



Appeal Decision

Site visit made on 18 June 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

Appeal Ref: APP/E2205/W/19/3225202

Pig and Whistle Farmhouse, Ashford Road, Great Chart, Kent, TN23 3DH

- 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 John Johnson against Ashford Borough Council.
 - The application Ref: 18/01804/AS is dated 2 December 2018.
 - The development, as described on the application form, is to demolish an existing redundant agricultural barn and replace it with a similarly sized dwelling that will utilise an improved version of the existing access and include associated parking and garden storage.
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Decision

1. The appeal is dismissed, and planning permission is refused for the demolition of an existing redundant agricultural barn and replacing it with a similarly sized dwelling that will utilise an improved version of the existing access and include associated parking and garden storage.

Main Issues

2. Having regard to the Council's statement of case which sets out the reasons that the Council would have refused the application had it determined it, I consider that the main issues to be considered are the effects of the proposed development on:
 - a) the special architectural and historic interest of the listed Pig and Whistle Farmhouse and its setting
 - b) the character and appearance of the area, with particular regard to size, layout and design and
 - c) the ecology of the site and its surroundings.

Reasons

Background

3. The proposed development is to demolish an existing redundant agricultural barn and erect a dwelling with associated parking and garden storage. The appeal site is a small narrow field accommodating the barn, which has a concrete frame and cementitious asbestos cladding. It is believed to date from the 1950s and to have formerly been part of an agricultural holding. The evidence indicates that neither the barn nor the field have any current agricultural use, and that the former is used for informal storage.

4. Immediately to the north of the site is a public right of way whilst to the south-west is the Pig and Whistle Farmhouse, which is listed at Grade II. The site is accessed via a field gate from the A28 to the north-west and to the south-east is another field which extends to the east and south of the Pig and Whistle Farmhouse (the Pig and Whistle Field). Planning permission was granted in October 2018 for the erection of 6 no. new dwellings with nectar-rich meadow land and reeds and swales in this field.
5. The appeal site is located in the countryside currently outside any built-up area. However, the site lies within the area covered by the Chilmington Green Area Action Plan (CGAAP) and outline planning permission was granted in 2017 for the Chilmington Green Ashford urban extension. Strategic Diagram 1 – Layout and Land Use of the CGAAP shows the extent of built footprint wrapping around the north-east and south-east of the appeal site, the Pig and Whistle Farmhouse and the Pig and Whistle Field.

The significance of the heritage asset

6. Section 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.
7. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
8. Paragraph 194 of the Framework requires clear and convincing justification for any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting. The setting of a heritage asset is defined in the Glossary to the Framework as 'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'. The main parties agree that the appeal site is within the setting of the Pig and Whistle Farmhouse.
9. According to the listing description for the Pig and Whistle Farmhouse it dates from the 18th C and was formerly an inn. It therefore represents a long-established part of the history of the area with its significance being in its architectural and historic interest. From the evidence before me, the barn on the appeal site is itself of limited historic interest and has no long-standing historical association with the Farmhouse (being purchased in 1991).
10. As such, I do not consider that it makes a positive contribution to the significance of the listed building. Neither do I consider that the plain utilitarian nature of the barn, even in its present condition, detracts from the significance of the Pig and Whistle Farmhouse or the appreciation of that significance. I therefore consider that it makes a neutral contribution to the significance of the

listed building. However, the otherwise undeveloped appeal site, of which the barn forms only a part, provides an important context for the listed building, allowing an appreciation of its significance.

