
Appeal Decision

Site visit made on 24 October 2017

by R J Marshall LLB DipTP MRTPI

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

Decision date: 1 December 2017

Appeal Ref: APP/N1730/W/17/3179953

Land rear of Schoolfield Corner, Church Lane, Dogmersfield, Hook RG27 8SZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Messrs D and J Fuller and Ms L Crumplin against Hart District Council.
 - The application Ref HDC 17/01142/FUL, is dated 1 May 2017.
 - The development proposed is erection of 2 no. 4 bed houses.
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Decision

1. The appeal is dismissed.

Background

2. Although the application is into a failure to determine the application on time the Council has given reasons why it would have refused permission. These are taken into account in my main issues below.

Main Issues

3. The main issues in this appeal are: **first**, the effect of the proposed development on the character and appearance of the Dogmersfield Conservation Area; and **second**, its effect on interest of nature conservation importance in the Thames Basin Heaths Special Protection Area (TBHSPA).

Reasons

Character and appearance

4. The appeal site lies within the Dogmersfield Conservation Area (CA). Dogmersfield is a small village with its main core around the crossroads in the vicinity of the village Public House. As well as covering this area the CA boundary include some ribbon development along roads leading into and out of the village core and substantial areas of the surrounding countryside.
5. Land in the appellants' ownership comprises a roughly rectangular area in close proximity to the main core of the village. This land fronts onto Church Lane and comprises largely grassland surrounded by substantial boundary hedgerows on all sides. However, a parcel of the land on the north-east of this area contains a few small low-key commercial buildings. Access to these buildings is obtained via a lengthy driveway leading from Church Lane. To either side of

this driveway, and fronting onto Church Lane are 2 parcels of land. A planning application has been submitted for 1 house on each parcel. Although no final decision has been made on this application it seems as though it is likely to be permitted subject to the resolution of minor design matters and appropriate arrangements being in place to provide for Suitable Natural Alternative Green Space (SANGs).

6. The appeal site lies in that part of the appellants' land ownership to the rear of the 2 proposed frontage houses and to one side of the commercial buildings. Access would be obtained from Church Lane via the existing access serving the commercial buildings. Given the strong likelihood of the frontage of the site being developed with 2 houses the scheme before me should be considered as a backland development behind frontage housing.
7. Much of the development in the Conservation Area is ribbon development with a direct road frontage. This includes development under construction for 3 houses fronting Church Lane to the south of the site. A key concern of the Council is that by deviating from this form of development the proposal would appear out of keeping. However, the appeal site is close to the main core of the village. Here development is more varied and contain some development with no direct highway frontage. In this context, and given the existence of the commercial buildings on the appeal site, which abut other more substantial commercial development, I consider that the proposed development would not appear out of keeping. I am of this view even though the proposed houses would be set further back from the road frontage than other backland development in the village core. There are some concerns on the creation of a precedent. However, my view above is based upon the particular circumstances of the site and is one that would not be directly replicated elsewhere.
8. Turning to detailed design matters the proposed houses are of an attractive rural appearance in keeping with development in the locality. With low eaves heights and garages with acceptably low ridge lines they would not appear over dominant on their plots.
9. It is concluded that the proposed development would fit in acceptably with the character and appearance of the Conservation Area. There would be no conflict with the statutory duty that development should preserve or enhance the character or appearance of such areas and with Policy CN13 of the Hart District Local Plan (replacement) 1996 – 2006 (LP) which reiterates this requirement. Nor would there be conflict with LP Policies GEN1, GEN4 and CON22 which more generally seek to protect the character and appearance of areas.

Effect on matters of nature conservation importance in the TBHSPA

10. The appeal site lies beyond 400m but within 5km of part of the TBHSPA. It is the view of Natural England (NE) that residential development individually or in combination with other developments within such distance of the TBHSPA would have a significant effect upon it. Having regard to this, and to ensure that development can still take place, in 2008 a TBHSPA Delivery Framework was devised. This sets out avoidance and mitigation measures in the form of the provision of SANGs and funding for Strategic Access Management and Monitoring (SAMM).
11. This approach has been adopted by the Council in its Interim Avoidance Strategy. This seeks contributions towards the provision of SANGs and SAMMS.

However, with the restriction on the pooling of more than 5 Section 106 obligations the Council is no longer able to seek, and appellants no longer able to provide, legal agreements for the provision of SANGs. Legal agreements for contributions towards SAMMs may still be made. However, no such agreement has been made in this case.

12. The appellants suggest that the need for both contributions may be dealt with by a Grampian condition that the development shall not take place until a scheme has been submitted to and approved by the Council for the provision of SANGs and a financial contribution made towards SAMM. However, the Planning Practice Guidance advises that such a negatively worded condition requiring an applicant to enter into a planning obligation is unlikely to be appropriate in the majority of cases. It says that only in exceptional circumstances would they be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. However, this application for just 2 dwellings is neither complex nor strategically important. Thus a Grampian condition of the kind suggested would not be appropriate. I am of this view notwithstanding that the Council appears to have accepted this kind of Grampian condition on a site nearby.
13. A further concern I have is that even were a financial contribution made towards SANG it is unclear whether land would be available for that purpose. The only means by which the appellants have suggested that it could be provided is by means of them "buying into" land that the Council has recently acquired for the purposes of providing SANG. However, the control on the release of land for this purpose, at a financial cost to applicants, appears to be at the discretion of the Council under its Corporate policy in relation to SANG allocations. The appellants say that to be consistent with this policy, and an approach taken on adjoining land, the Council should make a SANG allocation to them in this case. However, I can see no evidence that it would be obliged to do so and it seems as though it has a limited capacity to make such allocations.
14. Given the views of NE I consider that, in the absence of mitigation for the TBHSPA being secured for either the SANGs or SAMMs elements, I am unable to conclude that there would not be a likely significant effect upon that area. This being so the Habitats Regulations 2017 would require that an Appropriate Assessment (AA) of the implications of the plan for the site's conservation objectives is undertaken. I have no information to enable this to be done. That being so regulation 63 (5) requires that permission must not be granted.
15. It is concluded that the proposed development would have a detrimental effect on matters of ecological importance. There would be conflict with LP Policies Con1 and CON2 on the protection of important wildlife habitats and with the requirements of the Habitats Regulations.

Other matters

16. Appeal decision APP/N1730/W/17/3167135, referred to by the appellant, appears to throw some doubt on whether or not there is a 5 year housing land supply in the District. Other than this decision I have been provided with no substantial information by either party to arrive at a view on 5 year housing land supply. If the Council does not have such a supply then, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework),

relevant policies for the supply of housing should not be considered up-to-date. In such cases paragraph 14 of the Framework is engaged. This says that where relevant policies are out of date planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate that development shall be restricted. With regard to the second leg such policies would be those relating to sites, as in the case before me, protected under the Birds and Habitats Directives. That being so the presumption in favour of sustainable development does not apply.

Conclusion

17. I have found for the appellant in the first issue. However, it is harm in relation to the second issue that I must find decisive. For the reasons given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR