
Appeal Decision

Site visit made on 22 October 2019

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2019

Appeal Ref: APP/L3815/W/19/3233018

Lumley Mill, Lumley Road, Southbourne, West Sussex, PO10 8AQ.

- 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 Mr and Mrs Lafosse against Chichester District Council.
 - The application Ref.SB/18/02976/FUL, is dated 12 November 2018.
 - The development proposed is the erection of a dwelling and garaging on foundations of existing building (the old mill).
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Decision

1. The appeal is dismissed.

Main Issues

2. Although the appeal is against the non-determination of the planning application, in the light of the Council's representations on the appeal the main issues are:
 - the principle of new development in this location;
 - the effect on the setting of Lumley Mill, a listed building Grade II*;
 - The effect on the habitat of the Chichester and Langstone Harbour Special Protection Area (CLHSPA); and
 - The effect on protected species within the site.

Reasons

Background

3. The appeal site comprises a grassed area which lies in an area of countryside with a few scattered houses to the south of the A27 and to the north of a railway line and the village of Hermitage, which lie on the northern edge of one of the 'fingers' of Chichester Harbour. The site lies alongside a leat to the River Ems which serves Lumley Mill (also referred to as Mill House). The site contains a gravel surfaced raised area, rectangular in shape and enclosed by brick and stone surrounds up to about one metre high. These are said by the appellants to be the remains of the foundations of a malthouse which adjoined the Old Mill. The appellants have included in the Design and Access Statement photographs of these buildings taken about the turn of the century, but I understand that the Old Mill caught fire in 1915 and the buildings were demolished in 1929. It is proposed to erect a large two storey house over the position of the foundations. The 5 bedroom house is

proposed to have elevations in brick and timber boarding under a tiled roof and the overall design of the new house is said to be in the form of a mill building.

4. The appellants' Statement of Case on the appeal mainly relates to the background of dealing with the local planning authority's case officer and the views he is alleged to have expressed in favour of the development proposed. However, although the appeal is against the non-determination of the application the Council has stated that it would have refused the application had it been able to do so. Consequently, I have to deal with the Council's formal position against the proposal rather than the appellants' version of events leading up to the lodging of the appeal. In these circumstances, I will consider the appellants' main case as that set out in the Design and Access and Heritage Statement and 'final comments'.

Principle of development

5. Having regard to the nature of the site and its location away from and outside any defined settlement, I am satisfied that the Chichester Local Plan Policies 2 and 45 apply. These restrict new residential development in the area to specific development which requires a countryside location, or meets an essential rural need as defined in Policies 45-46. The proposal for a new dwelling has not been shown to require a countryside location to meet a specific need and, historical connections aside, the proposal would extend the built form of development beyond the tight-knit group of existing properties.
6. The reasoned justification for Policy 45 in paragraph 19.23 of the Local Plan also makes reference to previously developed sites in a sequential test but it appears to me that the previous building was demolished a long time ago (about 90 years) and the use as a mill and store was given up then. Moreover, the definition of 'previously developed land' as set out in the Glossary to the National Planning Policy Framework (NPPF) indicates that the term does not include land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. In this case the appeal site is largely open and grassed and the physical footings of the base are not a prominent structure in the landscape. On this basis, I find that the present site should not be considered as previously developed land.
7. Overall, on the principle of development I conclude that the proposal conflicts with the relevant policies in the development plan designed to regulate the location of new residential development to ensure a sustainable strategy of growth.

Effect on setting of the Listed Building of Lumley Mill (Mill House)

8. In assessing the effect on the setting of the heritage asset of Lumley Mill I have paid special regard to the desirability of preserving the setting of the building and its features of architectural or historic interest.
9. Under this aspect the appellants refer to Local Plan Policy 47 which generally supports proposals which conserve or enhance the historic environment and heritage assets subject to stated criteria. The appellants stress that the proposal seeks to enhance the setting of Mill House by replacing an old building which was the sole reason why the settlement was established.
10. However, it appears to me from all of the evidence provided that while the Mill House, the Old Mill and malthouse had the historical significance of a functional group, this significance was fundamentally changed some 90 years ago with the

demolition of the Old Mill and malthouse. In the intervening period the setting of Lumley Mill has also changed substantially. To my mind it is significant that at the time that Lumley Mill was listed in 1972, the appeal site appears to have been free from buildings and the space would have been likely to have contributed to the open setting of Lumley Mill and its appreciation, particularly from the public right of way which adjoins the appeal site. Further, old photographs and plans of the area show the malthouse (store) lying alongside the mill pond which extended as far as the old mill itself but there is no evidence of the mill pond now and physically it would appear to have taken up the majority of the garden of the proposed house outside of its raised footprint. Therefore, at best, the proposal only seeks to re-establish a relatively minor part of the collection of the historical components which formed the mill complex some time ago.

11. Moreover, I share the Council's concern that the actual design of the building proposed has a overly domestic form. Although a large building is put forward with architectural features which reflect some of the malthouse, the Council draws attention to the west gable end of the dwelling which has a more domestic form and the north elevation would also have a mainly residential character with domestic fenestration when compared to the old photographs of the structure. These elevations would be prominent when approaching the site from the north-east along the public right of way and would preface the setting of Lumley Mill itself.
12. Overall on this issue I find that while there may be some limited value in re-establishing the historic form of the mill, the proposal would not achieve this in that only a partial element of this historic group is involved and this would be significantly different to the historic setting and function of the mill. Moreover, the loss of the open area would now significantly harm the setting of Lumley Mill itself as would the form of the design of the new building put forward.

The effect on the habitat of the Chichester and Langstone Harbour Special Protection Area (CLHSPA)

13. The Council refers to Policies 50 and 51 in the Local Plan which relate to the 'in combination' effect of recreational disturbance caused by population increase from new residential development on the habitat of protected bird species in the SPA. The appellants say that this issue had not be brought to their attention prior to the submission of the application and if it had they would have produced a mitigation report. Notwithstanding this they do not accept that the proposed single dwelling would result in significant harm to the habitat of the SPA.
14. The Council advises that following the case of *People over Wind*¹ it has undertaken a full Appropriate Assessment of the proposal under the Habitats Directive, but the evidence submitted with the appeal does not appear to me to constitute such an assessment. Therefore, if I was minded to allow the appeal further clarification would be needed on the results of the Assessment and, if appropriate, whether the impacts of the proposed development could be adequately mitigated by some means, such as a financial contribution towards the provision of alternative recreational facilities as the Council suggests. In any event there is no legal mechanism before me at the moment to achieve this.

¹ Case C-323/17 of the European Court of Justice

The effect on protected species on site

15. On this issue, the Council advises that there is a lack of survey evidence on whether any protected species inhabit the site. The appellants say that this issue did not arise in the discussions with the Council before the application was submitted. However, they agree to the imposition of a condition requiring the submission of a Preliminary Ecological Survey and the implementation of the recommendations of the survey.
16. On the basis of the limited information submitted it does not appear to me that there is sufficient evidence to suggest that the survey needs to be undertaken prior to a planning decision and the issue can be resolved by imposing condition 10 recommended by the Council if permission were to be granted.

Planning balance

17. Bringing together my conclusions on the main issues, I have found that the proposed new dwelling would lie in an area of countryside away from any formally defined settlement and the principle of development here would not accord with the strategy for growth set out in the development plan. The new house would also harm the setting of Lumley Mill by intruding in the open area around the property and by the form and design of the house put forward. The proposal would significantly harm and not conserve or enhance the setting of this listed building.
18. Great weight has to be placed on this finding. The guidance in paragraph 194 of the National Planning Policy Framework (NPPF) indicates that any harm to the significance of a heritage asset arising from development within its setting requires clear and convincing justification and substantial harm to a Grade II* building and its setting should be wholly exceptional.
19. On the other main issues I have found that while the effect on protected species on site can be dealt with by a condition, the effect on the wider habitat of the CLHSPA has not been resolved.
20. My conclusions on the first two main issues constitute significant adverse effects but they have to be balanced with the benefits of development. I recognise that the appellants seek to continue to restore the historic form of the Mill and also have long standing connections with the site which they have occupied since 1972.
21. However, these are relatively limited private benefits and it has not been shown that the development is necessary to achieve substantial public benefits that outweigh the identified harm. I conclude that the other considerations do not clearly outweigh the conflict with the development plan and conflict with the guidance in the NPPF over the conservation of the heritage asset. This indicates that the appeal should not be allowed.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR