



Appeal Decision

Site visit made on 30 July 2019

by Christopher Butler BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/L2250/W/19/3228330

Land Adjoining The Old Forge, The Street, Swingfield Street CT15 7HA

- 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 M Farnham against the decision of Folkestone and Hythe District Council.
 - The application Ref Y18/1234/FH, dated 26 September 2018, was refused by notice dated 8 February 2019.
 - The development proposed is the erection of a detached dwelling (self/custom build) together with associated parking (shared access with The Old Forge).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Character and appearance with particular regard to whether the proposal would conserve or enhance the Kent Downs Area of Outstanding Natural Beauty (AONB) and / or the North Downs Special Landscape Area (SLA); and
 - Whether the proposal would be positioned in an accessible and sustainable location.

Preliminary Matter

3. An Examination in Public into the Council's emerging Places and Policies Local Plan (Submissions Draft) (PPLP) commenced in May 2019, but no information or evidence as to the extent of unresolved objections to the PPLP has been provided and therefore I afford the emerging policies in the PPLP limited weight.

Reasons

Character and appearance with particular regard to whether the proposal would conserve or enhance the AONB and / or SLA.

4. The appeal site is located in the open countryside, outside of any defined settlement boundary, as identified within the Shepway Core Strategy Local Plan 2013 (CS) and the saved policies in the adopted Shepway District Local Plan Review 2006 (LP). It is situated on the south-eastern side of The Street and is

formed, in part, by an area of off street parking, with the other part of the site being an area of land laid to grass.

5. The proposed development seeks to utilise the existing site access on to The Street. Beyond this site access, heading north-east, the boundary of the site, as it adjoins the road, is primarily formed by hedgerow. To the other side of the existing site access the boundary is formed by a low brick wall, behind which is a close boarded fence of some 1.8 metres in height. The wider area has a rural feeling and the land to the north-east, east and south that surround the appeal site is open in character and agricultural in nature.
6. I noted the positioning of other properties in the vicinity of the appeal site to the public highway and that the majority of them sit immediately adjacent to the road. I also noted the curve in The Street, adjoining the site access, and the fact that the proposed dwelling would be set back with a large area of hard standing to its frontage.
7. The site lies within the AONB and the SLA. Paragraph 172 of the National Planning Policy Framework (the Framework) states great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection.
8. Policies SS1 and CSD4 of the adopted CS and Policy SD1 of the LP seeks to protect and enhance the AONB's sense of place and character, whilst Policy CO4 of the LP, seeks to protect and enhance the Borough's rural landscapes, including those of the designated AONB. These policies are broadly consistent with the Framework in regard to conserving and enhancing landscape and scenic beauty in AONBs. In terms of design, Policy BE1 of the LP requires a high standard of design.
9. The bend in the road, located adjoining the site access, together with the boundary treatment and landscaping along the edge of the site are noted. However, the proposed development would still be visible and when considering the siting of the development, together with its resultant mass and bulk, it would still be visually prominent in the wider streetscene, especially when looking back at the site from the north-east.
10. This concern is further compounded by the roof design, which takes two different and contrasting forms that would be at odds with each other. Whilst I appreciate the development has been designed to be single storey, the contrasting design of the roofs would further increase the prominence of the development in the wider streetscene, adversely impacting on the open and rural character of the area and the surrounding countryside in general.
11. Overall, I consider that the resultant development would erode and have a detrimental and adverse impact on the character and appearance of the surrounding open countryside and would not conserve or enhance the AONB or the local landscape, including the SLA, within which it is located. As such the development would therefore fail to accord with paragraph 172 of the Framework; Policies SS1 and CSD4 of the adopted CS and Policies SD1 and CO4 of the LP, which seek to protect and enhance the Borough's rural landscapes, including those of the designated AONB. Furthermore, the proposal would fail to comply with policy BE1 of the LP, which seeks to ensure a high standard of design for development.

Locational sustainability

12. Policy SS1 of the CS sets out the spatial strategy for the District and directs new development to existing settlements, focusing such development in the most sustainable towns and villages, as set out in Policy SS3 of the CS. Policy SD1 of the LP seeks to ensure that all development proposals take account of sustainable development.
13. Despite not being located within a defined settlement boundary, as defined by the CS or the LP, the development would be located at the end of a linear form of development along The Street. As such, I do not consider that the site would be physically isolated, although the facilities and services within the immediate area are extremely limited. The nature of the road at this point, and through the residential part of The Street, is such that the speed of vehicles would be likely to be limited. However, I noted that there were no pedestrian footpaths in the vicinity of the site, or within The Street generally, and that streetlighting was limited. Even with the potentially limited speed of vehicles, it is unlikely that pedestrians would see walking as an attractive option when seeking to access services and facilities, particularly in inclement weather or when it is dark. In my view, future residents are likely to use private vehicles to access the closest services and facilities.
14. I am mindful that the Framework advises that all aspects of sustainability should be considered in planning decisions, that local circumstances should be taken into account, and that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. However, the proposal would not promote a choice in alternative forms of transport and the occupiers of the dwelling would be heavily reliant on private motor vehicles, as opposed to more sustainable modes of transport to reach day to day facilities and services. Consequently, the proposal would not accord with the accessibility objectives of local and national planning policy.
15. For these reasons, I conclude that the appeal site would not be located in an accessible location and there would be significant reliance by the occupiers of the dwelling on private motor vehicle journeys. The proposal would therefore fail to fulfil the environmental dimension of sustainable development as set out in the Framework and would not accord with Policies SS1 or SS3 of the CS or Policy SD1 of the LP, which among other objectives seeks to ensure sustainable development patterns.

Planning Balance and Conclusion

16. The appellant's Statement of Case (SoC) refers to personal circumstances. These personal circumstances are outlined in more detail in a letter from the appellant's Doctor, dated 1 May 2018, and in a letter from the Kent Community Health NHS Foundation Trust, typed 6 April 2018. In the light of this evidence, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made by Mr M Farnham he is a person who shares a protected characteristic for the purposes of the PSED.

17. In considering the personal circumstances of the appellant, reference has been made to the fact that he and his wife are currently living in their daughter's home and that they consider, owing to its traditional form and historic internal arrangements, it does not allow him the freedom of movement and any level of independence that he may otherwise be able to achieve with living spaces that could accommodate mobility equipment and allow unencumbered access.
18. Furthermore, the appellant refers to an unprecedented level of community support existing for him and his family in this locality and to a need for suitable accommodation where he and his wife, as his chief carer, can manage his demanding daily routine. Indeed, the appellant has indicated that the proposed dwelling has been designed specifically to meet his needs, only accommodating himself and his wife, and is proposed to be a self / custom-build development. As such a Planning Obligation to this effect has been submitted by the appellant, as part of the appeal.
19. The level of third party correspondence, submitted whilst the Council considered the submission, is noted, as is reference to the village emergency telephone system and the example where the applicant had need of its use. I also note the fact that the appellant considers the development would be appropriately located to enable access to medical facilities in the vicinity.
20. The appellant's desire to remain within Swingfield, for the reasons he has set out in his SoC are understood. However, no substantive evidence has been brought to my attention that demonstrates that suitable alternative accommodation, which would meet the appellant's needs, is not available elsewhere in the vicinity.
21. The appellant's concerns that the existing property he occupies is unsuitable for his and his family's needs are noted, as is the fact that he does not consider it possible to extend or adapt the house, due to its age, layout and form, in a way that would suit his and his family's requirements. However, no substantive evidence has been submitted demonstrating or substantiating these concerns and in the absence of such evidence, I am not persuaded that the existing property could not be adapted to allow unencumbered access and the provision of mobility equipment that would provide the appellant with freedom of movement and the level of independence that he needs. As such I can only attach moderate weight to the health needs / personal circumstances of the appellant and the equality implications do not outweigh my overall conclusion that the appeal should be dismissed.
22. In reaching the above conclusion, I have had regard to the European Convention of Human Rights [ECHR] where Article 8 states that everyone has a right to respect for his home and private life. However, Article 8 is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
23. Dismissing the appeal would not interfere with the appellant's rights under Article 8 in that there is no indication that in dismissing this appeal the appellant or his wife would be rendered homeless or be forced to have separate living arrangements. The appellant currently lives in the property located next to the proposed development site, which is indicated as being in the ownership of his daughter and no evidence has been provided to me to suggest that this arrangement would not continue.

24. In terms of the appellants physical and mental wellbeing, I have not been provided with any evidence that indicates this decision would have a direct and adverse effect on the appellant's physical and mental wellbeing.
25. In conclusion, having regard to the legitimate and well-established planning policy aims to protect the open countryside and the character of rural areas, a refusal of permission would be proportionate and necessary. It would not unacceptably violate the appellant's rights under Article 8 of the ECHR. The protection of the public interest cannot be achieved by means that are less interfering of their rights. As such, his human rights, as recognised by the provisions of Article 8 of the ECHR, would not be materially compromised.
26. In terms of Housing Land Supply (HLS), the Council argues that it has a robust HLS of 8.21 years and the appellant has not disputed this. However, the appellant queries whether the number of self / custom house building plots on identified sites / potential allocations can be delivered, especially as potential / draft allocation sites are unlikely to be brought forward for development until sometime in the future. As such the appellant suggest that paragraph 11 d) of the Framework, 'the tilted balance', is open for consideration.
27. Regardless of the Council's position regarding the allocation and provision of self / custom house building plots, from the evidence before me, it is clear that the Council has a 5 year HLS. As such, the policies which are most important for determining the proposal are those related to new development being located in sustainable locations, whilst also seeking to protect and enhance the AONB and / or the local landscape, including the SLA, within which the development site is located. I do not consider these policies, which are most important for determining the application, to be out-of-date and therefore the proposal falls to be considered against paragraph 11 c) of the Framework.
28. In reaching this conclusion, I have had regard to the appellant's SoC and the appeal decision APP/J2210/W/18/3204617. However, I note that that appeal decision relates to an adjoining Local Planning Authority and having regard to that appeal decision it is clear to me that the circumstances of that case are not the same as the appeal currently before me.
29. In conclusion, I have found that the proposed development would be prominent in appearance, especially when viewed from the adjoining public highway and would significantly erode the open and rural character of the site and area in general. As such the proposed development would have a significantly adverse impact on the surrounding open countryside and would not protect and enhance the AONB or the local landscape, including the SLA, within which it is located. Additionally, I have found that the development would not be located in an accessible location and there would be significant reliance by the occupiers of the dwelling on private motor vehicle journeys failing to fulfil the environmental dimension of sustainable development. As such the development would be contrary to and not accord with the Framework or Policies SS1, SS3 and CSD4 of the CS or Policies SD1, CO4 or BE1 of the LP.
30. For the above reasons, and considering all other matters raised, I conclude that the appeal should be dismissed.

Christopher Butler

INSPECTOR