



Appeal Decision

Site visit made on 8 August 2018

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2018

Appeal Ref: APP/N1215/W/18/3199991

Land at Hine Town Lane, Shillingstone, Blandford Forum, Dorset

- 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 C Pope, Mrs A Pring and Mr N Pope against the decision of North Dorset District Council.
 - The application Ref 2/2017/0595/OUT, dated 30 March 2017, was refused by notice dated 13 November 2017.
 - The development proposed is to develop the land by erection of 10 No. dwellings and form new vehicular access (outline planning application to determine access only).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr C Pope, Mrs A Pring and Mr N Pope against North Dorset District Council and Shillingstone Parish Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the revised Framework) replaced the previous 2012 version in July 2018. The main parties have had opportunity to comment on the significance or otherwise of the changes. I have had full regard to the comments received and the revised Framework in determining this appeal.
4. The planning application sought outline planning permission with all matters reserved for subsequent consideration except access. A sketch diagram was submitted with the planning application showing a possible development layout. This is intended to be indicative only, but I have nevertheless taken it into account as a helpful guide as to how the site might be developed.
5. The appellants and Local Planning Authority (LPA) agreed a revised description of the proposal during the course of the application which I have used above.

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the area, having particular regard to the designated Shillingstone Conservation Area, and whether any harm arising would be outweighed by other considerations.

Reasons

Background

7. The appeal site has been formally allocated, in Policy 10, for “up to 12 new homes, including affordable housing to meet local needs” in the Shillingstone Neighbourhood Plan (SNP) which was formally made by North Dorset District Council on 21 February 2018.
8. It also lies within the “central historic core” of the village which the SNP identifies as a character zone coinciding with the boundaries of the designated Shillingstone Conservation Area (SCA).
9. The significance of the SCA lies in the way it encompasses a range of listed and other important buildings that, with their green space in between, reflects the evolution of this historic rural settlement. Whilst the A357 Blandford Road is a dominant feature, Policy 2 of the SNP describes the importance in general of rural lanes and tracks around the village within the SCA and beyond. The appeal site’s particular contribution to the significance of the SCA is the character and appearance of the hedge-lined lane forming its northern boundary (Hine Town Lane) (HTL) which affords this part of the SCA its rural character.
10. Accordingly, SNP Policy 10 stipulates that the scale, design and layout of allocated development on the appeal site will need to be sensitive to the character of the SCA. To this end, the explanatory text to the Policy draws specific attention to the importance of the rural character of HTL and states that it should not be upgraded or otherwise urbanised. Significantly, it states that the hedgerow boundary along HTL should not be “reduced or breached” and development should be set well back from this edge and secure its long-term maintenance.
11. In line with these priorities, SNP Policy 10 goes on to state that the main focus of built development on the site should be on the lower ground towards the southern end of the site. The policy further states that an appropriate vehicular access would be from the main Blandford Road or through an adjoining plot. In this regard, the policy requires the provision of a landscaping scheme for the whole site including proposals to strengthen the existing hedgerow and treed boundary to screen the development from the lane and wider countryside.

Character and appearance

12. Despite the terms of the policies in the SNP, the proposed development is in fact proposed to be accessed off HTL. This would necessitate the removal of some 10m of hedgerow which would be offset (in part) by replacement hedgerow planting in closing up the existing field access at the north western end of the site. This would nevertheless result in a net loss of hedgerow of up to around 6m.
13. The appellants’ view is that the creation of a new access through a breach of the hedgerow would be a negligible change and would only be viewed from HTL itself rather than the wider conservation area. It is therefore suggested that this would amount to less than substantial harm to the SCA.
14. However, “less than substantial” harm is not the same thing as no harm. I am conscious of the statutory duty to pay special attention to the desirability of

preserving or enhancing the character or appearance of conservation areas. In this regard, the revised Framework makes clear that "great weight" should be given to the conservation of a heritage asset and that any harm (whether substantial or less than substantial) to its significance should require clear and convincing justification. The revised Framework further clarifies that in cases where a development proposal would lead to less than substantial harm, this should be weighed against the public benefits of the proposal.

15. In line with the description of the area in the SNP, I observed that HTL is a quiet, narrow rural road providing a back route connecting the southern and northern parts of Shillingstone. Whilst it hosts clusters of development towards its south eastern end where it joins the wider village, the central part of the lane bordering the appeal site is flanked on both sides by well-established and largely uninterrupted hedgerows and mature trees which afford an undisturbed, rural character to the area. The proposed access would be situated at approximately the mid-point of this central stretch of unbroken hedgerow. I saw a small residential development taking place adjacent to the appeal site (to the rear of the Old Ox Inn) which will also be accessed off HTL. Furthermore, my attention has also been drawn to a further site allocated for development in the SNP which the appellants contend will also require access off HTL. However the circumstances around those developments/proposals are not before me and are not determinative in my assessment of the effects of the appeal proposal on the character and appearance of the area.
16. Given the above, and regardless of the fact that other accesses already exist and some compensatory hedgerow replacement would take place, the creation of a substantial new breach in the central section of the hedgerow would significantly alter the rural character of the lane.
17. Furthermore, whilst the submitted layout plans are indicative only, the creation of the access off HTL would to my mind be likely to dictate the future pattern of development in forming a functional relationship with HTL rather than being screened from it. This would be at odds with the requirements of SNP Policy 10 in terms of focusing development on the lower ground towards the southern end of the site and enhancing the screening of the boundary. The location of the access would also allow significant views into the site at that point which, together with increased vehicular activity, would further reinforce the urbanising effect of the development.
18. Taken together, I find this would contradict the expressly stated aims and policies of the SNP in safeguarding the rural character of HTL, would fail to preserve or enhance the character or appearance of the SCA as a whole and would cause less than substantial harm to its significance as a designated asset. This contrasts with the form of development as proposed in the SNP which sets out measures, as described above, to mitigate the effects on and safeguard the significance of the SCA. Accordingly, I now consider whether such harm is outweighed by the public benefits of the proposal and any other considerations.

Public benefits

19. Despite the fact that, for reasons that are not disputed by the LPA, the development would not provide any affordable housing as required by SNP Policy 10, there would be public benefits in providing new housing, the need for which is accepted locally. There would also be a positive contribution in

supporting local services and facilities. There could also potentially be benefits in terms of landscape and biodiversity management.

20. My attention has been drawn by the appellants to the fact the SNP Policy 10 expresses a preference, rather than a requirement, for access to be provided from the main Blandford Road or through an adjoining plot. Nevertheless, any ordinary reading of the words set out in SNP Policy 10 leaves no doubt of the importance, for the heritage and character reasons given above, of development proceeding with access being provided from the south if at all possible. Similarly, the fact that the SNP uses the word "should" in relation to the reduction or breaching of the hedgerow does not diminish the fact that this is an important and clearly articulated issue, consistent with the area's designation as a heritage asset, to be taken into account by decision-makers. To my mind, these are not matters which can, given the statutory status of the SCA and the development plan, be disregarded without compelling reasons.
21. The appellants contrast the appeal site with another site allocated for development in the SNP at Whitepit Farm Buildings (WPF). In this regard, it appears to be suggested that the SNP is inconsistent as WPF similarly lies on a rural lane with no access preference being specified. I do not have background details relating to the allocation of WPF before me but, given it lies in a different part of the village, I cannot be certain that the circumstances of the sites are comparable and the role of the rural lane on which it lies could well be different. In any event, any apparent inconsistency in the treatment of sites in the SNP is not a matter for me to consider in this appeal.
22. It is suggested by the appellants that SNP Policies 2 and 10 contain an inherent contradiction in proposing a sizeable housing scheme whilst also imposing unrealistic constraints on development. However, the SNP has been the subject of independent examination and provides coherent reasons for specifying a clear preference for the manner in which the proposed development should take place. Whilst there is some tension between policies, that it not unusual in a development plan document. In the context of attaching great weight to the conservation and enhancement of the SCA, harm in that regard should only be contemplated in the event that the means of access preferred by the SNP has been shown to be undeliverable on the basis of clear evidence. This is a matter I consider below.
23. In summary therefore, in the context of the SNP's clear and deliberate policy approach around the need to resist the upgrading or urbanisation of HTL, I find the overall public benefit from the development of 10 dwellings would not be so great as to outweigh the less than substantial harm I have found to the SCA.

Alternative vehicular access

24. A significant amount of evidence has been submitted by the appellants relating to a number of potential alternative access arrangements which would avoid the need to create an access off HTL. Their final conclusion is that for various reasons relating to heritage conservation, land ownership, tree protection, visibility spays, highway capacity, economic viability, flood risk and noise and disturbance, none of the proposed alternatives are realistic. I was able to view the majority but not all of these constraints, some of which are on third party land, on my site visit. Nevertheless, the appellants' analysis appears generally comprehensive and demonstrates that the potential for alternative access from the south is significantly constrained.

25. A variation on 'Alternative 5' as set out in the appellants' letter dated 9 October 2017¹ has, however, been suggested by the owners of Squirrels Leap - a dwelling lying to the north of the Old Ox Inn. I understand that approaches have been made to these 2 landowners with a view to acquiring a strip of land from Squirrels Leap in order to create an access to the north of the Old Ox Inn. Both landowners have, at least for the time being, declined to pursue that option.
26. The appellants' statement also addresses the possibility of the wholesale acquisition and demolition of Squirrels Leap - an option similarly brought to my attention by the owner of that property. The appellants' view is that this would not be achievable. One of the reasons advanced for this is that construction work would be likely to result in root damage to a number of trees as shown on drawing 0907-41 and that other trees would need to be felled. However, that drawing appears to only illustrate the likely effects of creating an access alongside the boundaries of the Old Ox Inn and Squirrels Leap, rather than through the demolition of the host building. Whilst the appellants appear to suggest that any such access would need to be sited along the southern boundary of Squirrels Leap to maximise visibility and minimise disturbance to existing properties, this again is unsubstantiated by any clear evidence. On the basis of the information before me therefore, it is not clear that important trees would necessarily be damaged in the event of this option being pursued.
27. The appellants also submit that this option would not in any event be financially viable and refers to advice apparently received from housing professionals. However, I have not been provided with that advice nor any other any significant 'open book' evidence as to the costs and viability of the acquisition of Squirrels Leap as part of the overall scheme.
28. In the absence of any clear evidence of the viability of this potential option, I therefore conclude there is reasonable doubt over the contention that vehicular access could not be achieved from the A357 Blandford Road rather than off HTL. I note the appellants' submissions that the SNP did not apparently include a clear assessment as to how access from the A357 could be achieved. Nevertheless, for the above reasons I conclude that the case for rejecting an access arrangement that would comply with the SNP has not been adequately demonstrated to justify the significant harm that would result from locating the proposed access off HTL.

Conclusions on the main issue

29. Overall, I find that the proposed development would fail to preserve or enhance the character or appearance of the SCA and would cause "less than substantial" harm to its significance as a designated asset. As such, clear and convincing justification is required for the development. The public benefits of the proposed development would not outweigh the harm for the reasons given. Furthermore, in relying on access from HTL, the proposed development would not accord with the form of development allocated in the SNP. The development would therefore conflict with Policies 4 and 5 of the adopted North Dorset Local Plan Part 1 (January 2016), Policies 2 and 10 of the SNP and Section 16 of the revised Framework. Together, these policies seek to protect,

¹ Option 5 in the letter dated 9 October 2017 differs from the Option 5 described in the appellants' appeal statement which appears to relate solely to the acquisition of Squirrels leap.

preserve and enhance the character of the historic environment, landscape and other features in promoting development.

Other Matters

30. The appellants draw attention to the fact that the LPA cannot currently demonstrate a 5 year housing supply. This not disputed by the LPA although the scale of the shortfall remains a matter of on-going disagreement. Nevertheless, the revised Framework is clear in Footnote 6 to Paragraph 11 that policies should not be considered out of date if the application of policies in the revised Framework that protect areas of particular importance, including designated heritage assets, provides a clear reason for refusing the development proposed. Given I have found that the proposed development would harm the designated heritage asset of the SCA, the so called 'tilted balance' set out in paragraph 11 is not engaged.
31. Reference has also been made by the appellants to their permitted development rights to breach the hedge on HTL and undertake agricultural development as a fallback position. However, I have not been provided with evidence to suggest this would genuinely be pursued if the appeal failed or that such works would be materially more harmful than the appeal proposal. I therefore attach limited weight to this matter.

Conclusions

32. For the reasons given, and having had regard to all other matters raised, the appeal is dismissed.

Ian Bowen

INSPECTOR