



Appeal Decision

Site visit made on 13 August 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/N0410/W/19/3228979

Cut Heath House, Parsonage Lane, Farnham Common SL2 3PA

- 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 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 Mr & Mrs Richard Pomeremke against South Bucks District Council.
 - The application Ref PL/19/0254/VRC is dated 21 January 2019.
 - The application sought planning permission for redevelopment of site to provide 8 detached dwellings with integral garages without complying with a condition attached to planning permission Ref 17/01853/FUL.
 - The condition in dispute is No 16 which states that: "The development to which this planning permission relates shall be undertaken solely in accordance with the following drawings:
Drawing No.(s): CH8-01/A received on 6 October 2017, LOCATION PLAN REV B received on 6 October 2017, CH8-03 received on 6 October 2017, CH8-02 received on 6 October 2017, CH8-05 received on 6 October 2017, CH8-06 received on 6 October 2017, CH8-10 received on 6 October 2017, CH8-13 received on 6 October 2017, CH8-04 received on 6 October 2017, CH8-07 received on 6 October 2017, CH8-09 received on 6 October 2017, CH8-12 received on 6 October 2017, CH8-11 received on 6 October 2017, CH8-08 received on 6 October 2017,
and in accordance with any other conditions imposed by this planning permission."
 - The reason given for the condition is: "To ensure that the development is carried out in accordance with the details considered by the Local Planning Authority."
-

Decision

1. The appeal is allowed and the planning permission Ref: 17/91853/FUL for redevelopment of site to provide 8 detached dwellings with integral garages at Cut Heath House, Parsonage Lane, Farnham Common SL2 3PA on 14 January 2019 by South Bucks District Council, is varied by deleting condition 16 and substituting for it the following condition:
 - 1) The development to which this planning permission relates shall be undertaken solely in accordance with the following drawings:
Drawing No.(s): CH8-01/A received on 6 October 2017, LOCATION PLAN REV B received on 6 October 2017, CH8-03 received on 6 October 2017, CH8-02 received on 6 October 2017, CH8-05 received on 6 October 2017, CH8-06 received on 6 October 2017, CH8-10 received on 6 October 2017, CH8-13 received on 6 October 2017, CH8-04/A received on 24 January 2019, CH8-07 received on 6 October 2017, CH8-09 received on 6 October 2017, CH8-12 received on 6 October 2017, CH8-11 received on 6 October 2017, CH8-08 received on 6 October 2017,

and in accordance with any other conditions imposed by this planning permission.

Application for costs

2. An application for costs was made by South Bucks District Council against Mr & Mrs Richard Pomeremke. This application is the subject of a separate Decision.

Background and Main Issue

3. On 14 January 2019 planning permission was granted for the redevelopment of the site at Cut Heath House, to provide 8 detached dwellings with integral garages. That planning permission was subject to a Section 106 agreement which required three of the eight proposed housing units were to be for affordable housing.
4. The appellants seek to vary a condition in relation to the plans with which the permitted development is to accord and further consider that the provision of three affordable housing units would result in the development being financially unviable.
5. Consequently, the main issues are:
 - The effect of the proposal on the character and appearance of the area; and,
 - Whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Character and Appearance

6. The application sought to varying a condition regarding the plans to which the proposed development must accord. The appellant is seeking an amendment to the design and appearance of the proposed dwellings at plot 2 and plot 3, by introducing pitched roofs to the dormer windows on the front and rear elevations of the proposed dwellings.
7. In this regard, the Council's Officer Report confirms that the principle of the requested amendments to the relevant roofs of dormer windows is acceptable and that the resulting change in appearance of these two proposed dwellings would not result in harm to the character and appearance of the surrounding area.
8. Consequently, from the evidence and submissions before me, I have no reason to disagree with the Council with regard to the amendment to be made to the relevant dwellings, and accordingly the condition should be varied to provide reference to the submitted revised plan document.

Affordable Housing

9. Policy CP3 of the South Bucks Core Strategy DPD (2011) (the Core Strategy) details the Council's affordable housing requirements. It provides that schemes of 5 or more units must provide 40% of the proposed units as affordable housing, with such provision being provided on site in the first instance. The policy goes on to provide that if this cannot be achieved, then it would be for the applicant to demonstrate and justify this by providing a viability

assessment setting out what they consider to be a more appropriate amount and why an off-site provision is more appropriate.

10. The South Bucks District Council Affordable Housing Supplementary Planning Document (2013) (the AHSPD) provides encouragement to applicants to obtain independent advice on the financial viability of proposed developments from the District Valuer Service or an alternative independent assessor of financial viability as specified by the Council. The AHSPD also sets out that the independent advice will not be commissioned by the Council until it has received the fee in relation to that service from the applicant.
11. The present application was accompanied by a viability assessment, produced by Turner Morum LLP, which maintained that it would be unviable to provide any form of on-site affordable housing or any form of financial contribution towards off site provision. The evidence before me indicates that the appellants did not provide the fee in relation to the independent assessor of financial viability.
12. However, during the assessment of the planning application, the Council instructed a separate viability consultant, Avison Young, to provide an independent viability appraisal. This appraisal concluded that, in line with the findings of the report produced by Turner Morum LLP, the scheme would not be able to provide on-site provision of affordable housing. Notwithstanding this, Avison Young did conclude that the scheme was viable and could provide a financial contribution towards off-site provision in the amount of £370,944.
13. The appellants challenged the findings of the assessment carried out by the Council's independent assessor and, subsequently, a revised report from Avison Young concluded that the scheme could afford an off-site contribution in the amount of £115,000.
14. That finding is now further challenged by the appellants who maintain that the revised figure is inaccurate based upon, amongst other matters, a key difference in the submissions regarding build costs. In this regard, the appellants have provided a rebuttal to the revised findings of the Council's independent assessor which concludes that the independent assessor applied the same build costs in the amount of £222psf, for the four permitted dwellings as for the eight house scheme which is the subject of the present application.
15. The evidence before me maintains that the basis of the figure provided by the Council's independent assessor is inappropriate by reason of the additional number of rooms, service connections, drainage works, foundations, facework, internal partitions and openings, which would be required in relation to an eight house scheme when compared to a scheme providing four dwellings. There is no evidence before me which disputes the subsequent findings of the report produced by Turner Morum LLP.
16. Furthermore, the evidence indicates that whilst there is dispute in respect of Market Revenues and Purchase Costs between the viability consultants, even in the event that the Council's independent assessors figures were used in these regards, the difference in figures described above relating to build costs, would result in the scheme being unviable and consequently no off-site financial contribution could be applied.

17. I acknowledge the Council's view that affordable housing is needed in the District and that schemes should be required to deliver affordable housing provision. However, there is no evidence before me that the proposal would result in harm to the need to create a mixed and balanced community and Policy CP3 of the Core Strategy does permit a consideration of the economics of developing a site through the production of a viability assessment. In light of the above, and based on the information put to me, I cannot conclude that the scheme in question would be capable of delivering either on-site affordable housing, or a financial contribution in respect of off-site affordable housing provision without affecting the viability of the development.

Other Matters

18. Concerns have been raised by interested parties with regard to the potential impact on the highway resulting from construction works and that access to the appeal site would be dangerous. In these regards, I have not been provided with any substantive evidence which demonstrates that the proposal would adversely affect the condition of the highway and note that the County Highways Authority raised no objections in relation to highway safety. In the absence of clear evidence to the contrary, I do not consider that the proposal would have a harmful effect in respect of the condition or safety of the highway.
19. Concerns have also been raised by interested parties regarding the effect of the proposal on the character and appearance of the surrounding area, and in relation to the provision of affordable housing. However, these are matters that have been raised under the main issues described above and, accordingly, no further assessment of these concerns is required here.

Conditions

20. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged¹. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant and have reproduced these in the schedule below. In the event that some of these conditions have been discharged, that is a matter which can be addressed by the main parties.
21. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the National Planning Policy Framework and the advice in the Planning Policy Guidance. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord.
22. I find it reasonable to include conditions requiring details of any landscaping, external finish and materials to be used be approved by the Local Planning Authority in the interests preserving the character and appearance of the surrounding area. I have also included a condition requiring that the development accord with the aboricultural method statement which was

¹ Paragraph: 040 Reference ID: 21a-040-20190723

submitted with the original planning application, in the interests of persevering the character and appearance of the area.

23. In the interest of highway safety, I have included conditions which requires that the development is carried out in accordance with the plans with respect to parking arrangements. In addition to the above, and in the interests of protecting the environment, I also find it reasonable and proportionate to include a condition requiring that the proposed development be carried out in accordance with the hydrological assessment and that schemes in respect of biodiversity enhancement and mitigation to reduce the impact on any nearby ancient woodland be approved by the Local Planning Authority.
24. Furthermore, a condition which restricts certain permitted development rights is justified in in the interests of protecting the Metropolitan Green Belt. Finally, in the interests of living conditions with respect to privacy, I have included a condition requiring that obscured glazing be used for windows above first floor level in respect of plot 4 and plot 5.
25. Where necessary, and also in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. The wording of the pre-commencement conditions have been agreed by the appellant.

Conclusion

26. For the reasons given above, the appeal succeeds and planning permission granted subject to the conditions identified.

A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning from the date of this decision notice.
- 2) No development shall take place until a schedule of materials to be used in the elevations of the development hereby permitted have been submitted to and approved by the District Planning Authority in writing. Thereafter the development shall be carried out in accordance with the approved details.
- 3) Prior to the commencement of the development hereby permitted a specification of all finishing materials to be used in any hard surfacing of the application site shall be submitted to and approved by the District Planning Authority in writing. Thereafter the development shall be constructed using the approved materials.
- 4) Prior to the commencement of the development hereby permitted a scheme of landscaping which shall include indications of all existing trees, shrubs and hedgerows on the site and details, including crown spreads, of those to be retained shall be submitted to and approved by the District Planning Authority in writing. None of the trees, shrubs or hedgerows shown for retention shall be removed or felled, lopped or topped within a period of five years from the date of this permission, without the prior written permission of the District Planning Authority.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the development hereby permitted or the substantial completion of the development, whichever is the sooner. Any trees, hedgerows or shrubs forming part of the approved landscaping scheme which within a period of five years from the occupation or substantial completion of the development, whichever is the later, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority gives written consent to any variation.
- 6) Notwithstanding the provisions of Article 3 and Classes A, B & E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking and re-enacting that Order with or without modification) , no enlargement, improvement or other alteration (including the erection of a garage, stable, loosebox or coach-house within the curtilage) of or to any dwellinghouse the subject of this permission, shall be carried out nor shall any building or enclosure required for a purpose incidental to the enjoyment of any said dwellinghouse as such be constructed or placed on any part of the land covered by this permission.
- 7) Prior to the occupation of the development hereby permitted, space shall be laid out within the site for the parking, loading and manoeuvring of vehicles in

accordance with the approved plans and that area shall not thereafter be used for any other purpose.

- 8) No other part of the development shall begin until visibility splays have been provided on both sides of the access between a point 2.4 metres along the centre line of the access measured from the edge of the carriageway and a point 37m metres along the edge of the carriageway to the left and a point 32m to the right measured from the intersection of the centre line of the access. The area contained within the splays shall be kept free of any obstruction exceeding 0.6 metres in height above the nearside channel level of the carriageway.
- 9) The development shall be implemented in accordance with the arboricultural method statement submitted and approved as part of the planning application and under the supervision of a retained arboricultural specialist in order to ensure that the phasing of the development accords with the stages detailed in the method statement and that the correct materials and techniques are employed.
- 10) The first floor windows and second floor roof lights in the south west elevations of the dwellings on plots 4 and 5 hereby permitted shall be fitted and permanently maintained with obscure glass.
- 11) No further windows shall be inserted at or above first floor level in the southwest elevations of the dwellings on plots 4 and 5, hereby permitted.
- 12) The development hereby permitted shall be implemented in accordance with the specified Recommendations stated within the Hydrological Assessment, produced by Cole Easdon Consultants, which was submitted as part of the application for planning permission.
- 13) Prior to any works commencing on site, an ecological/biodiversity enhancement scheme shall be submitted and approved in writing by the District Planning Authority. The development shall be carried out and maintained in accordance with the approved scheme and details.
- 14) Prior to any works commencing, a scheme of mitigation to reduce the developments impact on the Ancient Woodland, shall be submitted and approved in writing by the District Planning Authority. The scheme shall include the following:
 - Provide appropriate tree protection to protect all trees in the ancient woodland;
 - Provide as much buffer as possible between hard surfaces and trees in the adjacent woodland;
 - Use permeable paving on all driveway and patio surfaces to ensure all Ancient Woodland trees retain access to the same quality and quantity of rain water;
 - Provide landscaping using only native species to avoid non-natives escaping into the neighbouring Parson's Wood (Ancient Woodland) and becoming weeds;

- Provide information packages for the new residents with information on Ancient Woodlands and highlight the impacts that fly tipping of garden waste into the neighbouring Ancient Woodland can have (causing weed infestations, adding unwanted nutrients, smothering ground level vegetation etc.);
 - Monitor the health of the Ancient Woodland within 15m of the development during construction and for the first 5 years of occupancy to ensure any impacts are identified and rectified;
 - The development shall be carried out and maintained in accordance with the approved details.
- 15) Prior to the first occupation of the development hereby permitted, details of a bin drop off area shall be submitted to and approved in writing by the District Planning Authority. The development shall be carried out in accordance with the approved details.
- 16) The development to which this planning permission relates shall be undertaken solely in accordance with the following drawings:

LOCATION PLAN REV B received on 6 October 2017

CH8-01/A received on 6 October 2017

CH8-02 received on 6 October 2017

CH8-03 received on 6 October 2017

CH8-04A received on 24 January 2019

CH8-05 received on 6 October 2017

CH8-06 received on 6 October 2017

CH8-07 received on 6 October 2017

CH8-08 received on 6 October 2017

CH8-09 received on 6 October 2017

CH8-10 received on 6 October 2017

CH8-11 received on 6 October 2017

CH8-12 received on 6 October 2017

CH8-13 received on 6 October 2017

and in accordance with any other conditions imposed by this planning permission.