



Appeal Decision

Site visit made on 2 December 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/D1265/19/3235598

Tennis Court 60m from Hill Farm, 91m from Dover Street, Stour Row SP7 0QW¹

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Jackson against the decision of Dorset Council.
 - The application Ref 2/2019/0345/FUL, dated 8 March 2019, was refused by notice dated 5 June 2019.
 - The development proposed is described on the application form as a 'new residential dwelling on site of tennis court'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019 the former Councils of West Dorset, North Dorset, Purbeck, East Dorset, and Weymouth and Portland combined to form a single Authority. Nevertheless, until superseded the existing development plan documents of the former councils remain extant. There is some planning history to Hill Farm. Of particular relevance is a 1987 permission for the construction of a tennis court and a 2019 permission for a second access off Dover Street, north-eastwards of that which already exists.² The former is within the appeal site, the latter part of the route via which the proposed dwelling would be accessed.

Relevant policies

3. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. Notwithstanding an overarching review underway, the development plan in this instances includes policies of the North Dorset Local Plan (adopted 15 January 2016, the 'LP'). I have had regard to various other material considerations including the National Planning Policy Framework ('NPPF'), the Planning Practice Guidance ('PPG'), and to the North Dorset Character Area Assessment (March 2008, the 'NDCA').
4. Following on from LP policy 1, policy 2 sets out how all development within the former administrative area of North Dorset should be located in accordance with the spatial strategy. In summary, that seeks to focus development

¹ Alternatively stated in the Council's decision notice as 'Tennis Court 60M From Hill Farm, Green Lane To Foyle Hill, Stour Row, Dorset, SP7 0QW.'

² Ref 2/1987/0743 and 2/2018/1460/FUL.

proportionately relative to the scale and function of settlements. As a counterpoint, LP policy 20 takes a more restrictive approach to managing development within the countryside, defined as land outside main towns and named larger villages. Stour Row is a small settlement with an essentially linear form along Dover Street. It is not identified as a larger village within the LP; the nearest settlements with a defined boundary being East Stour and Shaftesbury, each several kilometres away.

Policy considerations

5. For the above reasons, LP policy 20 applies. Its aims are principally twofold. Whilst enabling some development beneficial to the vitality of rural communities, supporting LP paragraphs 3.33 and 8.171 in particular explain how that policy seeks to maximise use of modes of transport other than private vehicles, thereby reducing associated emissions by locating development in areas well served by services and facilities. It also aims to protect the intrinsic character and beauty of the countryside. In so far as relevant here, those aims are aligned with the relevant elements of NPPF paragraphs 102, 103 and 170. I accept that judgements brought to my attention relevant to the determination of whether or not a site is 'isolated' within the terms of NPPF paragraph 79, and also in respect of the definition of brownfield land, remain good law.³
6. As in NPPF paragraph 79, there are certain exceptions in LP policy 20 to the general principal that new homes in the countryside should be avoided. LP figure 8.5 sets out relevant types of development that may be acceptable in that context. LP paragraph 8.187 further more explains that there should be an 'overriding need' for a countryside location, which may relate to dwellings of 'exceptional or innovative design'. The latter phrase relates to paragraph 55 of the 2012 version of the National Planning Policy Framework ('NPPF2012'), which has since filtered into paragraph 79(e) of the current version.
7. Contrary to the appellants' view on LP policy 7, as set out in paragraph 5.10 of their appeal statement, that policy deals expressly with the creation of mixed and balanced communities. It references to the needs of particular groups of the community based on extensive evidence (summarised in supporting paragraphs 5.30 to 5.69). A plan must be consistent with national policy in order to be recommended for adoption, and the provisions in NPPF paragraph 61 are not dissimilar to those in NPPF2012 paragraph 50.
8. Conversely the Council acknowledge the lack of a five year land supply of deliverable housing sites relative to needs in line with NPPF paragraphs 67 and 73; the appellant puts the current position at some 3.4 years' worth of future provision. That is not an insubstantial predicted shortfall. In that context there is no dispute that the provisions of NPPF paragraph 11 apply, regarding the application of the presumption in favour of sustainable development. The appeal site is not formally protected on account of landscape, heritage, or ecological value with reference to NPPF paragraph footnote 6. I have therefore approach this appeal through the lens of NPPF paragraph 11)d).

³ Braintree District Council v SSCLG & Ors [2017] EWHC 2743 (Admin) and the subsequent Court of Appeal judgment of 28 March 2018, and Dartford BC V SoS & Ors [2017] EWCA Civ. 141.

Main issue

9. Against the context above, the main issue is whether or not the appeal site is an appropriate location for the development proposed with regard to its accessibility and effect on local character. If I find that harm would result, I will then gauge the significance of other material considerations.

Reasons

10. The appeal site incorporates a dilapidated tennis court and some surrounding land. The court has been cut into the undulating hillside to provide a level surface. Broadly the landform slopes upwards from Dover Street to towards Duncliffe Wood a short distance away to the north. There is therefore an open vista of the surrounding landscape from the appeal site across a wide arc from east through west. Aside from the tennis court, the appeal site and its immediate surroundings reflect the strongly rural characteristics of the 'Rolling Vales' landscape character area described in the NDCA.⁴ That is an expansive rolling irregular patchwork of fields cut by hedgerows and streams, interspersed with occasional copses, hamlets and farmsteads. I note, on account of its elevation and wide visibility, Duncliffe Wood is referred to therein as a 'key feature' of the landscape in this location.
11. At its nearest the appeal site is some sixty or so metres from the existing Farmhouse. The two are in the same ownership, and the tennis court was created for private domestic use. However it does not represent part of the residential curtilage of the Farmhouse for several reasons. As set out above Stour Row has a principally linear form. In this location properties are located sporadically in single plot depth along Dover Street (as is the case also of Ancombe and Old Acre). By consequence I saw that there is a readily apparent limit to residential gardens to the north of Dover Street, demarcated at Hill Farm and others by an established hedgerow broken on few occasions.
12. The appeal site falls beyond that hedgerow to the north-west of the Farmhouse. It is set in undulating land which, although rough grass, is neither landscaped nor otherwise maintained to a standard that typical of a domestic garden. There is no pathway leading between it and the Farmhouse. On account of the intervening hedge, surrounding character of the land, and the distance between the appeal site and the Farmhouse, the tennis court appears very much visually separate. It stands alone in an open field which is consistent with landscape character here. Moreover, the 1987 permission referred to above granted permission for the construction of a tennis court on 'agricultural land'. The statement made in support of the 2019 application refers to the creation of a secondary access in an improved location 'for access into the fields to the north'. The tennis court therefore cannot reasonably be described as part of the curtilage to Hill Farm.
13. The NPPF definition of previously developed land ('pdl') does not specify that residential gardens and curtilage are one and the same. However garden, accorded its dictionary definition, is a piece of ground next to a house with a lawn or flowers. Proximity is therefore similarly relevant. Garden, understood in an ordinary or every day sense, also suggests something other than a tennis court in nature. Therefore, although I accept that the NPPF definition of pdl

⁴ With some similarity also to the Clay Vales typology of land to the south.

expressly only excludes 'land in built-up areas', as a matter of judgement the tennis court cannot be described as curtilage or residential garden. However that reasoning is somewhat incidental; support for the re-use of brownfield land in NPPF paragraph 117 in particular is not at the expense of ensuring that development is appropriate in other respects.

14. The appellants contend that the appeal site cannot be termed 'isolated' within the terms of NPPF paragraph 79. Or, alternatively, that even if the site were to be considered as such the proposal would be of exceptional quality and design. As set out above there are other some other dwellings relatively nearby, and reliance cannot solely be placed on proximity to settlement boundaries in establishing whether or not a location is 'isolated'. The appellant explains that there is a village hall at Stour Row which regularly hosts various events. There is also a Church around which the village is roughly centred. There are also other services, facilities and employment opportunities within the wider Parish. I am told that the X4 bus service runs through the area five times daily serving Gillingham, located some 3.2 miles away.
15. Nonetheless Stour Row is a small settlement. It has few services and facilities catering for many day-to-day needs. The built form of the settlement, centred around All Saints Church to the south-west, effectively peters out before Hill Farm is reached or thereabouts. Nearby properties dotted about are set within expansive plots with mature gardens interspersed by fields, rather than representing anything more substantial by way of street scene or frontage. Some are barely perceptible on account of those features, the topography, and the enclosure of Dover Street by hedgebanks. There is no dedicated footway or lighting leading from the appeal site and centre of the village. Notwithstanding occasional buildings punctuating the landscape, the area around the appeal site is strongly rural in character. I have further set out above how the creation of a dwelling at the appeal site would not reflect the prevailing pattern of development. The appeal site is separate from the existing Farmhouse and set within natural land consistent with its surroundings. I was also unable to identify bus stops nearby; it seemed the nearest served by the X4 referred to above is along the B3032 a couple of miles away.
16. For the above reasons, the appeal site may fairly be described as isolated. Future occupants would be highly reliant on the use of private vehicles in that context. Therefore the creation of a dwelling in this location would not only conflict with the spatial approach set through LP policies 2 and 20, but would also undermine one of the principal aims thereof, i.e. to maximise use of sustainable modes of transport. I appreciate that the appellants intend to occupy the proposed dwelling, and that they have local ties to the area. However the proposal would inevitably result in an increase in comings and goings to this location by effectively 'releasing' the Farmhouse to other occupants.
17. In brief the proposal is to create a bungalow built to high levels of accessibility, sustainability, and benefitting from good levels of natural light. Although modern methods of construction would be employed, a palette of traditional materials would be used externally. The building would be clad in spaced vertical timber boards which would project above the main form of the dwelling to differing heights, appearing to have a rippled organic form. Windows would be recessed and could be manufactured to reflect little glare. The proposal

would also entail new planting around the appeal site to reduce the prominence of the development proposed. For those reasons, and as there are few vantage points, if any, along Dover Street from which the dwelling proposed would be readily perceptible, the visual effects of the proposal would be limited.

18. Nevertheless paragraph 79(e) sets a high bar for demonstrating exceptional quality. A proposal must, within those provisions, be 'truly outstanding or innovative' and 'significantly enhance' its immediate setting. That would not be the case here. The rationale for the design is convoluted. The supporting Design and Access Statement ('DAS') explains how the proposal is designed to be very modern and 'striking', albeit sitting 'comfortably within the street scene'. There is no discernible street scene or townscape in this location. Aiming to create a striking dwelling sits awkwardly with the justification for the use of timber boards with an organic form. Those features are stated in the appellants' appeal statement to reflect the 'woodland edge' setting relative to Duncliffe Wood, enabling the proposal to blend in with its environment. In my view the design proposed would achieve neither objective sufficiently.
19. Aside from cladding, the dwelling proposed is a simple rectangular form punctuated by regular windows. It is therefore essentially rigid and geometric. At 335 square metres it is also substantial. That footprint appears, as described in the DAS, to be such so as 'to utilise the footprint of the existing tennis court'. The justification for the layout, scale and shape of the proposed dwelling stems in large part from the introduction of a domestic, artificial, and rectangular addition to an undulating natural landscape. Inherent in that reasoning is that the proposed dwelling pays little attention to the changing topography. The use of timber cladding is not, in itself, particularly innovative. In this instance, given the bulk of the main form of the dwelling, it appears as something of an incidental afterthought.
20. I saw that the tennis court, or fence around it, is apparent from a number of vantage points along the public rights of way to the north bounding Duncliffe Wood and also to the west, which emerges onto Dover Street by Home Farm, despite intervening hedgerows and trees. The dwelling proposed would therefore be visible from those vantage points, appearing incongruous relative to an otherwise undulating hillside and open rural vistas. Planting would take some time to mature and would not serve to entirely screen the proposal from view. Light spill from internal illumination may also draw the eye unnaturally outside of daylight. Significant additional enclosure resulting from planting would, in itself, serve to reduce a characteristic sense of openness in this location as described above.
21. Therefore whilst the landscape here is not formally protected, and although there are certain aspects of the proposal that would mitigate its effects or represent high quality design in themselves, the scheme would nevertheless fail to protect the intrinsic character and beauty of the landscape. Whilst such effects would be qualified, that, again, would nevertheless be in conflict with the relevant provisions of LP policy 2 and 20, and of NPPF paragraph 170(b).

Other matters

22. With reference to LP paragraph 8.187 in particular, the appellants contend that their connections to the area and the unsuitability of the Farmhouse for the

needs of Mr Jackson on account of his health represent 'overriding need' for the accommodation proposed. It may seem trite to say that I empathise with those circumstances, although I sincerely do. I acknowledge that the natural light from which the proposed dwelling would benefit, along with its design to maximise accessibility, would be beneficial. However achieving those aims is not inherently reliant on the particular scheme before me.

23. There is little evidence of alternatives which have been considered and discounted for whatever reason (in terms of adjustments to the Farmhouse, or relating to the unsuitability or unavailability of accommodation elsewhere, for example).⁵ Limiting the occupation of the dwelling proposed as personal to the appellants via condition is not therefore justified, nor has that been suggested to me. Similarly, whilst the DAS refers to other planning permissions in Thakeham, West Sussex, and at Lime Kiln House by Shillingstone, there is no substantive information as to the particular circumstances that applied in those instances (or of their comparability to the scheme before me and its surroundings).
24. The proposal would also have some more general benefits. It would result in an incremental addition to housing stock in an area with an acknowledged lack of supply. Additional occupants in this location would also bring trade to services and facilities in the area, noting that NPPF paragraph 78 explains how rural housing may have benefits beyond an individual settlement. However the benefits of a single new home would inevitably be modest, particularly set against 825 dwellings proposed between 2011 and 2031 for the countryside as set out in LP policy 16 (itself some 14% of the overall housing requirement).
25. Moreover neither the support for new housing in the LP nor NPPF in overarching terms is at the expense of ensuring that all development is appropriately located and integrates suitably with its surroundings. As such, within the terms of NPPF paragraph 11)d), the adverse effects of the proposal would significantly and demonstrably outweigh the limited benefits. Consequently no other matters are sufficient to justify allowing the appeal.

Conclusion

26. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

⁵ Mentioned only in so far as robust evidence in those respects may have carried weight in favour of the appeal.