



Appeal Decision

Site visit made on 31 July 2019

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2019

Appeal Ref: APP/L2250/W/19/3226648

The Pump House, Marshlands, Dymchurch, Romney Marsh, Kent TN29 0PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Steven Adlington against the decision of Folkestone & Hythe District Council.
 - The application Ref Y18/1406/FH, dated 30 October 2018, was refused by notice dated 27 February 2019.
 - The development proposed is described as proposed change of use from Use Class B1 to C3 dwelling house, extension of existing building and associated development.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Use Class B1 to C3 dwelling house, extension of existing building and associated development at The Pump House, Marshlands, Dymchurch, Romney Marsh, Kent TN29 0PZ in accordance with the terms of the application, Ref Y18/1406/FH, dated 30 October 2018 and the plans submitted with it, subject to the conditions set out in the schedule attached to this decision.

Preliminary matters

2. The Council has stated that the Folkestone & Hythe Places and Policies Local Plan Submission Draft 2018 (Draft LP), is now at an advanced stage in its preparation. As it has not yet been adopted and may be subject to change, I only afford its policies limited weight.
3. In their appeal submission the appellant has included a noise assessment. The Council has requested that this should not be taken into account in the determination of this appeal because it was not submitted with the planning application. I note that no concerns relating to noise were raised in the Council's written response to the applicant's pre-application submission and that the noise assessment has been submitted to address the Council's concerns raised during their consideration of the planning application. As the Council has had the opportunity to consider its content and seek the views of their Environmental Health Officer, to take this evidence into account in the consideration of this appeal is appropriate and would not result in prejudice to any party.

Main Issues

4. The first main issue is whether the appeal site is located in a suitable location for housing, with adequate access to services and its impact on the character and appearance of the surrounding countryside. The second main issue is whether the proposed dwelling would provide satisfactory living conditions for its occupiers, with particular regard to noise.

Reasons

Location

5. The Appeal site is located within the open countryside a short distance from the built up area of Dymchurch and within the Romney Marsh Local Landscape Area (LLA). The site is close to the Romney, Hythe and Dymchurch railway tracks which provide access between the coastal settlements. Other than this and the narrow access drive running between the appeal site and the built up area of Dymchurch, the site is surrounded by flat, open pastureland.
6. The appeal site comprises a tall single storey brick built commercial building with a flat roof and a number of windows and other openings. Whilst utilitarian in appearance, it reflects its origins as a water board pump house and is an integral part of the local landscape. Whilst the building is both solid and clearly sound, it has not been well maintained, some of the openings are in poor condition and the window openings have been blocked up for security reasons. This has detracted from the appearance of the building. The yard area around the building is neglected, includes areas of disused building materials and is partly overgrown with brambles and weeds. There is a mature tree screen around part of the site and outside the trees screen is a tall fence. The front of the site is a tall chain-link security fence. As a result of these factors the appeal building and the appeal site together have a degrading impact on the character, appearance and quality of the surrounding open countryside.
7. Policies DSD, SS1 and SS3 of the Shepway Core Strategy Local Plan 2013 (CS) and Policies SD1 and CO1 of the Shepway District Local Plan Review 2006 (LP) set out the spatial strategy for the District and support sustainable development. They seek to concentrate new development in the larger settlements while allowing some development within and around the smaller rural settlements. This helps to safeguard the countryside from unnecessary development and minimises the need for travel. These policies acknowledge that some development will take place in the countryside and Policy HO1 of the Local Plan and Policy CSD3 of the CS all allow for the conversion of rural buildings to dwellings, subject to various criterion. Where the criteria in the policies differ from each other I give greater weight to those in the CS as they are more recent.
8. The National Planning Policy Framework 2019 (the Framework) similarly advocates a plan-led approach and states that planning decisions should play an active role in guiding development towards sustainable solutions. Paragraph 79 of the Framework allows certain forms of isolated buildings in the countryside, including the conversion of redundant rural buildings, where the proposal would enhance its surroundings. In addition, paragraph 117 of the Framework promotes effective use of land in meeting the need for homes and of making as much use as possible for previously developed land.

9. The appeal site sits within the open countryside and whilst it is not remote, I consider that it is isolated in relation to other buildings and the built-up area of Dymchurch. Notwithstanding this, the site is already developed and comprises previously developed land. Its private drive leads directly to the built-up area of Dymchurch where most of the roads are flat and have both pavements and street lights. There are a good range of community services and facilities in Dymchurch that are within walking and/or cycling distance of the appeal site. This includes the coastal railway station and local bus stops.
10. As a consequence, whilst the occupiers of the proposed dwelling would likely be reliant on private transport for some activities, a good range of facilities and services would be located within walking, cycling or a short vehicle travelling distance from the appeal site. As the proposal would result in just one additional dwelling, any increase in car travel would be modest and could well be less than that generated by the former commercial uses of the appeal premises.
11. With the proposal the building would be restored and although a first floor would be provided over the front half of the building, the building already has a split level roof and the increase in height proposed would be less than 1.7 metres. The positions of the existing openings would be retained and the proposed first floor windows would respect the simple form and uniform lines of the host building. For these reasons, subject to the use of matching and complementary external materials, which can be secured through the imposition of a condition, the proposed conversion would respect the form and appearance of the host building.
12. The existing trees just within the boundary of the site, some of which are the subject of a Tree Preservation Order, would be retained and the treatment of the boundary around the site is something that could also be controlled through the imposition of a condition.
13. As a result of these factors the proposal would improve the overall character, appearance and condition of the appeal building and its grounds, which would enhance its surroundings. Not only would the proposed scheme enhance its surroundings in views from the surrounding open countryside, it would enhance the outlook for passengers using the adjacent coastal train service. I also agree with the Council's view set out in its officer report that the proposal would not be harmful to its rural setting and would preserve the overall landscape character of the LLA. As such the proposal would comply with Policy NE3 of the Draft LP, which seeks to preserve the landscape character within the LLA.
14. I conclude on the first main issue that, having regard to the nature of the proposal, the appeal site is located in a suitable location, with adequate access to services. The proposal would enhance the setting of the building and would preserve the landscape character of the LLA. Accordingly, the proposal would comply with Policies DSD, SS1, SS3 and CSD3 of the CS, Policies SD1, CO1 and HO1 of the LP and Policy NE3 of the Draft LP. It would similarly comply with paragraphs 79 and 117 of the Framework.

Living conditions

15. To help address the Council's concerns regarding noise the appellant has submitted an acoustic assessment. It includes a continuous 24 hour period of

noise monitoring close to the pump house and the railway line. The report concludes that subject to a glazing specification to ensure that internal noise levels do not exceed those set out in Section 2.4 of the report and various ventilation measures, there are no further reasons on noise grounds why planning permission should not be granted.

16. The Council's Environmental Health Officer has accepted the findings of the appellants acoustic assessment and has suggested the imposition of appropriate condition(s) to secure the recommendations of the assessment. Having listened to a train passing the appeal site during my appeal site visit, I agree that the suggested conditions would ensure that the noise generated by passing trains would be highly unlikely to have a materially adverse impact on the living conditions of the proposed dwelling.
17. I conclude on the second main issue that the proposed dwelling would provide satisfactory living conditions for its occupiers with regard to noise. Accordingly, it would comply with Policy SD1 of the Local Plan, Policy HB1 of the Draft LP and the Framework, which amongst other things seek to provide a good standard of living conditions and to ensure that development does not have an adverse impact on the living conditions of existing and proposed residents.

Other matters

18. It is noted that the appeal site falls within Flood zone 2 and 3 on the Environment Agency's Flood Risk Map and is shown to be at low/moderate risk of flooding in 2115 in the Council's Strategic Flood Risk Assessment. To address this the Environment Agency has recommended the imposition of conditions which prevent the provision of any sleeping accommodation at ground floor level. Also, that the ground floor finished floor level should be no lower than 2.82m AOD and the first floor finished level should be no lower than 6.1m AOD. Further, various flood risk mitigation measures are set out in the appellants Flood Risk Assessment. I agree that such measures are necessary to reduce the risk of flooding to the development and future occupants and that these measures can all be secured through the imposition of appropriate conditions. As stated in paragraph 164 and footnote 51 of the Framework, as the proposal involves the change of use of an existing building, there is no requirement to undertake sequential and exception tests.
19. In view of the findings of the appellants Preliminary Ecological Appraisal and Great Crested Newt Survey, together with the overgrown nature of some of the appeal site I agree with the Council that a construction management plan, which demonstrates how terrestrial Great Crested Newts habitat would be cleared (or retained) to safeguard the species during development works is necessary. Similarly, as advised in the appellants bat survey report, a climbing inspection of the Poplar trees should be undertaken prior to the commencement of the development and if any bats or evidence of bats is found, no works shall take place until appropriate mitigation is put in place. Both of these matters can be dealt with by conditions.
20. In addition, a soft landscaping condition is required to ensure the retention of existing and planting of new shrubs and trees to ensure the development respects the character and appearance of the surrounding countryside. I have considered whether it would be appropriate to impose a condition which requires enhancement for biodiversity. However, whilst paragraph 175 of the Framework encourages enhancement for biodiversity, to impose such a

condition would fail the test of need as set out in the National Planning Practice Guidance. However, the appellant could use plant species recommended in their Preliminary Ecological Appraisal in their soft landscaping scheme should they choose to do so.

