

Appeal Decision

Site visit made on 10 January 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/C3105/W/16/3158760

Land west of Horn Hill Road, Adderbury, Oxfordshire OX17 3EW

- 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 Mr M Gough against the decision of Cherwell District Council.
 - The application Ref 16/00619/F, dated 1 April 2016, was refused by notice dated 10 June 2016.
 - The development proposed is residential development of a single dwelling with associated landscaping and land for an extension to the existing village burial ground.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A Planning Obligation signed and dated 24 January 2017 was submitted by the appellant pursuant to Section 106 of the Town and Country Planning Act 1990. The Planning Obligation would pay a contribution towards the repair and alteration of the Friends Meeting House and transfer the land of the proposed burial ground extension to the Council. I have considered this matter later in my decision.

Main Issues

3. The main issues in this appeal are as follows:
 - Whether part of the appeal site would be suitable for use for burials, having regard to the risk of groundwater pollution.
 - The effect of the proposal on the character and appearance of the area.
 - Whether this would be an appropriate location for housing having regard to the settlement strategy, the Development Plan and the National Planning Policy Framework.

Reasons

Risk of groundwater pollution

4. The proposed burial ground extension is located immediately to the west of the existing burial ground and comprises around 0.4 hectares of a larger open agricultural field. There is no dispute between the parties that both the existing and proposed burial grounds are in an area which can experience high levels of groundwater. I understand that the Council granted planning
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permission for a smaller scale extension to the burial ground on part of the appeal site in 2010. Conditions were imposed restricting the location of burials in relation to water courses and other water infrastructure, as well as controlling the depth of burials. However, as far as I am aware that permission was never implemented and it has since lapsed.

5. I acknowledge that the Council have not questioned the principle of extending the burial ground. The appellant has suggested that burials could be restricted on the extended burial ground, in accordance with the conditions on the previous permission and that any land too wet for burials could be used for other purposes, such as for cremated remains or as a memorial garden. However, Adderbury Parish Council (PC) states that it wishes to use much of the extended area for burials. In this regard, although the Environment Agency (EA) did not object to the 2010 scheme or the current appeal, they have nevertheless expressed concern that in practice a significant area of the extended area might be unsuitable for burials, due to the groundwater conditions. A drainage strategy was submitted with the application. However, no detailed evidence regarding the groundwater conditions at the appeal site has been submitted in order to attempt to address the EA concerns, which have also been reflected in comments made by interested parties concerning the suitability of the extended area for burials having regard to flooding.
6. Therefore, it is unclear whether imposing conditions would overcome the objections to this aspect of the proposal. Moreover, in such circumstances and notwithstanding the scheme approved in 2010, in my view there is a significant risk that imposing the conditions suggested would have the effect of taking away the benefit of granting planning permission, insofar as it would apply to the extended burial ground. Accordingly, the suggested conditions would fail the test of reasonableness in the National Planning Policy Framework (the Framework) at paragraph 206.
7. Therefore, without the ability to impose reasonable conditions the proposed extension to the burial ground would not accord with Policy ESD8 of the adopted Cherwell Local Plan 2015 (CLP), as it would adversely affect the water environment. The burial ground extension would also not accord with saved LP Policy ENV1, as it would be likely to have an unacceptable effect in terms of environmental pollution. The failure to prevent unacceptable risks from pollution would also be inconsistent with the Framework at paragraphs 17 and 120.

Character and appearance

8. The proposed dwelling would occupy an elongated triangular plot within the same expansive open field as the extended burial ground. The plot has a narrow frontage onto Horn Hill Road and progressively widens in a westerly direction. The plot is roughly grassed and the landform rises gently away from the road. The boundaries are largely formed by stands of trees and mature hedging as well as fencing.
9. To the north is 'Bridge House', a large detached dwelling of modern appearance situated in an elongated garden partly formed by the raised embankment of an old railway. The embankment continues to the west through gardens alongside the appeal site. To the south is the 17th Century Friends Meeting House (FMH), situated within the village burial ground. The FMH is listed Grade II*. A portion of the appeal site adjacent to the road is in the Adderbury Conservation

Area (CA). The CA also includes the FMH, the existing burial ground as well as residential development along Horn Hill Road.

10. The pattern of development along Horn Hill Road is generally made up of some traditional buildings interspersed with modern suburban style housing. This is noted in the Adderbury Conservation Area Appraisal (CAA), where the road is within 'the streets' character area. The more dense and developed feel of the eastern side of the road is contrasted by the larger properties set in more spacious, mature landscaped plots of different shapes and sizes on the western side. These dwellings are of a variety of ages, styles and size. They are set back varying distances from the road and there is no regular alignment. The FMH is a small scale building, set well back from the road. The above all contributes to a more loose-knit and edge of village feel in the street scene in the vicinity of the appeal site.
11. Due to its agricultural use, the appeal site has a largely open character. Apart from 'Bridge House' and the FMH, there is a general absence of nearby buildings visible on the land adjacent to the appeal site. Together with the extensive vegetation in the adjoining extensive gardens and the outward views to open countryside to the west, this results in a secluded rural feel when stood on the appeal site. Consequently, the appeal site more readily relates to open countryside than the more developed characteristics of the nearby housing.
12. The proposed dwelling would be a substantial structure, providing four bedroom accommodation arranged over two storeys. It would be located well back from the road towards the rear of the plot. As a result, the proposed dwelling would be physically and visually separated from the adjoining and nearby buildings and would result in a substantial residential built form appearing in what is otherwise currently a countryside setting. The proposed dwelling would therefore have a suburbanising effect in respect of the appeal site and its immediate environs.
13. Even so, and whilst it would not be as close to the road as nearby dwellings, the generous spacing about the proposed dwelling would not be significantly at odds with the spacious pattern of development in the vicinity. Moreover, the design of the proposed dwelling would be of high quality, echoing the form and details of a traditional farmhouse and utilising local materials. Consequently, in design terms the proposed dwelling would successfully integrate with traditional development nearby and elsewhere in the village. A landscape strategy which includes new tree and hedgerow planting using native deciduous species on the boundaries and within the appeal site would also serve to soften the effects of the new built form on its surroundings.
14. The proposed dwelling would be open to limited views in the street scene, due to the narrow frontage and the rising ground levels away from the road. The main views of the dwelling would be experienced by the adjacent properties, where it would largely be viewed from a substantial distance, mostly through established planting. The proposed dwelling would be sited outside of the CA and it would not be located any area designed for its landscape character, visual amenity value, or historic significance. Having regard to the submitted landscape and visual impact assessment (LVIA), I have not seen any evidence to suggest that the visual impacts arising from the proposed dwelling would be other than minor and localised. The heritage setting assessment concluded that the visual impact of the proposed dwelling in respect of the FMH and the

burial ground would be limited, being confined to a partial view of the new rooftop over the existing boundary hedge.

15. Overall therefore, there would be some minor localised adverse visual impacts caused by the siting and scale of the proposed dwelling. However, this would be significantly offset by the high quality of the design and landscaping proposed. There would be no substantial adverse landscape or visual impacts on the wider surroundings. In terms of the proposed burial ground extension, this would also be located outside the CA. It would largely retain the open characteristics of the land although possibly with a more manicured appearance. A deciduous hedgerow would be planted along the boundaries and there would be limited external views into the extended area. Overall, the visual impact of the burial ground extension would therefore be neutral.
16. For the above reasons, I conclude that the proposal would not cause unacceptable harm to the character and appearance of the area. Therefore, it would accord with CLP Policy ESD13, as it would not cause visual intrusion into the open countryside and it would be consistent with the local character. The proposal would also accord with CLP Policy ESD15, as it would complement and enhance the character of its context through sensitive siting and high quality design, it would contribute positively to the area's character and identity by reinforcing local distinctiveness and it would integrate with existing streets and spaces. Further, the proposal would also meet the criteria concerning the context within the existing built environment, being in keeping with the character and form of the village, its local landscape setting and the scale of development in CLP Policies Villages 1.
17. From its supporting text it is clear that the primary objective of saved LP Policy C8 is to protect the open, rural character of the countryside beyond the built-up limits of settlements. Consequently, for the reasons identified above, the proposal would not amount to sporadic development in the open countryside and it would accord with Policy C8. Further, the proposal would accord with saved LP Policy C28, as its design and external appearance would be sympathetic to the character of the rural context. Finally, the proposal would accord with saved LP Policy C30 as it would be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity. For the above reasons, this part of the proposal would also be consistent with the guidance in the Framework at paragraph 17 and sections 7 and 11 concerning good design and conservation and enhancement of the natural environment respectively.

