



Appeal Decision

Site visit made on 27 June 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 26 July 2017

Appeal Ref: APP/W1850/W/17/3168334

Balance Farm, Eywood Lane, Titley HR5 3RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Angela Vaughan against the decision of Herefordshire Council.
 - The application Ref 162518, dated 10 August 2016, was refused by notice dated 16 January 2017.
 - The application sought planning permission for an agricultural worker's dwelling and septic tank drainage without complying with a condition attached to planning permission Ref 95/0238/O, dated 18 October 1995.
 - The condition in dispute is No 2 which states that: the occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person and to any resident dependants.
 - The reason given for the condition is: The Local Planning Authority would not be prepared to grant permission in this location except to meet the expressed case of agricultural need.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented. As the original permission was for an agricultural worker's dwelling and septic tank drainage I have used this description in the banner heading.
3. An application for planning permission for the erection of 5 dwellings on an adjacent site by the appellant was submitted in September 2016. This application is the subject of separate appeal¹ against the failure of the Council to give notice of its decision within the appropriate period. In the interests of clarity, I have dealt with that appeal in a separate decision letter.

¹ APP/W1850/W/17/3168668

Background and Main Issue

4. In 1995 outline planning permission (1995 permission) was granted for an agricultural worker's dwelling and in 1999 an associated reserved matters application (1999 RM) was approved. The Council considers that the even though the development has not been completed the planning permission has been implemented and that no further planning permission would be required to complete the dwelling if it was to be occupied in compliance with condition 2.
5. However, due to a change in family circumstances, that would appear to have occurred between the 1995 permission and the 1999 RM, the appellant no longer lives in Titley and as a result farming practices have changed and an agricultural workers dwelling is no longer required on Balance Farm. As the dwelling has not been substantially constructed, has remained this way for a considerable amount of time and due to the change in the family circumstances it is highly unlikely that it would be completed with the condition in place.
6. Consequently, I give the extant permission little weight as a fallback position. Furthermore, as stated above, if I was minded to allow this appeal an additional planning permission would be created for a new open market dwelling. The occupancy of the dwelling would not affect its potential impact on the surrounding area. However, the reason for the disputed condition was that the Council would not be prepared to grant permission in this location except to meet the expressed case of agricultural need.
7. Taking into account all of the above I consider that the main issue in this case is whether the site is a suitable location for an open market house within the countryside having regard to its location within Eywood Park, a grade II registered park and garden and within the settings of nearby heritage assets.

Reasons

8. The appeal site is an undeveloped landscaped area adjacent to the entrance to Eywood Park. The boundary of the registered park and garden appears to cut through the appeal site. The part of the site fronting onto Eywood Lane is within the heritage asset. There are, what appear to be, foundation trenches for a building on part of the site. The site is also within close proximity to the settlement of Titley and Balance Farm, a grade II listed building.
9. The appeal is seeking the removal of the disputed condition in order that the proposed dwelling could be occupied as a residential dwelling by any person rather than restricted to agricultural or forestry workers. Policy RA4 of the Herefordshire Local Plan Core Strategy (CS) requires that proposals to remove agricultural occupancy conditions must demonstrate evidence that the dwelling is surplus to the current and sustained original business needs, as well as other rural enterprises in the locality and that there has been a genuine and unsuccessful attempt to market the property at a realistic price (for rent or sale) which has been independently verified.
10. As stated above the change in family circumstances means that there is no longer a need for an agricultural workers dwelling at Balance Farm. However, no evidence of marketing of the property has been submitted or any other evidence that would demonstrate that it is surplus to the needs of other rural enterprises in the locality. As such the removal of the condition would not meet the requirements of CS Policy RA4.

11. Nevertheless, as the site is adjacent to the settlement of Titley which is defined by CS Policy RA2 as a settlement which will be the main focus of proportionate housing development the proposal would not result in an isolated house in the countryside. CS Policy RA2 would support sustainable housing growth in or adjacent to Titley subject to four criteria. Criterion 3 seeks development that would be appropriate to their context and make a positive contribution to the surrounding environment.
12. Even though the dwelling would not be in an isolated location it would be within Eywood Park and its setting which is a designated heritage asset. Eywood Park was created around the 18th century and was the seat of the Harleys, Earls of Oxford and Mortimer. The main house was demolished in 1954 but Eywood Stables which were associated with this house still remain and are grade II listed.
13. S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker, in considering whether to grant planning permission for development which 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.
14. Paragraph 132 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different elements of that setting may either make a positive, negative or neutral contribution to its significance.
15. The site is adjacent to the main entrance of the park which is marked by an attractive late 19th century lodge and gateway. Third party evidence states that the park may have a connection to Lancelot 'Capability' Brown but the list description states that even though he visited Eywood there is no evidence that he worked at or advised on Eywood. The significance of Eywood Park derives from its historical and aesthetic value as an example of an 18th century designed landscape.
16. The entrance to Eywood Park marked by the 19th century lodge and gateway was, historically, secondary in nature but in more recent times, it has become the main entrance. The grounds of the park, set within attractive rolling countryside interspersed with stands of mature trees, create panoramic views from Eywood Lane when approaching the entrance from Titley. Even though the dwelling would be close to the settlement of Titley and set back from Eywood Lane it would be evident in views from the lane when approaching the site from either direction. Furthermore, it would be clearly within Eywood Park as it would be beyond the lodge and gateway.
17. The proposal dwelling would be of an architectural style that would reflect the local vernacular. However, it would visibly extend the built form of Titley into and would urbanise this part of Eywood Park, which occupies a particularly sensitive position close to the main entrance. Consequently, the proposal would harm part of the significance of Eywood Park.