21. Finally, in addition to the conditions set out above in this decision the Council has suggested the imposition of conditions relating to adherence to the submitted plans, the removal of permitted development rights relating to external extensions and surface water drainage details. I consider that all of these conditions are necessary in the interests of certainty, to ensure the proposal respects the character and appearance of the host dwelling and its countryside setting and to ensure the site is adequately drained and does not increase the risk of flooding in the locality.
22. Whilst the appellant has not objected to a restriction on permitted development rights, they have highlighted that the Planning Practice Guidance advises that restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity.¹
23. In this instance, I have only found the proposal to be acceptable because it respects the form, character and appearance of the host building, which contributes to the history of the locality and the local landscape and enhances its immediate setting. As a consequence, it complies with the relevant development plan policies and paragraph 79 of the Framework. Were the building to be extended the situation could be very different and the resultant building could have an unacceptable impact on the character and appearance of the building and its setting and could conflict with the development plan and the environmental objective of sustainable development. For these reasons I find that the restriction on permitted development rights relating to external extensions is both necessary and amounts to the exceptional circumstances referred to in the PPG.

Conclusion

24. Having regard to the conclusion on the main issue and having regard to all other matters the appeal is allowed.

Elizabeth Lawrence

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 200 Rev 2, 201 Rev 01 and 204 Rev 1.
- 3) Prior to the commencement of the development hereby permitted details of the materials to be used in the construction of the external surfaces of the

¹ Planning Practice Guidance Paragraph 017: Reference ID:21a-017-20190723

development hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 4) a) Prior to the commencement of the development hereby permitted a desk top study shall be undertaken and submitted to and approved in writing by the local planning authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.
- b) If a desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by a competent person and a written report of the findings shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include:
- A survey of the extent, scale and nature of contamination,
 - An assessment of the potential risks to:
 - i) human health,
 - ii) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - iii) adjoining land,
 - iv) ground waters and surface waters,
 - v) ecological systems, and
 - vi) archaeological sites and ancient monuments.
 - An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this condition shall be conducted in accordance with the DEFRA and Environment Agency document 'Model Procedures for the Management of Land Contamination' (Contamination Report 11).

c) If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the local planning authority. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.

d) Prior to commencement of the development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and

approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

- e) In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the local planning authority.
- 5) The sleeping accommodation within the dwelling hereby permitted shall only be located on the first floor and at no time shall any sleeping accommodation be located on the ground floor of the dwelling hereby permitted.
 - 6) The ground floor finished floor level shall be set no lower than 2.82m AOD and the first floor finished floor level shall be set no lower than 6.5m AOD.
 - 7) The flood risk mitigation measures set out in section 14 of the Flood Risk Assessment prepared by STM Environmental and dated 7 September 2018 shall be fully implemented throughout the ground floor of the dwelling hereby permitted prior to its first occupation.
 - 8) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. Details of proposed soft landscape works shall include planting plans; schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.
 - 9) 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 buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 10) Prior to the first occupation of the dwelling hereby approved details of all boundary treatments shall be submitted to and approved in writing by the local planning authority and shall have been fully implemented in accordance with the approved details.
 - 11) No development shall take place (including ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP (Biodiversity)) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
 - a) Risk assessment of potentially damaging construction activities;
 - b) Identification of 'biodiversity protection zones';

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce the impacts during construction (may be provided as a set of method statements);
 - d) The location and timing of sensitive works to avoid harm to biodiversity features;
 - e) The times during construction when specialist ecologists need to be present on site to oversee works;
 - f) Responsible persons and lines of communication;
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - h) Use of protective fences, exclusion barriers and warning signs.
 - i) The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period in accordance with the approved details.
- 12) Immediately prior to works to the Poplar trees on-site, the trees will be subject to climbing inspections for bat roosts. If any bats, or evidence of bats is found, no works will commence until professional advice has been sought and a mitigation plan put in place.
- 13) The dwelling hereby permitted shall not be first occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SUDS), having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall include:
- a) Information about the design storm period and intensity;
 - b) The method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - c) Include a timetable for its implementation, including details of the responsibilities of each party for the implementation of the SUDS scheme; and
 - d) Provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 14) Notwithstanding the provisions 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 extensions shall be added to the dwelling hereby permitted.