The Planning Inspectorate

Appeal Decision

Site visit made on 30 January 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2019

Appeal Ref: APP/N1730/W/18/3214505
Clifton Barns, Croft Lane, Crondall, Farnham, GU10 5QF

- 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 Mrs E. D. Porter and Mrs B. R. Batt, on behalf of Penn Croft Farms Ltd against Hart District Council.
- The application Ref 18/00575/FUL is dated 12 March 2018.
- The development proposed is the erection of two detached two-storey three-bedroom dwellings with integral double garages following the demolition of two agricultural barns.

Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Penn Croft Farms Ltd against Hart District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal was made following the Council not determining the application within the statutory time frame. The Council state that they were not aware that the appeal had been made and proceeded to issue a decision notice after the appeal was lodged. However, as the appeal had been submitted, I have not treated that as a formal decision but as an indication of the Council's concerns.

Main Issues

4. From the evidence that I have before me, I consider the main issues to be:

   i) the effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA);

   ii) whether the appeal site is a suitable location for residential development, having regard to local and national policy as well as the effect of the proposal on the character and appearance of the area, including the setting of the adjacent Crondall Conservation Area (CA); and

   iii) the effect of the proposal on flood risk.

Reasons

Effect on the SPA

5. Saved Policies CON1 and CON2 of the Hart District Local Plan (Replacement) 1996 – 2006 (LP) and Saved Policy NRM6 of the South East Plan 2009 (SEP) indicate that permission will not be given for development that is likely to have a significant effect, either alone or in combination with other development, upon the integrity of the SPA.

6. The appeal site is located within 5km of the SPA. Due to this location, the Conservation of Habitat and Species Regulations 2017 (the Regulations) places a duty on competent authorities, before deciding to give permission for a plan or project which is likely to have a significant effect on a European site, to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives.

7. The Council have adopted an Interim Avoidance Strategy (IAS) for the SPA (2010). This states that the SPA provides a habitat for the internationally important bird species of Woodlark, Nightjar and Dartford Warbler. These birds are particularly subject to disturbance from walkers, dog walkers and cat predation because they nest on, or near, the ground.

8. The strategy also states that Natural England advise that proposals resulting in an increase in the number of dwellings within 5km of the SPA are, without 'avoidance measures', likely to have a significant effect on the SPA within the meaning of the Regulations. It also states that in combination with other residential developments, small scale residential developments, such as this one, are likely to have an effect on the SPA. Consequently, the strategy sets out the avoidance measures that are needed to mitigate the effects of residential development in Hart on the SPA.

9. The avoidance measures consist of two elements. The first being the provision of Suitable Alternative Natural Greenspace (SANG), and secondly, Strategic Access Management and Monitoring (SAMM) measures. The strategy indicates that SANG can either be provided by the developer, subject to various criteria being met, or by way of a financial contribution. The SAMM element can only be provided by way of a financial contribution.

10. Within the evidence, there is some dispute in relation to SANG and whether or not the Council would grant an allocation for this proposal. Although a SANG allocation would appear to have been granted for a Class Q Prior Approval on the site (ref: 16/02758/PRIOR), the appeal proposal is a materially different scheme and would require a separate allocation.

11. It is therefore suggested that a condition could be used to restrict the commencement of development until evidence has been submitted that demonstrates that the proposal has satisfied its obligations under the Regulations. Paragraph 55 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects. Whilst a condition to mitigate the impact of the development on the SPA could pass many of these tests, the tests in relation to precision and reasonableness are harder to pass.

12. It is not clear from the condition what the necessary evidence would entail in terms of complying with the regulations and therefore in this respect, the condition lacks precision. Furthermore, there would appear to be uncertainty as to whether the Appellant would be granted SANG or whether providing a SANG would be proportionate for this development. Therefore, there can be no certainty that the requirements of the condition could actually be complied with and the suggested condition would therefore fail the test of reasonableness. Moreover, even if an allocation of SANG was achievable, compliance with the Council's IAS would likely require a financial contribution. The same would be true in relation to SAMM.

13. On this point, the Planning Practice Guidance (PPG) is clear that conditions cannot be used to require the payment of money when granting planning permission. It may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken. However, such an approach should only be utilised in exceptional circumstances 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.

14. Due to the scale of the proposal, it is not a strategically important development. Furthermore, the fact that the site is located within the zone of influence of a Special Protection Area is a circumstance that will arise in many locations. It is therefore not an exceptional circumstance.

15. The condition is comparable in its approach to that recommended in the prior approval process. However, in that type of proposal, the condition is used to impose some control after planning permission has effectively been granted through the General Permitted Development Order. Where planning permission rather than prior approval is sought, a condition is required to meet the tests within the Framework and also comply with the guidance set out in the PPG. Despite the careful wording of the condition, for the reasons identified above, it would fail to meet these requirements. I therefore cannot be certain that the identified harm would be satisfactorily addressed. Consequently, the suggested condition would not be an appropriate mechanism through which to secure the necessary mitigation measures in relation to the effect of the proposal on the SPA.

16. The site benefits from a Prior Approval for the conversion of the existing building into a single dwelling and there is a possibility that this conversion could be implemented. Nevertheless, converting the building would result in a materially different scheme to that which is the subject of this appeal. It would also bring with it different requirements in relation to SAMM and SANG. The existence of the Prior Approval, and the potential fall-back position that it provides, does not therefore alter my findings on this main issue.

17. For the reasons identified above, in the absence of suitable mitigation, I conclude that the proposed development would be likely to have a significant harmful effect, either alone or in combination with other development, upon the integrity of the SPA. Consequently, it would conflict with Policy CON1 and CON2 of the LP and Policy NRM6 of the SEP which state that development which would adversely affect a SPA will not be permitted.

Location

18. Paragraph 77 of the Framework states that in rural areas, decisions should be responsive to local circumstances and support housing developments that reflect local needs. Policy RUR2 of the LP states that development in the open countryside, outside the defined settlement boundaries, will not be permitted unless it is specifically provided for by other policies in the local plan, and does not have a detrimental effect on the character and setting of the countryside by virtue of its siting, size and prominence in the landscape.

19. The settlement boundaries established through the LP related to development needs derived from the former Hampshire Structure Plan. Although these needs pre-date the Framework, and may have changed over time, the Council state that they can provide a robust supply of housing land in excess of 9 years and this has not been disputed by the Appellant. Although I have been provided with other appeal decisions that relate to the interpretation of this policy and its consistency with the Framework, there is nothing in the Framework that prevents the use of settlement boundaries. Consequently, due to the robust housing supply position of the Council, the policy is not out-of-date and is consistent with the aims of the Framework. I therefore give it full weight in my assessment of the proposal.

20. The appeal site is located outside of a settlement boundary and as a consequence, it is located within the open countryside. The proposal is therefore in direct conflict with the locational requirements of Policy RUR2 of the LP.

21. The appeal site is located some 250m from the western extent of the settlement boundary of Crondall and the surrounding area is dominated by open fields. As a consequence, the context of the appeal site is defined by its clear rural character. The site itself comprises of two agricultural buildings set in open fields. It is removed from the nearest built form of Crondall and is consistent with and makes a positive contribution to the overwhelming rural character of the area.

22. The proposal would introduce two dwellings onto the site. The overall footprint of the buildings and the amount of hardstanding would be reduced through the proposal, and the houses have been designed to have a vernacular quality using tile hanging, timber cladding, and red brick. However, due to the clear and distinct separation between the appeal site and the settlement to the east, the proposed dwellings would be distant from Crondall. Consequently, they would introduce a more urban and domestic form of architecture in to the rural environment which would be in stark contrast to the surrounding countryside. This would have a harmful effect on the character and appearance of the area.

23. The significance of the CA lies in the way it reflects the organic growth of an historic rural village over time. Its setting, in which the appeal site is located, is defined by an open and rural character and this makes a positive contribution to the significance of the CA. By introducing domestic development into this setting, the proposal would therefore also harm the setting of the CA. This harm would be less than substantial and therefore Paragraph 196 of the Framework requires the harm to be weighed against the public benefits of the proposal. In this respect the proposal would provide two new houses to boost local housing supply that would be constructed in an energy efficient manner.

It is also argued that the proposal would provide a visual betterment over converting the building.

24. Due to the modest scale of the proposal, the public benefits carry limited weight in favour of the appeal. However, great weight should be given to the CA's conservation, including its setting, and therefore the public benefits do not outweigh the harm that I have identified.

25. For the reasons identified above, the proposal would constitute development outside of a settlement boundary which would harm the character and appearance of the area, including the setting of the adjacent CA. I therefore conclude that the appeal site would not represent a suitable location for residential development. Consequently, it would fail to accord with Saved Policy RUR2 of the LP which seeks to restrict development in the open countryside and is consistent with policies in the Framework in that regard.

Flood risk

26. The appeal site is located on chalk and evidence from the Council suggests that the site is at risk of groundwater flooding with a flooding event taking place in 2014. Due to the concerns in relation to draining the site, the Council's drainage engineer has requested that additional information be provided through the development proposal rather than using a condition to secure the necessary information.

27. Through the appeal, the Appellant has provided additional information regarding drainage systems which had previously been sent to the Council. However, the information does not provide sufficient clarity for the proposal or confirm that it would achieve the requirements of the Council. Moreover, the suggested condition does not offer enough certainty that its requirements could be complied with. For that reason, it fails the test of reasonableness and therefore could not be imposed had the appeal proved successful.

28. In the absence of a suitable drainage scheme, I conclude that the proposal would experience unacceptable flood risk. Consequently, it fails to accord with Policy GEN11 of the LP which seeks to prevent development in areas liable to flood.

Conclusion

29. For the reasons identified above, the appeal is dismissed and planning permission is refused.

Martin Chandler

INSPECTOR