
Appeal Decisions

Site visit made on 27 August 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of decisions: 25 September 2019

Appeal A Ref: APP/R3650/C/18/3214532

Land at Alfold Farm, Loxwood Road, Alfold, Cranleigh GU6 8HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Ryan Crumley against an enforcement notice issued by Waverley Borough Council.
 - The notice was issued on 20 September 2018 under refs. EN/2018/07 & C/2017/00094.
 - The breach of planning control as alleged in the notice is *"Without planning permission, the erection of a building for equestrian purposes in the approximate position marked 'A' on the attached plan."*
 - The requirements of the notice are set out as follows:
*"1 Remove the building marked in the approximate position 'A' on the attached plan.
(ii) Remove from the land all materials resulting from compliance with the above step."*
 - The period for compliance with these requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Appeal B Ref: APP/R3650/W/18/3212907

Land at Alfold Farm Bungalow, Loxwood Road, Alfold, Cranleigh GU6 8HP

- 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 Ryan Crumley (Dollar Enterprise Ltd) against the decision of Waverley Borough Council.
 - The application ref. WA/2018/0763, dated 16 April 2018, was refused by notice dated 14 September 2018.
 - The development proposed is *"Erection of terrace of 5 new build dwellings following demolition of existing dwelling; revised application (further to application WA/2017/2286) in the alternative to extant permission granted under WA/2017/0758 for Erection of an extension to existing dwelling to provide 2 additional dwellings"*.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by changing the text *"(ii)"* in paragraph 5 to the number *"2"*. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Preliminary matter and application for costs

3. In the decision above on Appeal A, I have corrected the numbering of the requirements (*1 and (ii)*) in paragraph 5 of the enforcement notice in the interests of precision and consistency. Such a correction would simply aid interpretation and not result in any injustice to the parties.
4. For Appeal B, an application for costs was made by Mr Ryan Crumley (Dollar Enterprise Ltd) against the Council. This application is the subject of a separate decision.

Appeal A, the appeal on ground (f)

5. This ground allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.
6. The appellant's enforcement appeal statement essentially sets out a series of submissions as to why planning permission ought to be granted for the equestrian building alleged in the notice. However, for the reasons given in the heading above, I am afraid that ground (a) and the deemed planning application have lapsed. Ground (f) is not a ground that can be used on its own to argue that the development in question is acceptable and should benefit from planning permission. Thus, the planning merits of the case and the matter of whether planning permission should be granted will not be considered in this appeal decision.
7. The manner in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4) (a) of the Act. It is reasonable and not excessive to require that the unauthorised operational development be removed. This would remedy the breach and nothing more. If the appellant considers the requirements of the notice to be excessive, then he ought to propose lesser steps which would still achieve the purpose of remedying the breach of planning control.
8. The appellant has not put forward any such lesser steps. There is no lawful development certificate or express planning permission in place for the erection of any equestrian building at the appeal site. There is no fully worked out alternative scheme submitted for consideration. Upholding the notice would not prevent the appellant from entering into discussions with the Council about other ways forward. Appeal A fails on ground (f).

Appeal A, the appeal on ground (g)

9. This ground of appeal is that the time given for compliance with the notice falls short of what should reasonably be allowed. The notice gives 6 months. The appellant said "*In the interests of animal welfare and business continuity*

together with the need to find alternative stabling together with seeking any necessary alternative permissions a 9-12 month compliance period would be more proportionate." The Council, on the other hand, does not believe that the compliance period specified within the notice is too short.

10. Fundamentally, I consider that it is not a question of whether equivalent stabling can be replicated within the 6-month period but rather whether there is anywhere else that could be used or rented to move the horses to. This may serve as an interim measure pending the appellant's search for comparable premises or pursuit of other proposals which might require planning permission. The appellant offers no information about what search he has conducted for alternative existing equestrian buildings. In any event, a period of 6 months would ordinarily offer more than sufficient time to apply for planning permission for an alternative scheme. Any such planning applications would be determined by the Council in the first instance.
11. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm that arises from it, as identified in the reasons for issuing the notice. In line with the advice at paragraph 58 of the Government's National Planning Policy Framework (Framework), effective enforcement is important to maintain public confidence in the planning system. The Council has the discretion to extend the compliance period, should any unforeseen difficulties arise, using its powers under section 173A (1) (b) of the 1990 Act as amended.
12. Weighing up all the considerations, I consider that a compliance period of 6 months would remedy the breach in a reasonable timescale and would give the appellant a reasonable opportunity to seek alternative stabling in the interests of animal welfare and business continuity. This would strike the appropriate balance between the competing public and private interests and not place a disproportionate burden upon the appellant. The compliance period given in the notice is reasonable. Appeal A fails on ground (g).