11. The proposed development is described on the application form as 'similarly sized' (to the barn). However, although the main part of the proposed dwelling appears to be similar in footprint to the existing barn, the proposal also includes a substantial extension to the side. This would result in a significantly larger footprint than the existing barn and development closer to the Pig and Whistle Farmhouse. The proposed development would also be considerably higher than the existing barn.
12. The appellant's Design and Access Statement refers to matching the height of the recently consented other buildings 'which are all less than the listed building with its 2.5 storeys'. However, although not a drawing on which the Council's decision was based, Appendix A of the appellant's comments on the Council's Appeal Statement clearly shows the overall height of the proposed development being significantly higher than the listed building.
13. Due to its form, height and positioning, the proposed dwelling would dominate the listed building in a way that the existing barn does not and result in the loss of important context for the Farmhouse. The proposed development would therefore change the immediate setting of the listed building in a way that would be harmful to its significance and appreciation of that significance. I concur with the main parties that this harm would be less than substantial but nevertheless the proposed development would fail to preserve the setting of the listed building.
14. Paragraph 196 of the Framework confirms that where a development proposal 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, including securing its optimal viable use. The appellant suggests that the removal of the dilapidated barn would be a visual improvement, remove a health and safety hazard and help prevent anti-social behaviour.
15. I acknowledge that the removal of the existing barn would improve the appearance of the site. However, I have concluded below that the proposed development in its place would be harmful to the character and appearance of the area. No evidence has been submitted regarding existing or the likelihood of anti-social behaviour associated with the barn and the appellant does not dispute that there is no record of anti-social behaviour on the site. I therefore give this little weight as a public benefit.
16. Cementitious asbestos is a recognised potential hazard to health and I therefore give the public benefit of its safe removal from the site and disposal some weight. However, I have no evidence that the Council's Environmental Health Officer has raised this as an issue. Planning permission has been granted for the Chilmington Green development and the 6 houses on the Pig and Whistle Field notwithstanding the barn. Therefore, I do not consider that these suggested public benefits outweigh the harm to the significance of the listed building that I have identified would result from the proposed development. Nor do I consider that there is clear and convincing justification for this harm.

17. The Council is concerned that the proposed development would result in the loss of a visually important gap separating the Chilmington Green urban extension site and the Pig and Whistle Farmhouse. I agree that it is desirable to retain a gap between the new development and the historic Farmhouse to protect its setting and to allow the appreciation of its significance. The proposed development would bring new built form and domesticated curtilage closer to the Farmhouse, encroaching into its setting.
18. However, the contribution of the appeal site to a gap between the new Chilmington Green development and the Farmhouse is limited, although not entirely negated, by the current barn on the site. Furthermore, Strategic Diagram 1 – Layout and Land Use of the CGAAP identifies a flood attenuation lake to the north-east of the appeal site which will form part of a landscaped area. I consider that this area will be sufficient to provide the desirable clear gap between the closest new development of the urban extension and the Farmhouse as seen from the A28. I therefore attach limited weight to the loss of the appeal site's contribution to a gap between the two.
19. Nevertheless, for the reasons stated above, I consider that the appeal development would fail to positively respond to the historic Pig and Whistle Farmhouse and its setting. Having regard to the statutory duty under Section 66(1) of the Act, the proposed development would not preserve or enhance the setting of the building. It would also be contrary to key development principle f) of Policy CG1 of the CGAAP that new development should respond positively to the assets of Chilmington Green, including historic buildings, and to the Framework.

Character and appearance

20. The proposed development would be squeezed on the appeal site between the substantial hedgerow to the north-east and the boundary with the Pig and Whistle Farmhouse to the south-west. I consider that this would result in a cramped form of development. I consider that the height and form of the proposed development would have an unsatisfactory visual relationship with the Pig and Whistle Farmhouse.
21. I acknowledge that the appeal site previously accommodated two other barns, but these have been demolished. Even if these still stood, they were modest relative to and set further away from the Pig and Whistle Farmhouse and so related better to the Farmhouse than the proposed development would. I therefore consider that they do not set a precedent for the proposed development.
22. Accordingly, I consider that the proposed development would be harmful to the existing character and appearance of the area. This conclusion is not altered by the expected changes to the character of the area with the development of the 6 houses on the Pig and Whistle Field and the Chilmington Green urban extension. The former has been carefully designed as a farmyard style complex set back from the Pig and Whistle Farmhouse to respect its setting and I have concluded above that there would be a clear gap between the closest new development of the urban extension and the Farmhouse as seen from the A28. The proposed development would therefore be contrary to key development principle a) of Policy CG1 of CGAAP that new development at Chilmington Green should be well designed.

