
Appeal Decision

Site visit made on 17 September 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2019

Appeal Ref: APP/J1915/W/19/3231889

Land between Bowyers Cottage and St Marys Church, The Causeway, Furneux Pelham, SG9 0LN

- 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 Ms R Williams against the decision of East Hertfordshire District Council.
 - The application Ref 3/18/2269/FUL, dated 6 February 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a new residential dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice refers to 'Grade I Bowyers Cottage' in describing a nearby listed building. Having consulted the Historic England listing description, Bowyers cottage is Grade II listed. I have dealt with the appeal on this basis.
3. The appellant's statement of case was accompanied by an Ecology Report which was not submitted with the planning application. The Council have had an opportunity to comment on it within the statutory timescales for appeals. As a result, my acceptance of the additional report would not disadvantage interested parties. Therefore, I have considered the Ecology Report as part of this appeal and determined it on this basis.

Main Issues

4. The main issues are:
 - Whether the development would preserve or enhance the character or appearance of the Furneux Pelham Conservation Area and whether the setting of nearby listed buildings would be preserved; and,
 - The effect of the development on biodiversity.

Reasons

Character and appearance

5. The appeal site comprises an irregular shaped parcel of land which is partially overgrown and surrounded by several large trees which are the subject of a

Tree Preservation Order (TPO). A public footpath (the footpath) lies to the east, falling in between the appeal site and the Church of St Marys, a Grade II* listed building. Bowyers cottage, a Grade II listed building, fronts the road and lies close to the western boundary of the site. The appeal site lies within Furneux Pelham Conservation Area (CA). There is no dispute between the main parties that the principle of infill development in this village is acceptable.

6. A conservation area appraisal for the CA has not been submitted to me but I have based my assessment of the significance of the CA on my site visit and the evidence before me. Furneux Pelham has a quintessentially rural English village feel, which is defined by a bespoke assortment of traditional properties and several significant listed buildings. Views of properties from the street are softened by the presence of numerous mature trees and planting. There are several areas of green space which intersperse buildings on the street, reinforcing the verdant character of the village. These attributes contribute to the character and appearance of the area and significance of the CA.
7. The Grade II* listed Church of St Marys comprises an impressive 15th Century building which includes a number of historic architectural elements typical of religious buildings of this age. It is set back from The Street behind an open burial area. The grounds of the church are contained by a low-set boundary wall and large, well-established trees, which contribute to the significance of its setting. The Grade II listed 'Bowyers' sits in less open surroundings, being contained by several trees and positioned close to the road. Its significance mainly derives from the prominent appearance of its facade and the traditional materials, fenestration pattern and architectural detailing of the building as a whole.
8. The proposed dwelling would be situated behind several large trees which are the subject of a TPO. A new access driveway would be positioned in between two of the trees. The dwelling would comprise a two-storey building, with additional habitable space in the roof, of vernacular style, with materials which would be in keeping with the locality. Despite the Council's concerns regarding the position of the proposed dwelling to the rear of the appeal site, I observed several examples in the area where parking was located in front of properties, and the layout proposed would be in keeping with the diverse arrangement of individual properties within the CA.
9. Nevertheless, the scale of the proposed dwelling and the use of the land around it for domestic purposes, would be a permanent encroachment into an undeveloped area of green space. Whilst I appreciate that views of the proposal would be reduced due to the extensive foliage along the site frontage, and the additional landscaping proposed, the gap created in order to facilitate the access would increase the prominence of the proposal from the street. Furthermore, there would be obtrusive views of the proposal from the footpath so that the existing verdure of the land adjacent to it would be diminished, to the detriment of the rural village character of the area. The loss of the green gap between existing buildings would be harmful to both the character and appearance of the CA.
10. The dwelling would be positioned so as not to interrupt views of the listed cottage or church, with vegetation and trees providing a substantial foil. The scale, design and appearance of it relative to these assets means that the proposal would not harm the significance of the setting of the listed buildings.

However, this does not detract from the harm I have identified in respect of the character and appearance of the CA.

11. Heritage assets are an irreplaceable resource, and therefore any harm requires clear and convincing justification. In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I must pay special attention to the desirability of preserving or enhancing the character or appearance of the CA, which I have done in reaching my decision.
12. I appreciate that the appellant has carefully designed the appeal scheme, having regard to a recent refusal of planning permission on the appeal site for a slightly larger dwelling¹ (previous planning application). Consequently, the proposal would retain the protected trees and be less conspicuous from the street than the previous planning application. I also appreciate that the proposal would provide an additional residential dwelling in order to contribute to local housing delivery at a time when the appellant alleges the Council are falling short of their delivery targets. There would be additional potential biodiversity benefits through the provision of trees, new habitats, a pond, and bumble bee boxes. However, having considered these as potential public benefits, I am not satisfied that collectively they would be sufficient to outweigh the less than substantial harm I have identified.
13. For the foregoing reasons I conclude that the development would be contrary to Policies HA1, HA4, VILL2 and DES4 of the East Herts District Plan October 2018 (the District Plan) which require, amongst other matters, that development preserves or enhances the character and appearance of an area, including conservation areas, and is in keeping with the village. The development would also conflict with paragraph 196 of the Framework as the public benefits would not outweigh the less than substantial harm.
14. As I do not find harm to the setting of the listed buildings I have referred to, I do not find any conflict with Policy H7 of the District Plan in this case.

Biodiversity

15. An Ecology Report accompanies the appeal which was not available to the Council when they determined the planning application. Despite having the opportunity to do so as part of this appeal, the Council have not commented on the report.
16. According to the submitted Ecology Report, there are no sites of national or local importance within 500m. However, whilst there are no arboricultural objections to the required felling of an existing Ash tree within the appeal site, a limb failure associated with the tree makes it a possible bat roost location. Due to the height of the opening within the tree, no survey work has been undertaken to ascertain the suitability of it to support a bat roost. In the absence of further survey work, given the location of the tree and the roosting opportunity that exists within the gap in the tree, and the presence of potential commuting and foraging areas that surround it, and the confirmed presence of bats in the nearby church grounds, I therefore consider that there would be at least a reasonable likelihood of bats being present on the appeal site.
17. Without more definitive survey work concerning the bat activity within the appeal site, I do not know if a license would be required. I am unable to

¹ East Hertfordshire District Council planning reference - 3/13/0910/FP

conclude with any certainty whether the provision of several bat boxes as proposed by the appellant would be an appropriate form of mitigation without first knowing the extent of any potential adverse effects.

18. In addition, the surveys undertaken to inform the Ecology Report included recordings of Great Crested Newts (GCN's) within 100m of the appeal site where ponds are present. Direct access to the site for GCN's would be affected by the road that lies in between the site and the surveyed pond. Furthermore, the report indicates that the appeal site is sub-optimal for GCN's due to the extensive tree cover which would reduce basking opportunities, and a lack of objects which could be used for shelter.
19. However, the Ecology Report also recommends that a further destructive search of the site should be carried out by a suitably qualified person prior to any works taking place on site. The report notes that a license from Natural England may be required, depending on the findings of the search. Having regard to the recorded presence of GCN's nearby, and the additional survey recommendations of the Ecology Report, I am unable to ascertain that GCN's and/or their terrestrial habitat would not be affected by the development. Consequently, I am not able to rely on the provision of habitats as mitigation/enhancement without having a complete understanding of the impact the development would have on GCN's.
20. As such, and in the absence of suitably robust evidence to the contrary, I conclude that the development would fail to accord with Policy NE3 of the District Plan which requires, amongst other matters, that development enhances biodiversity and creates opportunities for wildlife. It would also conflict with paragraph 170 of the Framework which requires development to minimise impacts on biodiversity.

Other Matters

21. Even if I was to accept the appellant's assertion that the Council are unable to demonstrate a 5 year housing land supply, footnote 6 of paragraph 11 of the Framework effectively disengages the tilted balance where a proposal would result in harm to a heritage asset, as is the case here.
22. Even though the Council's Conservation Officer did not object to the previous planning application, I have had regard to all the evidence before me submitted as part of this appeal and concluded on the main issue relating to the impact on the CA accordingly.
23. A historic planning permission relating to a new dwelling was granted in the 1960s but given the significant change in policy context since that date, and the fact that the planning permission is not extant, it only carries limited weight in the determination of this appeal which does not outweigh the harm I have identified.
24. I have been provided with evidence of several other cases where planning permission has been granted for new dwellings by the Council or on appeal on sites that have some similarities with the one before me. However, each of the cases involved either a replacement dwelling, an extension to an existing dwelling, or was located in a different part of the village. I am not satisfied that the circumstances of these cases are sufficiently similar to the appeal scheme such that it would warrant me reaching a different conclusion on the

main issues. I have determined the appeal case on its own merits, whilst having regard to the evidence submitted.

Conclusion

25. For the reasons given above I conclude that the appeal is dismissed.

Matthew Woodward

INSPECTOR