The Planning Inspectorate

Appeal Decision

Site visit made on 14 November 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 01 March 2017

Appeal Ref: APP/J0405/W/16/3153066
Land adjacent to Old Rectory, London Road, Aston Clinton, Buckinghamshire HP22 5ND

- 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 Professor Edward Peile against the decision of Aylesbury Vale District Council.
- The application Ref 15/02665/AOP, dated 31 July 2015, was refused by notice dated 4 February 2016.
- The development proposed is the erection of 4 detached houses, including the creation of a new access onto London Road and associated works.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 detached houses, including the creation of a new access onto London Road and associated works at land adjacent to Old Rectory, London Road, Aston Clinton, Buckinghamshire HP22 5ND in accordance with the terms of the application, Ref 15/02665/AOP, dated 31 July 2015, subject to the conditions set out in the schedule to this decision letter.

Procedural Matters

2. The appeal proposal was submitted in outline with the means of access, layout and scale being considered at the outline stage. I also note that the address of the appeal site on the application form is stated to be land adjacent to Stablebridge Road, but on the Council's decision notice this refers to land adjacent to Old Rectory, London Road. Given the location of the site adjacent to London Road, and some distance from Stablebridge Road, I consider the Council's description of the location of the site to be more accurate. I have therefore dealt with the appeal on the basis of the above.

3. The access from the site to London Road was not originally included within the red line of the planning application. An amended plan (drawing no 01 revision B) was submitted during the appeal which includes the access between the main part of the site and the carriageway of London Road. Subsequent to that plan, the proposal has had a further period of public consultation.

4. Having regard to the 'Wheatcroft' principles (Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another 1982), I consider that following the revised consultation period there would be no prejudice to any party by accepting this plan at the appeal stage.

5. In refusing permission, the Council referred to the need for financial contributions towards education and off site leisure and recreation facilities. However, following the Court of Appeal's judgement of 11 May 2016, wherein the Secretary of State for Communities and Local Government successfully appealed against the judgment of the High Court of 31 July 2015 (Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council) it follows that significant weight should be given to the Secretary of State's written ministerial statement of 28 November 2014 and the updated Planning Practice Guidance where such planning obligations should not be sought from such small scale and self-build development. In light of this, the Council have subsequently withdrawn these reasons for refusal.

National Planning Policy Background

6. The Council have confirmed that they do not have a five year housing land supply. It follows that, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework), the housing supply policies in the Aylesbury Vale District Local Plan (LP) are out of date.

7. Consequently, the fourth bullet point of paragraph 14 of the Framework comes into force. This makes clear that where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Main Issues

8. The main issues are the effect of the proposed development on the character and appearance of the area and on highway safety.

Reasons

Character and appearance

9. The appeal site is located on the south side of London Road and forms part of the land associated with Old Rectory Farm. The site consists of mainly of an open undeveloped field. A timber fence has been recently erected around parts of the field adjacent to The Old Rectory South, and the northern and western edges. There is an area of trees which lie between the field and London Road which partially obscure views of the site from London Road. To the west of the site is a public footpath from London Road which also provides access to an area of open space. To the east of the site is The Old Rectory, a grade II Listed Building which has been subdivided into two dwellings.

10. The LP identities Aston Clinton as one of the Districts larger, more sustainable, villages that has at least a reasonable access to facilities and services, including public transport. The principle of new residential development in Aston Clinton is therefore considered to be acceptable.

11. Notwithstanding that, the south side of London Road from the appeal site eastwards to Stablebridge Road is largely undeveloped and open in character, with only The Old Rectory and the more recently constructed Old Rectory Farmhouse buildings providing the built form. The undeveloped nature of this area, together with the trees and woodland to the southeast, gives the appeal

site a more rural character even though it is located at the edge of the main built form of Aston Clinton.

12. Whilst the development would be screened to a extent from London Road, given the two storey scale of the development it would be visible from the public footpath to the west of the site despite the recently erected fence. The development of the site with four dwellings would erode the rural character of the site by introducing further built development in a suburban manner which would be to the detriment of this rural, edge of settlement, location.

13. Given that The Old Rectory is a grade II Listed Building, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of this building.

14. In this case, the development would have some impact on the wider setting of The Old Rectory, by introducing new development on the adjacent site. However, this impact is minimal and is somewhat mitigated by the existing trees together with the proposed trees indicated on the layout plan.

15. Paragraph 134 of the Framework states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

16. The provision of new dwellings would provide some public benefits. Given that the harm to the heritage asset is largely mitigated by the existing and proposed landscaping, this public benefit is sufficient to outweigh the very limited harm to the setting of The Old Rectory. However, this does not outweigh the harm I have found to the wider character and appearance of the area.

17. For the above reasons, I conclude that the dwellings would lead to harm to the character and appearance of the area contrary to the provisions of Policy GP.35 of the LP which amongst other things seeks to protect the character and appearance of the area. The development would also be at odds with the similar underlining objectives of the Framework.

Highway safety

18. The Council, in their fourth reason for refusal, have indicated that highway amendments would have been sought in order to comply with the guidance in the Framework. These amendments appear to relate to what the Highway Authority would like to see should the development be granted planning permission.

19. From the evidence before me, it is not clear whether the internal layout could allow service vehicles to turn within the site and therefore enter and exit in a forward gear. Whilst this is an outline application, layout is being considered at this stage. Notwithstanding that, it would appear that should it not be possible to adequately turn a service vehicle within the site, only minor modifications to the site layout would be required. Overall I am satisfied that such amendments, if required, could be addressed by means of a suitably worded planning condition should I be minded to allow the appeal.

20. In relation to the other matters raised by the Highway Authority, I note that they consider that these could be dealt with under a section 184 agreement.

21. I have also had regard to the representations made on this issue. The new access point onto London Road would be located broadly opposite Mount Close which serves four bungalows. From my site visit I also observed a steady but not excessive level of traffic along London Road, although I am conscious that this was only a snapshot of the traffic situation. I also observed parked vehicles in the layby to the west of Mount Close.

22. The Highway Authority support the principle of the development and given the relatively low levels of traffic which would be generated from the development, including during the construction phase, I have no reason to disagree with that view.

23. For the above reasons, I conclude that the development would provide a safe and suitable access to the site for all people and would accord with the objectives of the Framework.

Other matters

24. The Appellant has raised concern over the processing of the application by the Council, including the timeliness of its determination, a change in opinion from the pre-application advice, the lack of pro-active working, the consistency of the decision making and that the appellant was disadvantaged.

25. From the evidence before me, the pre-application advice given by the Council in respect of the effect of the development on the character and appearance of the area is generally consistent with their determination of the application. In any case, that advice was given with a detailed disclaimer and on the basis that it did not bind the Council to a particular decision. Notwithstanding that I have, in any event, determined the appeal on its planning merits.

26. In respect of the other matters raised, none of these matters go to the heart of the matters at hand. Given that these are procedural matters they have very little bearing on the planning merits of the case.

27. I have also had regard to the representations made both from during the Council's public consultation on the planning application and in relation to this appeal. From the information before me, part of the site is subject to a restrictive covenant preventing any further development for which it is stated that Buckinghamshire County Council has an obligation to enforce this covenant. However, the granting of planning permission does not override the provisions of a covenant and as such I give this very little weight.

28. On my site visit, I saw the trees which are the subject of a Tree Preservation Order and the path located between the site and the pavement alongside London Road. The new access would be sited in a location where there would be a minimal loss of trees. As such, given that the majority of the trees along the London Road frontage would be retained, I consider that the new access would not result in any significant harm to the amenity value which the trees give to the area. In relation to the footpath, this would cross the new access at broadly right angles and as such given the limited amount of traffic which would use the access road this would not give rise to any harm to pedestrian safety.

29. In respect of potential wildlife implications there is no evidence to suggest that the development would affect any protected species. It is also noted that the Council's Biodiversity Officer has come to a similar conclusion.

30. My attention has also been drawn to another residential proposal in the area (16/02995/APP) which is now the subject of an appeal which has yet to be determined. However, this site is unrelated to the current appeal. In any case I have determined this appeal on its individual merits.

Planning balance

31. I have found that the proposed development would give rise to some harm to the character and appearance of the area and would conflict with the LP and the Framework in this respect. This factor weighs against allowing the proposed development.

32. In considering the economic and social aspects of sustainable development the proposal would bring some benefits to the area including the temporary benefits during the construction phase. These matters are in favour of the proposed development.

33. From the evidence before me, it is unclear what the current shortfall in the Council's five year housing land supply is. Notwithstanding this, the provision of four dwellings is unlikely to have any significant effect in reducing any deficit. Nevertheless, the provision of four additional dwellings is a benefit.

34. I have taken all of these factors into account, and that there is other residential development to the south, east and west (beyond the footpath) of the site. This surrounding development, together with the tree screening along the London Road frontage, considerably minimises the impact of the proposal on the surrounding area. To my mind, the adverse impact of the development does not significantly and demonstrably outweigh its benefits. Therefore the development is sustainable development when considering the Framework taken as a whole.

Conditions

35. Other than the standard reserved matters conditions, it is also necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty.

36. Whilst details of the existing site levels were provided with the application a condition relating to the finished ground and floor levels is appropriate in the interest of the character and appearance of the area.

37. In the interests of highway safety, it is necessary to ensure that the access road is provided in a timely manner and that suitable visibility splays are provided at the access point with London Road and that service vehicles are able to enter and exit the site in a forward gear.

38. It is also necessary to ensure that the trees on and around the site are protected during the construction works, and that utility services do not damage the root systems of the retained trees. Additionally, given the possibility of archaeological remains a condition is also required to ensure that any findings are recorded.

39. With the exception of the proposed slab levels, tree protection measures and the archaeological investigations, it is not necessary for any of these to be pre-commencement conditions. It is necessary for these matters to be agreed prior to any works commencing as the finished slab levels may impact on the

initial site works and the archaeological matters relate to matters below ground level and should be resolved before any ground disturbance works occur.

40. The tree protection measures need to be in place prior to any construction works to ensure that the protected and retained trees are not damaged during this phase of the development.

41. The suggested conditions relating to the proposed landscaping and materials are not necessary as they would form part of a subsequent reserved matters submission.

Conclusion

42. Taking all matters into consideration I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR

SCHEDULE OF CONDITIONS

1) Details of the appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with plan 01 revision B (with the exception of the requirements of condition 5).

5) Notwithstanding the submitted layout details, full details of how service vehicles will be able to enter and exit the site in a forward gear shall be submitted to and approved in writing by the local planning authority. The approved details shall be carried out prior to the first occupation of any of the dwellings and be maintained as such for the life of the development.

6) No development shall take place until full details of the proposed finished floor levels of all buildings and hard landscaped surfaces have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

7) Prior to the commencement of the construction of any of the dwellings, the new access to London Road shall be sited and laid out in accordance with the approved drawing(s) and constructed in accordance with Buckinghamshire County Council's Guide Note "Private Vehicular Access Within Highway Limits" 2001.

8) Prior to the first occupation of any of the dwellings, details of vehicular visibility splays (which shall be a minimum of 2.4 metres by 43 metres) at the access point with London Road shall be submitted to and approved in writing by the local planning authority. The approved visibility splays shall be provided prior to the first occupation of any of the dwellings.

9) No development shall take place until the trees shown for retention on the approved tree protection plan (5448 FE TPP 01) have been protected by the erection barrier complying with Figure 2 of British Standard 5837:2012 positioned at the edge, or outside the root protection area shown on the tree protection plan. The area surrounding each tree/hedge within the approved protective fencing shall remain undisturbed during the course of the construction works, and in particular in these areas:

   i) There shall be no changes in ground levels;
   ii) No materials or plant shall be stored;
   iii) No buildings or temporary buildings shall be erected or stationed unless these are elements of the agreed tree protection plan;
   iv) No materials or waste shall be burnt; and
   v) No drain runs or other trenches shall be dug or otherwise created.

   unless an alternative form of tree protection measures or specific work within the protected area has been first agreed in writing by the local planning authority.

10) The construction phase of the development shall be carried out in accordance with the recommendations as set out in the Arboricultural Method Statement (5448 FE AMS 01 Rev A) dated July 2015 unless an alternative form of tree protection measures has been first agreed in writing by the local planning authority.

11) No development shall take place, including any preliminary ground works, until the developer has secured and fully implemented a programme of archaeological works in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the local planning authority.