Ecology

23. The application for the 6 dwellings on the Pig and Whistle field was accompanied by an Ecological Summary and Mitigation Plan. The Plan set out mitigation and compensation in response to the potential impacts of the proposed scheme on species and habitats. The permission for this development was subject to a condition (22) requiring the implementation of an ecological design strategy including ecological enhancements as detailed within the Plan.
24. The appellant indicates that this condition covers the appeal site. However, plan E85-3/S04B to which condition 22 refers, has not been provided to me. Nor have Site Layout Drawing EX85-3/S02 and the Proposed Ecology Plan EX85-3/S04, to which reference is made within the Ecological Summary and Mitigation Plan. I do have Proposed Ecology Masterplan EX85-4/S06, which shows ecological enhancement measures for the development on the Pig and Whistle Field, but I cannot be sure that these measures are as shown on plan E85-3/S04B.
25. The appellant commissioned Kent Wildlife Trust to undertake a bat scoping report of the barn which found no bat droppings nor hibernating bats but recommended that the proposed dwelling (if permitted) provide enhancement opportunities for bats. However, otherwise, it is not clear to me from the evidence provided to what extent the appeal site has been surveyed nor what contribution the site in its current condition makes to biodiversity other than to the local bat population.
26. Any species that are present on the site or use it for foraging could benefit from the mitigation and compensation measures required for the permitted development on the Pig and Whistle Field. However, these have been developed as a specific response to that proposed development, which did not include the appeal proposal. Other than for bats I have no specific detailed surveys of the appeal site nor, if necessary, any detailed bespoke mitigation or compensation measures for the appeal scheme.
27. Therefore, I cannot be confident that the appeal development would not lead to unacceptable harm to protected species, including great crested newts, reptiles and dormice, or habitats. Accordingly, I cannot be sure that the appeal scheme would conform with key development principle f) of Policy CG1 of the CGAAP that new development should respond positively to the assets of Chilmington Green, including ecologically sensitive areas. Nor can I be sure that the proposed development would accord with Policy CG21 of the CGAAP, which seeks to protect the ecology of Chilmington Green.
28. The Council's recommended conditions should I be minded to allow this appeal include a requirement for the submission of detailed mitigation strategies for great crested newts and dormice. The appellant has confirmed willingness to submit a detailed ecological mitigation strategy which would include these requirements. However, I consider that a detailed survey and mitigation strategy is necessary to demonstrate that the development could take place without unacceptable harm to protected species or habitats before permission could safely be granted. Policy CG21 of the CGAAP requires an ecological enhancement and mitigation strategy to be agreed with the Council prior to the granting of planning permission. A condition would not provide the necessary comfort that the appeal scheme would comply with the CGAAP.

Other matters

29. Under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 the conversion of agricultural buildings to dwelling/houses is permitted development, subject to a number of exclusions and conditions. The Court of Appeal¹ as clarified that there is no requirement for an application to be made in order for permitted development rights under Class Q to be considered a fallback position. I consider the conversion of the barn to a dwelling under this Class is a greater than theoretical possibility and therefore is a potential fallback position.
30. However, I find the evidence provided that Class Q permitted development rights could be invoked inconclusive. In particular, that the past and current uses of the barn are such that its conversion under Class Q would not fall foul of Q.1 (a) and that it is structurally strong enough to take the loading which comes from the external works to provide for residential use.
31. Even if the barn could be converted to a dwelling under Class Q, it would be confined to the current dimensions of the barn, ie it would be lower, of a smaller footprint and with greater separation to the Pig and Whistle Farmhouse than the proposed development. I consider it would therefore have a better visual relationship with the Pig and Whistle Farmhouse and be less harmful to its setting. I therefore attach little weight to this fallback position, if it exists, as justification for the proposed dwelling.

Conclusions

32. I find that the proposed development would cause harm to the significance of the Grade II listed Pig and Whistle Farmhouse and its setting. This is a matter which must be given considerable importance and weight against the proposal in my decision. The harm would be less than substantial, but it would not be outweighed by any public benefits. I also consider that the proposed development would have an unsatisfactory visual relationship with the Pig and Whistle Farmhouse, and I cannot be sure that it would not lead to unacceptable harm to protected species or habitats. I have had regard to the fallback position but have concluded that this does not justify the proposed development.
33. Therefore, for the reasons given and having had regard to all other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR

¹ *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314