Whether the appeal site would be an appropriate location for housing

18. CLP Policy Villages 1 identifies Adderbury as a service village where in order to be suitable, residential development must be within the built-up limits of the village and consist either of small-scale development of less than ten dwellings, infilling or a conversion. Saved LP Policy H18 restricts new dwellings beyond the built-up limits of settlements for purposes other than agriculture. Neither the CLP or the LP defines the extent of the built-up limits. I understand that a settlement boundary is defined in the emerging Adderbury Neighbourhood Plan (NP). Even so, the NP is at early stage in its preparation and therefore can only be afforded very limited weight.
19. Whether the appeal site is outside of the built-up limits of the village is a matter of dispute between the parties. Nevertheless, placing substantial

reliance on the built-up limits of a settlement as a means of controlling residential development in rural areas does not fully reflect the approach in the Framework, in particular paragraph 55, of promoting sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities. In my view, CLP Policy Villages 1 and saved LP Policy H18 are not fully consistent with the Framework in this respect and I therefore intend to give them weight accordingly.

20. Adderbury is defined as a 'Category A' village in CLP Policy Villages 1. It is therefore at the top of the hierarchy of villages in terms of accommodating sustainable development. The proposed dwelling would be adjacent to the existing housing in the village. It would therefore have a similar level of access to local services, facilities and employment opportunities as well as links to public transport as housing within the built-up limits of the village, where infilling or other small-scale development would otherwise be suitable in principle under Policy Villages 1. Consequently, the proposed dwelling could not be described as a 'new isolated home in the countryside' as defined by paragraph 55 of the Framework in either a physical or functional sense.
21. Even so, in order for the proposed dwelling to achieve the objectives of sustainable development, the three mutually dependent roles set out at paragraph 7 of the Framework-economic, social and environmental-must all be assessed. The proposal would provide some economic benefits, notably by generating and sustaining jobs in the construction sector, albeit in the short term, and bringing limited additional wealth from incoming residents into the local economy in the medium to longer term.
22. The proposal would also provide some social benefits. Firstly, it would assist in creating a high quality built environment. Although the Council says that it has a five-year supply of housing land, the proposed dwelling would nevertheless make a small contribution to the supply of new housing in the Council's area. The increase in population and increased use of village services and facilities that would flow from the proposal would also make a small contribution to enhancing the vitality of the village.
23. In terms of other benefits, under the Planning Obligation £100,000 would be paid to the Council, to be put towards repairs and alterations to the FMH, and; the land of the proposed burial ground extension would be transferred to the Council. The repairs and alterations to the FMH would be consistent with the Framework objective of delivering social, recreational and cultural facilities to enhance the sustainability of communities. They would also sustain and enhance the significance of the heritage asset, putting it to a viable use consistent with its conservation, in accordance with the Framework. I have been referred to recent Court judgements in which the requirement that an Obligation is 'necessary to make the development acceptable in planning terms' has been interpreted benevolently and it does not prevent the securing of additional benefits¹.
24. A survey report prepared on behalf of the Historic Chapels Trust in January 2013 estimated that the cost of repairs and alterations to the FMH itself would be in the order of £86,000, with works to an outbuilding and the grounds costing a further £114,000. That report is now of some age and it is likely that the cost of the works would have risen in the intervening period, especially if

¹ *R (Derwent Holdings Ltd) v Trafford BC* [2011] EWCA Civ 832.

the building has deteriorated further. There appears to be no dispute between the main parties that the contribution in the Obligation would be fairly and reasonably related in terms of its scale and kind, to the proposal. Whilst some interested parties have suggested that a much smaller scale of repairs would be required, I have not seen any firm evidence to support such a conclusion being reached. The repairs and alterations would therefore provide facilities to support the extended burial ground which, according to the available evidence, could not otherwise be provided by the existing building. Consequently, the works facilitated by the Planning Obligation would be directly related to part of the appeal scheme. The Council consider that a planning application could have been made for the burial ground extension on its own. Nevertheless, it is an integral part of the scheme before me.

25. I have been referred to another recent Court judgement² which the Council says supports their case that the Obligation is neither necessary to make the development acceptable in planning terms or directly related to the development. However, that case concerned contributions to a community fund derived from the profits of a proposed renewable energy scheme. The contributions therefore did not serve a planning purpose and had no real connection with the scheme. For the reasons explained above, materially different circumstances apply in respect of the current appeal.
26. Overall, for the above reasons I am satisfied that the Planning Obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly related to it in scale and kind. The Planning Obligation would therefore comply with Section 122(2) of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework and consequently I have afforded it some weight in my decision, as set out below.
27. Together with the burial ground extension, the works to the FMH would assist in meeting community needs for accessible local services, supporting its social and cultural wellbeing, offering further, more wide-ranging social benefits. The works to the FMH would also contribute to protecting and enhancing the historic environment. Nevertheless, the unresolved risks associated with environmental pollution in respect of the proposed burial ground extension significantly affects whether these benefits would be realised in practice and consequently, I have afforded them limited weight.
28. Moreover, the proposal would not fully achieve the environmental role, as it would not contribute to protecting and enhancing the natural environment by minimising pollution. Therefore, the proposal would not achieve all of the objectives of sustainable development.

Other Matters

29. I understand that neither the Council or Historic England objected to the effect of the proposal on the setting of the FMH or the effect on the character and appearance of the CA. The conservation of the significance of these heritage assets is a matter to which I am required to give great weight by legislation and policy. Even so, I have not seen any firm evidence which would suggest that I should reach a different conclusion on these matters to that of the Council.

² *R (Wright) v Forest of Dean DC & Resilient Energy Severndale Ltd* 2016 EWHC 1349 (Admin).

30. Similarly, I have not seen any firm evidence to suggest that the proposal would cause any unacceptable harm to the ecological interests of the appeal site, highway safety, or the living conditions of occupiers of adjacent residential properties. I have also not seen any firm evidence to suggest that the proposal would set an undesirable precedent for further residential development. Each planning application is required to be considered on its individual merits. I have taken into account interested party comments regarding disruption and safety during the construction period. A condition could be imposed requiring the submission and implementation of a construction and environmental management plan (CEMP), in order to address those concerns. I have also taken account of the support expressed by the PC at application stage. None of these matters affect my conclusions in respect of the main issues.

Planning Balance

31. There would be economic and social benefits arising from the proposal. These include a small contribution to the supply of housing as well as the more significant potential benefits contributing to the enhancement of the vitality of the village, to meeting community needs for accessible local services supporting social and cultural wellbeing and to protecting and enhancing the historic environment.
32. Nevertheless, most of the benefits would be limited in scale and there is uncertainty over whether the more significant benefits would be achieved, affecting the weight that can be attributed to them. The failure to protect and enhance the natural environment by minimising the risk of pollution would significantly and demonstrably outweigh the above benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the proposed dwelling would not amount to sustainable development.

Conclusion

33. The proposal would fail to accord with the Development Plan and would not be consistent with the Framework and for the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR