposed quantum of 26 dwellings, a revision to the application was submitted on 13 October 2015. This revision removed the quantum of the development and sought soley the principle of development on the site with all matters reserved except for access. By removing the quantum within the red line it was agreed that both main parties could assess the concerns and responses from consultees and local people as to the merits of the site as a `preferred option' site for housing in the emerging Local Plan.

4. Accordingly, I shall deal with this appeal on the basis of the description of the development set out in the Council's decision notice: *Application for outline planning permission for residential development (all matters except access reserved) (as amended by plan received on 13 October 2015)* and the plans which were before the Council when it made its decision: Drg No 3 Rev1 and Topographical Survey. I have not considered the sketch plan for a possible layout for 12 dwellings received by the Planning Inspectorate on 7 November 2016 as this has not been considered by the Council.

Main Issues

5. The main issues are:

   (i) the effect of the proposal on the landscape character and appearance of the area;

   (ii) the potential impact of the proposed development on the significance of heritage assets;

   (iii) the effect of the proposal on flooding and drainage in the local area; and

   (iv) whether the proposal makes adequate provision for mitigating any adverse impact it would have upon local services and infrastructure.

Reasons

6. The appeal site comprises an open field/pasture on the western side of Police Row between the listed property known as The Grange and a pair of semi-detached dwellings to the south (Hay Green). The site adjoins Therfield Conservation Area and fronts Police Row, presenting a mature hedge to the road. Opposite and to the south is Therfield cricket ground preceded to the north by a listed building known as The Thatch and a row of modern 20th century properties. The site of the new development known as `Nine Elms', is located opposite The Grange.

7. The proposal is in outline with all matters reserved except for access. The access remains as originally submitted and was designed to serve a scheme of up to 26 units. This is shown in the Appellants' Transport Statement and would be located opposite the pair of modern dwellings located between the bungalow to the south and Nine Elms development site to the north.

8. A number of documents were submitted with the application including a Design and Access Statement, a Supporting Planning Statement (October 2013), a Planning Clarification Statement (January 2016), a Phase 1 Habitat Survey and Protected Species Scoping Assessment, a Supplementary Ecological Response (September 2015), a Landscape, Visual and Heritage Assessment, a Tree Survey and Landscaping Specification Notes (Rev A).

9. The statutory development plan includes the saved policies of the North Hertfordshire District Local Plan No 2 with Alterations (NHDLP) (2007). Reference is made to a number of policies in this plan including: Policy 6 – Rural Areas beyond the Green Belt; Policy 26 – Housing Proposals; Policy 29A – Affordable Housing for Urban Housing Needs; Policy 51 – Development Effects and Planning Gain; Policy 55 - Car Parking Standards and Policy 57 – Residential Guidelines and Standards.

10. The following Supplementary Planning Documents are relevant to the appeal proposals: the Planning Obligations SPD (2006) and the Vehicle Parking Provision at New Development SPD (2011).

11. The Council is preparing the North Hertfordshire District Local Plan 2011-2031. The new Local Plan seeks to address the key issues facing North Hertfordshire and will set a strategic vision and spatial strategy for the District over the period 2011 to 2031. A Preferred Options consultation was

held during 2015 and a Pre-Submission version has now been prepared. It is intended that the Pre-Submission version will be submitted for Examination by an independent Planning Inspector in early 2017 following a consultation exercise late in 2016.

12. The Appellants refer to a number of policies in the emerging NHDLP 2011 - 2031 (July 2016) including: Policy SD1: Presumption in favour of Sustainable Development; Policy SP2: Settlement Hierarchy; Policy SP7: Infrastructure Requirements and Developer Contributions; Policy SP8 Housing and Policy SP12: Green Infrastructure, Biodiversity and Landscape. The Community Development Chapter for Therfield proposes the appeal site (Ref:TH1) for an estimated 12 new dwellings subject to: frontage development facing Police Row only; sensitive treatment of western boundary to maintain integrity of Footpath 22; no infiltration drainage SuDS (or other) features without prior consent of Environment Agency; assessment of the impact of development on the Therfield Conservation Area should be undertaken; and an archaeological survey to be completed prior to development.