18. I note that the setting of nearby listed buildings is not cited in the reasons for refusal. However, as stated above, I have a duty under S66(1) of the Act and this matter was covered within the Council's evidence. Moreover, it has been raised by third parties. From the evidence before me, including the listing descriptions, I consider that the significance of the listed buildings nearby is largely derived from their form, historic fabric and particular architectural features.
19. Eywood Stables were associated with the demolished main house and they are located close to the site of that house. Consequently, the setting of the stables is linked with that of the main house as the former's significance partly derives from its association with the latter. Due to the considerable distance of the stables from the appeal site and intervening vegetation there is no intervisibility between them and the appeal site. However, the setting of a heritage asset is the surroundings in which it is experienced. As visitors to the stables traverse through Eywood Park and past the appeal site I consider that it can be treated as being within the setting of Eywood Stables.
20. However, the historical, social and economic connections of the park are with the main house which has been demolished and as such the wider Eywood Park setting makes a limited contribution to the significance of Eywood Stables. As such, even though the dwelling would result in a change to the setting of the stables I am satisfied that it would not materially affect the ability to understand or appreciate the significance of Eywood Stables. The same goes for other listed buildings within Eywood Park that have been cited within third party representations.
21. The significance of Balance Farm is mainly experienced from within its curtilage. However due to its proximity to Eywood Lane and the B4355 its significance is also experienced in views from these roads. A number of adjacent outbuildings and barns have been converted to residential use. Due to intervening vegetation there is limited intervisibility between the appeal site and Balance Farm. Whilst Balance Farm and its complex of outbuildings can be appreciated in views from Eywood Lane and the B4355, those views would not materially change as a consequence of the development proposed.
22. All in all, I consider that the appeal site contributes little, if anything, to the significance of the listed building or its setting. As such, the ability to appreciate and understand its past connection with agricultural use would not be materially affected by development of the application site. I find, therefore, that the special interest and significance of the listed building, and its setting, would be preserved.
23. Titley Court (grade II) lies on the opposite side of the B4355 to Balance Farm. I am satisfied that it derives heritage significance from its immediate, rather than extended, setting. There is no evidence before me, in this regard, to suggest that there would be any intervisibility with the development proposed. Accordingly, there would be no harm to the setting or significance of the listed building, and neither would the development scheme impact on the ability of the public to interpret its significance.
24. Taking into account all of the above, the development of the site would have a materially detrimental effect on the significance of Eywood Park as it would lead to an extension of the settlement and an intrusion of built development into the rural landscape adjacent to the main entrance of the park. As the

majority of the body of the Registered Park and Garden would remain unaffected the harm that would be caused to the significance of the designated heritage asset would be less than substantial. In such a circumstance, paragraph 134 of the Framework requires the harm to be weighed against the public benefits of the proposal.

25. In this case the main public benefits resulting from the scheme would be the provision of a dwelling and its location is relatively accessible to local services and facilities. As such, the scheme would add to the local housing stock. The development as proposed would also result in some support for local services and facilities including additional employment opportunities, both during construction and after occupation. As such, the proposal would have social and economic benefits.
26. Given the modest amount of development proposed, these benefits would be likely to be relatively limited and in my judgement they would not outweigh the great weight to be given to the harm to the heritage asset. As such the proposal would not comply with paragraph 134 of the Framework.

Other matters

27. I note the appellant's concern regarding the Council's determination of the application. However, that is not a matter for my consideration in the context of this appeal decision.

Conclusion

28. The Council cannot demonstrate a 5 year supply of housing land (HLS) as required by paragraph 47 of the Framework. Where the Council is unable to demonstrate a HLS, paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date. Furthermore, paragraph 49 of the Framework states that all housing applications should be considered in the context of the presumption in favour of sustainable development. As CS Policies RA2 and RA4 are relevant policies for the supply of housing they are considered to not be up-to-date with regard to paragraph 49 of the Framework and as such are given limited weight.
29. Paragraph 14 of the Framework explains that there is a presumption in favour of sustainable development at the heart of the Framework, and that this should be seen as a golden thread running through both plan-making and decision-taking. Having regard to my findings above and footnote 9 of the Framework, I find that the final bullet point of paragraph 14 of the Framework is engaged, as specific policies in the Framework indicate that development should be restricted. Therefore, the proposal would not represent sustainable development.
30. The harm that would be caused to the significance of the heritage asset also leads me to conclude that the proposal would conflict with the CS Policies RA2 and LD4 which, amongst other things, seek development that is appropriate to its context and protects, conserves and where appropriate enhances heritage assets and their settings. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case, although CS Policies RA2 and RA4 have limited weight, there are no material considerations which indicate that the proposal should be determined other

than in accordance with national policy and development plan policies which seek to protect heritage assets.

31. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR