
Appeal Decision

Site visit made on 23 October 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2019

Appeal Ref: APP/N1730/W/19/3234150

Land at Oakbridge House, Church Lane, Dogmersfield, Hook RG27 8TB

- 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 & Mrs Keith Harrison against the decision of Hart District Council.
 - The application Ref 19/00666/FUL, dated 18 March 2019, was refused by notice dated 20 June 2019.
 - The development proposed is demolition of existing garage/workshop/store building and proposed erection of a dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) Whether the site is suitable for a dwelling, having regard to the policies of the development plan and the character and appearance of the surrounding area;
 - b) Whether suitable drainage could be achieved for the development to avoid an increase in flooding and/or pollution of the Basingstoke Canal; and,
 - c) The impact of the development on the Thames Basin Heaths Special Protection Area (the SPA).

Reasons

Suitability of site for a dwelling

3. The appeal site is part of the large garden of Oakbridge House, which lies about 2 kilometres to the west of Fleet. Another large detached house and garden borders the site to the south, and there is a scatter of housing and other buildings in the general locality. However, the overwhelming majority of land around the appeal site is agricultural or woodland. The appeal site is separated from the nearest settlement, Dogmersfield, by a wide tract of undeveloped land, and it therefore lies in the countryside.
4. Policy RUR2 of the Hart District Local Plan (Replacement) 1996-2006 (the Local Plan) says development in the open countryside, outside the defined settlement boundaries, will not be permitted unless it is specifically provided for by other

policies of the Local Plan. In addition, new development will not be permitted if it has a significant detrimental effect on the character and setting of the countryside. The appeal site is outside of any settlement boundaries, so it is within the open countryside. The provision of a single open market dwelling in this location is not specifically provided for by any other policies of the Local Plan. Therefore, the proposed development would be contrary to Policy RUR2. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless other material planning considerations indicate otherwise.

5. The policies of the National Planning Policy Framework (the Framework) are material considerations that should be taken into account when determining applications and appeals. The Local Plan covered the period 1996-2006, and was adopted in 2002, so significantly pre-dates the Framework. Paragraph 213 of the Framework clarifies that existing development plan policies should not be considered out-of-date simply because they pre-date it, but due weight should be given to them according to their consistency with the Framework.
6. The settlement boundaries that define the extent of the countryside, and therefore restrict housing development, were based on housing needs and aspirations at the time of adoption of the Local Plan, which is now 17 years ago. They were only intended to cover the period until 2006, so they do not reflect current needs, or the aims of Paragraph 59 of the Framework to significantly boost the supply of homes. I recognise that the Council can demonstrate a 5-year supply of housing land, but the evidence before me suggests that this supply is made up, at least in part, by planning permissions granted outside the settlement boundaries. The appellants have referred to appeal decisions where Inspectors have concluded that the settlement limits that inform Policy RUR2 are out of date. I concur with their conclusions and can therefore only apply moderate weight to Policy RUR2, insofar as it places a blanket restriction on development in the open countryside.
7. As I have found that Policy RUR2 does not carry determinative weight regarding the principle of the development, the advice in the Framework assumes greater importance. Paragraphs 77 and 78 address rural housing. Paragraph 77 says that in rural areas, planning decisions should support housing developments that reflect local needs, and that opportunities to bring forward rural exception sites, that will provide affordable housing to meet identified local needs, should be supported. Paragraph 78 aims to promote sustainable development in rural areas, by ensuring housing is located where it will enhance or maintain the vitality of rural communities.
8. The proposed development has not been promoted as a rural exception site, and there is no evidence before me to demonstrate that the proposed 5-bedroomed dwelling would reflect local needs. Furthermore, the site is some distance outside Dogmersfield, so the proposed dwelling would not be located where it would best contribute to the vitality of the village. I therefore find that the Framework's advice on rural housing does not provide support for the open market dwelling that is proposed on the appeal site, and it does not therefore outweigh the moderate weight that I have applied to Policy RUR2 of the Local Plan.

9. Apart from restricting development in the countryside, in principle, Policy RUR2 also seeks to ensure that development does not have a significant detrimental effect on the character and setting of the countryside. This part of the policy is consistent with paragraph 170 of the Framework, which says that planning policies and decisions should contribute to and enhance the local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside. I therefore afford this aspect of the policy significant weight.
10. The appeal site lies in open countryside, where undeveloped agricultural land and woodland predominate. The appeal site is part of the garden of an existing house, and I am mindful of the appellants' argument that it may therefore be considered to fall within the Framework definition of previously developed land. However, it is largely laid to lawn, with mature trees around its edges and a gentle slope down to the canal on its eastern boundary. The site therefore makes a positive contribution to the verdant, undeveloped character of the countryside.
11. The existing garage that is to be replaced is a single storey building, tucked into the corner of the garden, where it is well-screened by the roadside hedge. The proposed house would have a much greater footprint, would be significantly higher, and would be located more centrally on the site. It would therefore be a much more visible feature through the gap in the roadside hedging created by the existing access. It would also be more visible above the boundary screening, particularly when approaching from the south. The building would therefore result in a consolidation of built development in the landscape, which would be harmful to the undeveloped character of this part of the countryside.
12. I have had regard to the appellants' contention that the conversion of the existing garage to a dwelling would be permissible under the terms of Policy NBE1 of the emerging Hart Local Plan: Strategy and Sites 2016-2032, which has been submitted for examination. It is further suggested that, once converted, the resultant dwelling could be replaced, under the same policy, by a new dwelling. However, the proposal before me is for neither the conversion of the building, or the replacement of an existing dwelling, so I find that the emerging policy is of little relevance.
13. To conclude on this issue, the proposed dwelling would be in the countryside, well outside any recognised settlement. It would not demonstrably meet any identified local need and, being distant from Dogmersfield, it would not make a significant contribution to maintaining or enhancing the vitality of the rural community. Furthermore, it would result in harm to the character and appearance of the countryside. The proposal would therefore be contrary to Policy RUR2 of the Local Plan. Although I have only applied moderate weight to the part of this policy that places constraints on the location of housing, I find nothing in the Framework, taken as a whole, that indicates that this is a suitable location for the dwelling proposed.