Appeal B

The appeal site, background and development plan policy

13. The appeal site includes a bungalow, its sizeable garden areas and a strip of land fenced off from those garden areas. The bungalow is reached via a shared access lane which runs eastwards from Loxwood Road and also serves as a public bridleway. It is separated from the shared access lane by the residential developments at The Granary and Black Barn and from Loxwood Road predominantly by the Jubilee Pond and associated amenity land. The site lies within a rural location between the settlement boundaries of Alfold and Alfold Crossways. Situated closer to the former, the main body of the appeal site lies adjacent to the boundary of the Alfold Conservation Area (ACC).
14. I have noted the planning history of the appeal site. The most relevant case is mentioned in the description of the proposed development in the heading above. Full planning permission was granted on 7 September 2017 under ref.

WA/2017/0758 for the erection of an extension to the existing bungalow to provide 2 additional dwellings. This permission remains extant.

15. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan includes the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (LP18) and the retained policies of the Waverley Borough Council Local Plan 2002 (LP02). For the avoidance of doubt, there is no credible evidence before me to suggest that the policies which are most important for determining the appeal are out of date for any reason. In particular, I have no clear up-to-date evidence before me to dispute the settled position at the application stage, with reference to that part of the officer's report titled *Housing land supply*, that the Council had a 5-year supply of deliverable housing sites.

Main issues

16. The main issues raised by the reasons for refusal are the effects of the proposed development upon: the character and appearance of the area; the living conditions of the occupiers of 1-4 Black Barn; the character, appearance and setting of the ACC; and local drainage matters and flood risks. A further main issue concerns whether there are other material considerations, including public benefits, in favour of the proposed development.

Reasons

17. The site falls within the Countryside beyond the Green Belt, as designated under LP18. Given the low and rather unassuming nature of Alfold Farm Bungalow and the extent of the land associated with it, the appeal site contributes to the spacious and open rural **character and appearance** that typifies much of the land beyond the settlement boundary of Alfold. There is limited built form hereabouts; just a handful of established dwellings to the north-west, the closest of which is Pond Cottage, plus the residential properties and business units nearer to the site off the shared access lane which came about through the change of use and adaptation of former agricultural and equestrian barns, where the planning circumstances were different. Jubilee Pond and the mature vegetation close to it add to the attractiveness of the rural surroundings.
18. The introduction of a sizeable 2-storey terraced block, containing 5 dwellings, positioned centrally within the site and spreading for over 35 m in width, would fundamentally alter the site's intrinsic character from what exists now. The block would rather dominate and urbanise the site. Its overall scale, bulk and mass would tend to be emphasized by a design which lacks any proper variation in wall plane and utilizes a very large crown roof, more commonly found in town centres or developments with deep floor plans such as apartment blocks, hotels and nursing homes.
19. The block plan is insufficiently detailed but the basic layout has little to commend it as it appears to rely on a wide access route to the east of the proposed building and hard surfaces between the building and the northern boundary, where there is currently a ditch, to provide a linear communal

parking and turning area. These arrangements for vehicles would add to the urbanized feel, as would the inclusion of the fenced-off land as residential gardens, if that is the intention.

20. I saw that the proposed development would be apparent in glimpsed views from Loxwood Road and the shared access lane and I have no doubt that in the months when the trees have less or are devoid of leaves, the views would be more open. The visible presence of new build development of this scale, height and design looming up behind the characterful converted buildings fronting the shared access lane would be unexpected and incongruous and would erode the pleasant rural character beyond the built-up fringe of Alfold.
21. This project would harm the rural character and appearance of the area, contrary to LP18 Policies RE1 and TD1 which collectively seek to recognise and safeguard the intrinsic character and beauty of the Countryside beyond the Green Belt and require new development to be of high quality and inclusive design that responds to the distinctive local character of the area in which it is located. For similar reasons, it would fail to respect LP02 Policies D1 and D4. It would also run counter to LP02 Policy RD2A covering the replacement of dwellings in the countryside, as alluded to by third parties.
22. Turning to **the living conditions of the occupiers of 1-4 Black Barn**, I consider only limited weight can be attached to the Council's Residential Extensions Supplementary Planning Document (SPD) adopted in October 2010. The SPD is aimed at extensions to existing dwellings rather than new buildings, is for guidance purposes only and LP18 Policy TD1 seems to anticipate the adoption of subsequent (new) guidance documents. The minimum spacing dimensions set out in the SPD are noted but I consider that compatibility with context, good neighbourliness and fairness should be matters of overriding importance.
23. The context here is that 1-4 Black Barn enjoy a high degree of privacy and largely unimpeded outlooks at the rear which are no doubt valued by the local residents there, especially as the fronts of the properties are close to the shared access lane. Their rear gardens are exceptionally short and as such it is likely that any changes to the surroundings at the rear would be more keenly felt than in other spatial relationships. Due to concerns about overlooking of Alfold Farm Bungalow, the Council and third parties confirm that a planning condition is attached to 1-4 Black Barn to control any additional rear-facing windows and third parties explain how their rear first floor windows were set above the internal eyeline and made narrow. As the Council says, this is indicative of the potentially harmful relationship between these properties. It is entirely understandable that third parties are perplexed about what is proposed and might well raise questions about fairness.
24. The rear (south elevation) of the new 2-storey block would directly oppose and considerably overlap each end of 1-4 Black Barn and contain 5 x 2-light first floor bedroom windows. No detailed cross sections have been submitted relative to these adjacent dwellings. From what I saw and compared to the existing situation, I am not convinced the separation distance is adequate to avoid the occupiers of 1-4 Black Barn experiencing and perceiving some

overbearing impact from the sizeable and long roof of the new block and some loss of privacy as a result of the first floor windows.

25. On balance, I find that the scheme would detract from the current living conditions of the occupiers of 1-4 Black Barn to an extent material enough to place it into conflict with LP18 Policy TD1 and LP02 Policies D1 and D4, insofar as they all deal with the protection of residential amenities.
26. The significance of the **ACC**, a designated heritage asset, is derived from: Alfold's historic centre close to St Nicholas Church; the individually significant buildings dating from the medieval period to the late 19th century; the attractive views along Loxwood Road (the principal route in the ACC) which, after it turns north in the vicinity of Alfold Chapel, become more open and are enhanced by the Jubilee Pond and the fine range of former agricultural barns at the Alfold Business Centre; and more generally, the distinctly rural landscape setting around the edges of the ACC.
27. LP18 Policy HA1 seeks to safeguard and manage Waverley's rich and diverse heritage which includes all designated heritage assets and their setting in accordance with legislation and national policy. LP02 Policy HE8 also states that development should preserve or enhance the character of conservation areas by requiring a high standard for new development within or adjoining conservation areas.
28. There would be no changes to the shared access lane which passes through the ACC and I could not detect any important public views across the main body of the appeal site into the ACC. However, the Jubilee Pond and the associated amenity area within the ACC are adjacent to the western boundary of the appeal site and when viewing out of the ACC, for example when approaching north along the footway which descends an embankment at an angle on the western side of Loxwood Road, they would be visually linked with the proposed 2-storey block on the appeal site especially in the winter months. Development of the scale, height, design and layout proposed would be disruptive in this view and more generally, would mar the pleasant rural character found on this fringe of the ACC. The character, appearance and significance of the ACC would be harmed through this development within its setting, contrary to relevant development plan policies. Whilst Black Barn may be closer to the boundary of the ACC, it is important to remember the scheme there was for the conversion of and alterations to an existing building.
29. Looking at the Government's Framework, the harm to the significance of the ACC would be plainly less than substantial. Even so, paragraph 193 of the Framework indicates 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 (and the more important the asset, the greater the weight should be), irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 196 states that where a development proposal will 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, where appropriate, securing its optimum viable use. To avoid repetition I shall cover this point under other material considerations.

30. Regarding **local drainage matters and flood risks**, the application form indicated that it was unknown how foul sewage would be disposed of, whilst surface water was to be discharged via a sustainable drainage system. The Council felt that there was inadequate information to demonstrate that a feasible drainage strategy could be implemented and that the proposal could result in an unacceptable increase in surface water run-off which could increase flood risk elsewhere. The Parish Council and some of the interested parties at the application stage verified that Alfold has a history of flooding issues particularly relating to foul sewage. The Council explains that consideration must be given to the localised flooding that occurs within Alfold. Southern Water confirmed that the existing public sewer network needed to be reinforced to avoid an increased risk of flooding.
31. LP18 Policy CC4 explains that development must be located, designed and laid out to ensure that it is safe; that the risk from flooding is minimised whilst not increasing the risk of flooding elsewhere; and that residual risks are safely managed. Sustainable drainage systems are not required, but are encouraged, on small sites like this. LP02 Policy D1 has similar broad aims.
32. This background confirms to me that local drainage matters and flood risks are matters of genuine concern. The nub of the matter is whether such matters can be left to be addressed through planning conditions as suggested in the planning officer's report to the Area Planning Committee and by the appellant. On balance I believe they can.
33. The appeal site itself is located in Flood Zone 1 (a low risk area) and not of a size to justify a site-specific flood risk assessment. I read that the Lead Local Flood Authority has not reviewed the scheme because of the limited number of new dwellings proposed. I have no evidence of poor drainage or flooding incidents at the appeal site itself. There is no mention of any conflict with any strategic flood risk assessment of the area which may have been made. There is an extant scheme which would see a total of 3 dwellings on the appeal site. The body responsible for the public sewer network – Southern Water – ultimately requested planning conditions be imposed, in the event of the planning application receiving planning permission, to phase the occupation of the development with the improvements to the public sewer network and to secure details of the means of foul and surface water disposal. I cannot see a phasing condition on the extant permission. Subject to those 2 necessary conditions, local drainage matters and flood risks would be satisfactorily addressed in accordance with relevant development plan policies.
34. I turn to **other material considerations, including public benefits, in favour of the proposed development**. Presumably because the appellant considers the development would preserve the character and appearance of the ACC, there is no clear evidence about public benefits. The modest boost to the supply of housing would be a public benefit but the weight that can be attached to this is tempered by the housing supply position in the Council's area and by the Parish Council's information on housing supply in Alfold.
35. The Courts have established that a private residential garden which is not in a built-up area will constitute previously developed land. This locality does not

have anything to mark it out as a built-up area. The proposal may therefore be viewed as the redevelopment of previously developed land, but that assessment could not apply to the fenced-off area within the application site. I am also unclear as to how that part of the site would be used. Still, making use of previously developed land and following a path that makes an effective and efficient use of the land attract some weight in favour of the scheme in the planning balance.

36. The extant planning permission referred to in paragraph 14 above is an important material planning consideration. However, this permits an extension to the existing bungalow, only 2 additional dwellings, a single-storey built form, a built footprint far further away from the boundary with the ACC and not fully overlapping Black Barn, variation in the south-facing wall plane and no crown roof and far more modest access and parking facilities appropriately kept close to the front of the site and away from the ditch on the northern (outer) boundary. I judge that this approved scheme is wholly different to what is being proposed now in so many respects and in terms of its impacts upon the locality, neighbours and the ACC.
37. I do not know the full planning circumstances which led to the grant of planning permission (ref. WA/2015/2261) on land west of Sweeters Copse. This land is at Alfold Crossways some distance away to the north. The planning permission was issued some time ago when the development plan background would have been different. It is an established planning principle that each application and appeal should be assessed on their own merits.
38. There would be some economic and social benefits arising from the proposal. However, the scheme performs very poorly when it comes to the environmental dimension of sustainable development. The application received the support of the planning officers who prepared a comprehensive and thorough report. Nonetheless, the Planning Committee was entitled to reach its own decision based on the information in the report, the written representations received and evidently with the benefit of a site visit.
39. I have noted all the comments made by third parties and the Parish Council at the application stage and/or in response to this appeal. A variety of other concerns are raised, the chief ones relating to highway safety and parking. I have no reason to dispute the findings on these matters reached in the officer's report which was informed by the response from the County Highway Authority. These matters do not amount to additional reasons to dismiss this appeal and rest as neutral factors in the planning balance.

Planning balance and conclusion

40. My findings on the first 3 main issues dictate the outcome of this appeal. There is conflict with the development plan and the other material considerations, including public benefits, in favour of the proposed development are not of sufficient weight, either individually or cumulatively, to justify a grant of planning permission. I have considered the conditions suggested across all the papers before me but they would not fully overcome the objections to the scheme I have identified. Accordingly, and taking into

account all the other matters raised in the written representations, I conclude that Appeal B should not succeed.

Andrew Dale

INSPECTOR