13. The National Planning Policy Framework (NPPF) published on 27 March 2012 is also a material consideration.

14. There is no dispute that the Council cannot demonstrate a 5-year Housing Land Supply (HLS) of deliverable housing sites. The latest calculations are set out in the Strategic Housing Land Availability Assessment (SHLAA) in November 2014. It concludes that the District has between a 2.2 and 3.8 years' supply of housing land. Relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a 5-year supply of deliverable housing sites.[1] Accordingly the default position of paragraph 14 of the NPPF is engaged and this proposal must be assessed in accordance with the presumption in favour of sustainable development. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Effect of the proposal on the landscape character and appearance

15. In terms of the principle of the development the starting point in this case must be the adopted Local Plan - the NHDLP 2007. The site is just outside the current selected village boundary as shown on the Proposals Map and lies within the rural area beyond the Green Belt (Policy 6). Despite the age of the NHDLP 2007, Policy 6 is still relevant and broadly consistent with a core principle of the NPPF, which is to recognise the intrinsic character and beauty of the countryside. The main thrust of Policy 6 is consistent with the NPPF in protecting the countryside which may otherwise be injurious to the character of the rural area. Therefore I attach considerable weight to Policy 6 in this case.

16. I am aware that the site is included in the emerging NHDLP 2011-2031as a proposed housing site. I accept that weight may be given to relevant policies in emerging plans. The weight given should be proportionate to the level of objection and the degree of consistency with policies in the NPPF. Given that objections are likely and an Examination is still to be held, an adopted NHDLP 2011-2031 might not be available until late 2017. It follows that I can only

[1] Paragraph 49 of the NPPF

give limited weight to the emerging NHDLP 2011-2031 policies in accordance with the advice in paragraph 216 of the NPPF.

17. In terms of access to services and facilities, the Appellants argue that the appeal site has been promoted as part of the emerging Local Plan and therefore it has been adequately assessed for its suitability for development. At my site visit I saw that Therfield has a school, a public house, a village hall and churches. It has enjoyed `selected' village status for many years in the adopted NHDLP 2007. However, Therfield does not enjoy access to a wide range of services and has no bus service. The occupiers of new housing in the village would rely heavily on private transport to access employment opportunities, a doctor's surgery, a dentist, shops and leisure facilities as well as educational establishments beyond primary level. This would conflict with the requirements of the NPPF in its aim of managing growth to make the fullest use of public transport.

18. The proposed access forms part of this outline proposal and is not a reserved matter. The specified access arrangements have been deemed to be acceptable in principle to the Highway Authority and are shown at the northern end of the site. The access is associated with the former quantum of 26 dwellings illustrated in the originally submitted proposal. The proposed access, although it may be technically satisfactory would be highly prominent, and have a significant urbanising impact in what is currently a country lane. With 2.4m x 43m visibility splays, 8m curb radii and a minimum 5.5m access roadway, the proposed access would radically alter the appearance of Police Row in this location.

19. In terms of the ecological value of the site, the Council has raised no objection provided the mitigation measures identified in the Appellants' submission in relation to Greater Crested Newts (GNC) are carried out. Indeed both main parties agree that other than GNC the site has low biodiversity value. The implementation of the proposed access would require hedgerows to be removed and re-planted along visibility splays. This re-configuration would have an adverse impact on the character of the site.

20. The development on the character of the village was a central theme in all of the submitted representations on the original proposal. Concern was expressed about the lack of detail in the proposal and that development of the site would adversely impact on the setting of the village. The Appellants have carried out a Landscape and Visual Heritage Assessment (LVHA) (2015) and also comment on landscape impacts in their Planning Statement. The LVHA points out that there would be an opportunity to enhance value by repairing the western hedge and by planting native trees and shrubs. In my view these documents make a number of assertions which have little evidential support. The LVHA dismisses the value of the site to the setting of the adjacent conservation area.[2] The Appellants consider that the development would help preserve the `string of beads' feel to the plateau as a whole where landscape acts to modulate the clusters of houses and farms from Reed, through Hay Green to the centre of Therfield.

21. Overall I consider the development of the site with housing clearly has the potential to seriously erode the `string of beads' characterisation offered by

[2] Page 10 of the LVHA

the Appellants. The site plays a significant and important role in defining the historic character of the village and framing the setting of both the main part of Therfield and Hay Green. Development of the site with housing could adversely impact the setting of the village and give rise to coalescence with Hay Green. In the absence of any details other than the proposed access arrangements the proposal would conflict with Policy 6 of the NHDLP 2007. I conclude that the proposal would be unacceptably harmful to the landscape character and appearance of the area.

Impact on Heritage Assets

22. The appeal site lies to the south but is located adjacent to the Therfield Conservation Area. The site is located between Therfield and Hay Green and would in effect link the two. To the north and outside the appeal site is The Grange (Grade II Listed) whilst immediately opposite and located on the other side of Police Row is The Thatch (Grade II Listed). There is no up-to-date Character Statement for Therfield Conservation Area. However, Historic England (HE) has expressed concern about the development of the site and its potential to harm the significance and setting of the Conservation Area in the context of the emerging Local Plan. HE indicates that if the site is to be taken forward there would need to be site specific criteria to guide development.

23. I acknowledge the assessments and statements submitted in respect of heritage by the Appellants. I note that the appeal site is located beyond the southern boundary of the Therfield Conservation Area and development would be located away from the village core and those parts of the Conservation Area which are identified as being of most significance. The Heritage Statement considers that the proposed development would have a direct impact on the setting of the two Listed Buildings -The Grange and The Thatch- but assesses this as being *moderate* and by setting any future development back from the northern and eastern boundaries and providing effective boundary treatment, any potential impact could be effectively mitigated resulting in a *negligible* impact. Overall it is argued that impact on heritage assets would be less than substantial and there would be no material harm to or on the setting of historic assets in the vicinity of the site.

24. I accept that in primary legislation, the setting of conservation areas is not a statutory duty.[3] However, the NPPF states that the setting of a designated heritage asset can contribute to its significance. Paragraph 131 of the NPPF states that:

"In determining planning applications, local planning authorities should take account of:

- *The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- *The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- *The desirability of new development making a positive contribution to local character and distinctiveness."*

25. Bearing these points in mind I cannot agree with the Appellants' overall assessment for several reasons. Firstly, the Appellants' assessments cannot identify the full nature of the potential impacts as there is no information as to

[3] The setting of Heritage Assets Historic Environment Good Practice Advice in Planning: 3 [2015] page 2

the size, scale or number of dwellings to be constructed. This is compounded by the fact that no parameter plans have been submitted which would provide a framework for such an assessment. Secondly, the extent of the red line site would potentially leave the door open for a level of development that would neither (i) secure frontage development only or (ii) secure a degree of separation between Therfield and Hay Green. Thirdly, HE has expressed concern about the development of the site and its potential to harm the significance and setting of the Conservation Area in the context of the emerging Local Plan. This is concern from a statutory body so I attach weight to it. Fourthly, the specific access suggests that the development would utilise the full width of the currently drawn red line to the west. Fifthly, as the site lies adjacent to an Area of Architectural Significance as identified in the NHDLP 2007 the County Council's archaeology officer advises that precise details on archaeology should be submitted prior to any reserved matters application being determined.

26. The appeal site is subject to an unresolved representation from HE which raises concern about the suitability of this site for development of any kind without fully understanding how this might be achieved or justified in terms of its impact on the historic environment. I share this concern and consider that in the circumstances the grant of an outline permission at this stage would not allow a proper assessment of the potential impacts of development on the significance of heritage assets i.e. the setting of nearby listed buildings and the adjacent Therfield Conservation Area as required by paragraphs 128-132 of the NPPF and the Planning (Listed Buildings and Conservation Areas) Act 1990. On the second issue I conclude that the appeal must fail.

Effect of the proposal on Flooding and Drainage

27. A preliminary Flood Risk Assessment (FRA) was submitted in support of the proposal. The Appellants considered this was proportionate to the level of detail that is capable of being provided as part of an outline application in the absence of detailed design and layout being available. I note that the site lies entirely within the EA Flood Zone 1 so has a very low risk of flooding from rivers. The Appellants claim that the development could be made acceptable through the use of conditions. The Hertfordshire County Council as Lead Local Flood Authority (LLFA) has objected to the proposal and recommended refusal until a satisfactory FRA has been submitted.

28. Plainly the preliminary FRA submitted by the Appellants does not comply with the requirements set out in the Planning Practice Guide[4] and does not provide a suitable basis for an assessment to be made of the flood risks arising from the proposed development. A detailed FRA is required for sites over 1 hectare.[5] Although the proposal is in outline a detailed FRA is vital to identify all flood risk issues, demonstrate that the development would not increase risk elsewhere and where possible reduce flood risk overall and give priority to the use of sustainable drainage methods. As no detailed surface water drainage assessment has been provided concerns about flooding remain. On the third issue I conclude the appeal must fail. Planning conditions would not overcome the concerns outlined.

[4] As revised on 6 April 2015
[5] Footnote 20 of paragraph 103 of the NPPF

Contributions towards infrastructure

29. There is no dispute that a Planning Obligation was not provided at the time the application was considered by the Council in January 2016. Moreover, I have not received one at the time of drafting this decision. The Appellants have indicated a willingness to meet any necessary obligations in full where these are justified in accordance with paragraph 204 of the NPPF. The Appellants have also agreed to meet all reasonable costs of drafting an agreement. The Appellants remain committed to agreeing a S106 Agreement with the Council in line with the formulaic principles set out in paragraph 4.3 of the Planning Obligations SPD and Section B of the Background Paper.

30. The Council's Planning Obligations SPD (2006) is a material consideration in this case and I afford it significant weight in the context of this appeal. The Council has indicated in its Committee report that in the absence of any quantum it is not possible to scope all the `heads of terms' a S106 Agreement might encompass. This might include affordable housing on any quantum above the threshold of 20 units and would inevitably include contributions to the County Council towards the local primary school should the number of units exceed 5. Indeed the County Council has set out[6] the financial contributions sought towards education, library services and fire hydrant provision based on the development of 26 dwellings to minimise the impact of development on their services for the local community. Plainly these calculations would need to be reviewed in the light of the proposed size, number and tenure of the dwellings.

31. The Appellants were advised in a letter from the Planning Inspectorate dated 6 October 2016 that if it was intended to rely on a Planning Obligation and to be certain that it would be taken into account by the Inspector in reaching a decision, then a certified copy of the Planning Obligation must be submitted to the Inspectorate no later than 7 weeks from the date of that letter. No such Planning Obligation has been submitted in this case. In the absence of a completed Planning Obligation relating to the matters discussed in paragraph 30 above, the proposal is in conflict with the adopted SPD and Policy 51 of the NHDLP 2007. On the fourth issue I conclude that the appeal must fail. This matter is sufficient on its own to dismiss this appeal.

Sustainable development

32. In terms of the 3 limbs of sustainable development set out at paragraph 7 of the NPPF, I accept that there would be some social and economic benefits arising from the scheme which carry some weight. Therfield is a selected village which does have a primary school. The site has been identified as a proposed housing site in the emerging Local Plan and the Council is presently unable to demonstrate a 5 year housing land supply. The appeal scheme would provide economic uplift through construction activities, the additional spending power of a new population and through the provision of additional housing boosting the wider economy. Further economic benefit would arise from the resultant New Homes Bonus. I also accept that there would be social benefits arising from the scheme in terms of the increase in new dwellings and help to meet the identified need for housing.

[6] See email dated 4 September 2015

33. However, with regard to the environmental role, the site is in an area where access to services would inevitably depend on private transport and this represents harm in environmental terms. Based on information that is currently available and my conclusions on the main issues, the proposal would be unacceptably harmful to the landscape character and appearance of the area due to the vehicular access of urban proportions. Furthermore, the site plays a significant and important role in defining the character of the village and framing the setting of both the main part of Therfield and Hay Green. The Appellants have failed to provide sufficient information to properly assess the potential impact of the proposal on the significance of heritage assets. In my view the proposal is in overall conflict with the development plan and the NPPF. I consider that the proposal does not constitute sustainable development and I ascribe significant weight to this in the planning balance. The exercise of the paragraph 14 balance shows that the adverse impacts of granting planning permission `would significantly and demonstrably outweigh the benefits' when assessed against the policies in the NPPF taken as a whole.

Other Matters

34. I have taken into account all other matters raised including the concerns expressed by local residents at the application stage when the proposal was for up to 26 dwellings'. I have also taken into account the representations from Therfield Parish Council and Hertfordshire County Council at the appeal stage. Reference is made to other developments including ` Nine Elms' Therfield and Hambridge Way, Pirton. However, these developments did not persuade me that the appeal proposal is appropriate in this location. Having considered these and all other matters I find nothing of sufficient materiality to lead me to a different conclusion. My overall conclusion is that the appeal should be dismissed.

Harold Stephens

INSPECTOR