Drainage

14. The appeal site has not previously been built on and therefore has a permeable surface. The proposed dwelling and additional hard-surfaces would cover a large part of the site, resulting in a significant increase in surface water run-off. There would also be an increase in foul drainage from the site as a result of the additional dwelling. The drainage report submitted with the application

indicates that surface water would be dealt with via underground drainage runs, falling to crate-type soakaways within the rear garden of the new dwelling. Foul water would fall to a private sewage treatment plant, which would connect to a ground perforated drainage network within the site.

15. These methods rely on the collected surface water and treated foul water being able to percolate down through the ground. However, the site lies largely on London Clay, which has low permeability. Although part of the site lies on Bagshot Sands, this is on the higher, western side of the site, so gravity drains to this area would be unlikely to be achievable. There is therefore a significant risk that the surface water will sit in the crates without infiltrating into the site, and that the treated effluent from the package plant will not be able to filter down through the perforated drainage network.
16. The site slopes down to the Basingstoke Canal, which is a Site of Special Scientific Interest. The evidence before me indicates that it is unlikely that consent would be granted to discharge excess surface or foul water to the canal, partly because treated effluent is unlikely to be of the correct quality. Nevertheless, if there is insufficient infiltration to allow the surface and foul water to percolate into the ground, there is the potential, at times of high or prolonged rainfall, for on-site flooding to occur, which could lead to unplanned drainage into the canal. Consequently, in the absence of infiltration test results, I am not persuaded that a viable means of surface and foul water drainage could be achieved.
17. The appellants have identified a number of planning permissions that have been granted for dwellings in the vicinity, where details of drainage have been dealt with by pre-commencement planning conditions. It is suggested that the same approach should be adopted in this case. However, the council has demonstrated that the examples are not comparable to the appeal site, as they either involved replacement buildings, where there would be no increase in run-off, or there was an identified alternative to soakaway drainage. In this case, it would not be reasonable for me to impose a condition reserving drainage details because, if the infiltration tests proved unsuccessful, there may not be an acceptable means of satisfying the terms of the condition.
18. It has not therefore been demonstrated that suitable drainage could be achieved for the development to avoid an increase in flooding, or pollution of the Basingstoke Canal. The proposal would therefore be contrary to Policy GEN11 of the Local Plan, which seeks to ensure that development that would increase the risk of flooding includes appropriate alleviation or mitigation measures.

Impact on the SPA

19. The site is within 5 km of the SPA, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). In determining this appeal, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. The Court of Justice of the European Union has ruled¹ that, when considering the effect that a development proposal may have on a European Designated Site, the decision maker must consider any proposed mitigation through an

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.

20. The Habitats Regulations require that permission for the development may only be granted after it has been ascertained that it will not affect the integrity of the SPA. The SPA is designated as such, because it is an area of lowland heathland that provides habitat for internationally important bird species. In the light of the limited evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the proposal would have significant effects on the features of interest of the SPA, due to the resultant increase in recreational use by the occupants of the proposed development.
21. In my AA, I may consider any conditions or other restrictions which could secure mitigation of these effects. The Council's delegated report indicates that there is an agreed strategic solution to mitigate the impact of development on the SPA, which involves the provision of Suitable Alternative Natural Green Space (SANG) and financial contributions to strategic access management and monitoring (SAMM). It is indicated that these measures could be secured by way of a legal agreement, but no such agreement has been completed.
22. The appellants accept that no evidence has been provided to demonstrate that the proposal would not have an adverse effect on the SPA. It is suggested that a negatively worded condition could be imposed to prevent development taking place until such evidence has been provided. However, there is no indication that the appellants control any off-site land that may be suitable for SANG, or that they are in negotiations with another landowner who does. The suggested condition would not therefore give certainty, at the decision-making stage, that appropriate and timely mitigation for harmful impacts on the SPA would be securely delivered.
23. Furthermore, as the required mitigation is likely to include the provision of off-site SANG and a financial contribution to SAMM, it seems inevitable that the condition would require the appellants to enter into a legal agreement. The Planning Practice Guidance (PPG) advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. Such a condition should only be used in exceptional circumstances, in the case of complex and strategically important development, where there is clear evidence that delivery would otherwise be at serious risk. I therefore find that the suggested condition does not accord with the advice set out in the PPG.
24. As the competent authority, I am therefore unable to conclude through my AA that the proposal will not affect the integrity of the SPA. Consequently, I must conclude that the proposal would cause harm to the SPA without clear and certain mitigation. Therefore, the scheme would conflict with saved Policies CON1 and CON2 of the Local Plan. These policies seek to avoid adverse impacts on sites of European and national nature conservation value. The proposal would also conflict with Policy NRM6 of the South East Plan, which aims to ensure that adequate measures are put in place to mitigate any impacts of new residential development on the SPA. Furthermore, Paragraph 177 of the Framework makes it clear that the presumption in favour of sustainable development does not apply where a proposal is likely to have a significant

effect on a SPA, unless an AA has concluded that the proposal will not adversely affect its integrity.

Conclusion

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

Nick Davies

INSPECTOR