
Appeal Decision

Site visit made on 2 October 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Appeal Ref: APP/E2205/W/19/3228882

Briars, Church Hill, Kingsnorth, Ashford, Kent TN23 3EG

- 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 outline planning permission.
 - The appeal is made by Mr Peter Terry of PJ Developments Ltd against Ashford Borough Council.
 - The application, Ref 18/01268/AS, is dated 23 August 2018.
 - The development proposed is for a mixed development of 44 one and two bedroom Sheltered retirement apartments with associated parking and amenity space
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Decision

1. The appeal is dismissed and outline planning permission for a mixed development of 44 one and two bedroom sheltered retirement apartments with associated parking and amenity space is refused.

Procedural Matters

2. The description in the banner heading above is taken from the application form but it does not inform that the development is in outline, although the appellant used the application form 'Outline planning permission with all matters reserved'.
3. In its report to planning committee the Council refers to having 'called-in' some other matters for consideration and the Council's description includes that Access, Layout, Landscaping and Scale are to be considered at outline stage, with Appearance as a reserved matter for later consideration.
4. In the appellant's 'Further Comments' he states that the Council changed the description shortly before the application was presented to the planning committee without reference to him and that in the limited time he was not able to submit new documentation. Notwithstanding the Council's description, I have determined the appeal on the basis of the appellant's description and that all matters are reserved.
5. As the application is in outline the submitted plans, apart from the Location Plan outlining the site in red, are illustrative only and I have considered them on that basis. However, they provide a useful guide as to how the site could be developed for the quantum of development proposed.

Background and Main Issues

6. The appeal follows the Council's non-determination of the application. The Council has submitted its officer report to committee (which also forms the Council's Statement) in which it recommended the application be refused on 11 grounds, had it been able to determine the application.
7. Accordingly, based on those grounds I consider the main issues are:-
 - a) The effect of the proposed development on the character and appearance of the area,
 - b) Whether the proposed development would be a suitable location for retirement housing, having regard to pedestrian accessibility to services and facilities,
 - c) The effect on highway safety with regard to the access,
 - d) Whether there would be adequate on-site parking,
 - e) The effect of the proposal on living conditions of existing occupiers of neighbouring properties on Church Hill with regard to outlook and noise and disturbance from parking,
 - f) The effect of the proposal on living conditions of future occupiers, with particular regard to the amount of external garden area,
 - g) Whether sufficient information has been provided regarding the effect of the proposed development on protected species,
 - h) The effect of the proposal on flood risk from surface water drainage, and
 - i) Whether the proposal makes adequate provision for affordable housing, libraries, outdoor sports, informal green space, allotments, strategic parks and cemeteries.

Reasons

Character and appearance

8. The appeal site comprises a detached dormer bungalow (the Briars) its rear garden and an approximately 1 hectare garden extension into the adjacent field at the rear and which has a certificate of lawful development as a garden. The enlarged garden sits behind the rear garden boundaries of a number of properties along Church Hill. Whilst the appeal property is one of 4 bungalows in a row, there are a mix of house styles and types along Church Hill and in the village, including detached and semi-detached properties, most of which are two storey. There is a car repair/MOT garage to the west of the site. The prevailing settlement pattern is linear in form with dwellings fronting Church Hill, but set back from it. However, there are also a number of cul-de-sac developments leading off Church Hill, such as Tudor Farm Close opposite and South Lea.
9. The proposal is for the erection of a building, indicatively shown as two-storey with accommodation in the roof space, to provide 44 sheltered retirement apartments which, according to the application form, would comprise 20 x 1-bed units and 24 x 2-bed units. The Briars would be demolished to form a private access drive off Church Hill. This would then lead to the retirement apartments and landscaped grounds sited on what is the extended rear garden. The indicative plans show an 'L' shaped building, positioned towards the rear of the site in close proximity to the southern site boundary, together with a vehicle turning area and a parking court with 22 residents' parking spaces and 1 staff parking space. A mix of private and landscaped communal gardens is also indicated.

10. The Briars and the original rear garden lie within the built up confines of Kingsnorth village. However, the extended garden lies outside, but contiguous with, the defined settlement confines. It adjoins fields and countryside beyond, which are designated a 'green buffer' between the village and an allocated housing site, as shown in figure 2 in the Council's committee report.
11. The indicative elevations and site plan show a monolithic form of building, with little articulation to break up the bulk and mass apart from a number of protruding gable features. The long expanse of uniform roofscape, with little variation in height and shape, would present a harsh, uncompromising and incongruous edge to the village, unlike the existing organic edge of the village derived from its variety of housing styles, designs and forms.
12. Furthermore, the proposed 44 apartments would result in a high density of development in the order of between 99-102 dwellings per hectare (dph). This would be at odds with the prevailing settlement density of approximately 25dph. Whilst this would represent an efficient use of land to some degree, as advocated by the National Planning Policy Framework (the NPPF), the backland nature of the development behind the Church Hill frontage and its high density would not respect the prevailing pattern of development in Kingsnorth. This would be exacerbated by the proposed building being shown sited beyond the built-up confines of the settlement and encroaching into the countryside. The extended garden land cannot be regarded as 'previously developed land' as it has previously been a field and is currently a garden.
13. Setting the building back from the road would not, in my view, offset its likely mass and size. A large single building would be different from seeing a cluster of houses, of example, with gaps between them. Whilst the proposed building would not be visible all at once from Church Hill and there are no public rights of way in the immediate vicinity, it would nonetheless be seen from the new access on Church Hill and in views between properties, particularly as the immediately neighbouring properties are single storey or dormer bungalows.
14. I have no reason to doubt the building and landscaping would be of a high quality. However, siting the building so close to the site boundaries would not give opportunity to provide any meaningful landscaping to soften the boundary and provide a transition between the proposed built form and adjacent countryside. Furthermore, placing the building so close to the boundary indicates to me of overdevelopment of the site.
15. Whilst the plans are indicative, they serve to illustrate how the appellant intends to develop the site and include all the various other components, such as parking and amenity space. I find the proposal would represent over-development and the proposed quantum and bulk of development on land beyond the built-up confines of Kingsnorth would be an unacceptable encroachment into the countryside that would harm the character and appearance of the rural area. Accordingly, the proposal would be contrary to Local Plan¹ (LP) Policies SP6, HOU5 and ENV3a. These seek, amongst other things to ensure new development sits sympathetically in the wider landscape and responds positively to the landscape character of the area.

¹ Ashford Local Plan 2030 adopted February 2019

Location

16. LP Policies SP1 and SP2 together set out some of the Council's strategic objectives for the borough. New housing is to be focussed in Ashford and its periphery, and in other accessible and sustainable locations which utilise existing infrastructure, facilities and services and make use of suitable brownfield opportunities. Access to sustainable modes of transport will be promoted in order to encourage non-car based travel. The Council also seeks to provide a mix of housing types and sizes to meet the changing housing needs of the borough, including specialist housing for older people. The NPPF recognises, at paragraphs 59 and 61, that needs of groups with specific housing requirements including older people should be addressed. The Planning Practice Guidance (the PPG) recognises² that the need to provide housing for older people is critical as people are living longer. Offering people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems.
17. LP Policy HOU5 allows for windfall residential development adjoining or close to existing built up confines of named settlements, including Kingsnorth, provided certain criteria are met. The site does adjoin the built up confines of Kingsnorth, albeit to the rear of houses fronting Church Hill. Criterion b) requires sites to be within easy walking distance of basic day-to-day services in the nearest settlements and/or access to sustainable methods of transport.
18. Kingsnorth has a linear settlement pattern with a pavement only along the north side of Church Hill. There is a village hall, primary school and church about 150m–280m away uphill to the east of the appeal site. To the west, the pavement continues for approximately 225m to Ashford Road where there is a public house and bus stops. Kingsnorth Medical Centre and a Tesco Extra are further along Ashford Road approximately 650m and 850m distance from the appeal site respectively. The other outlets by Tesco, including a hairdressers and take-away, are a bit further. The pavement to the bus stop, medical centre and supermarket is relatively level. Furthermore, Ashford is 2¼ miles away, according to the road sign I observed at the junction of Church Hill and Ashford Road, which is on a bus route allowing access to a wider range of services and facilities, including transport links into London and beyond. Overall, these various facilities would be within the generally accepted 800m walking distance in order to be considered sustainable, as set out in the supporting text to LP Policy HOU5.
19. However, the lack of a pavement on the south side of Church Hill changes the nature of the pedestrian route to access the various nearby services and facilities. Future residents of the retirement apartments would need to cross Church Hill in order to get to and from the pavement on the north side of Church Hill, before they can start walking to the nearby facilities. The proposal is for people of older age (post retirement) who would be more likely to have or develop impeded mobility. Crossing Church Hill to get to the pavement would make walking to these facilities less easy and could be a deterrent to some residents who may find crossing the road difficult, including those using a mobility scooter or wheelchair.

² PPG Paragraph: 001 Reference ID: 63-001-20190626

20. During my site visit I observed little traffic using Church Hill, although I acknowledge that my visit was a snap shot in time. However, I understand that at certain times of the day, such as school drop off/pick up times, there is more traffic that would make crossing the road more difficult. As there are no parking restrictions, vehicles could park either side of the new access and impede visibility for road users and pedestrians wanting to cross, and I observed a number of vehicles parked on the road either side of the garage. Furthermore, there is no street lighting along Church Hill in either direction until one gets to Ashford Road, which would expose those crossing the road to greater highway danger.
21. LP Policy TRA5 requires development proposals to demonstrate how safe and accessible pedestrian access and movement routes will be delivered and connect to the wider movement network. The appellant's proposed puffin crossing would provide some assistance to future residents to cross Church Hill. However, the Highways Authority does not regard there to be sufficient demand to justify its installation. Furthermore, the Puffin Crossing would not be able to connect to any pavement on the southern side of Church Hill, as there is none, and none is proposed due to third party land. Such a crossing would therefore not serve a purpose nor provide a wider benefit for existing residents of Kingsnorth. Whilst people would still need to cross the busier and faster Ashford Road to get to the Ashford-bound bus stop and the medical centre, there are pedestrian refuges to allow the crossing to be made in stages.
22. To conclude on this issue, the site is located within the generally accepted 800m walking distance of day-to-day facilities to make it an acceptable location for a residential development in principle. The appellant considers most future residents would walk (as indicated by his justification for less parking provision as discussed below), increasing the importance of safe and easy access to day-to-day services and facilities. However, the lack of a pavement on the south side of Church Hill would impede ease of movement for all residents and would not make the site a suitable location within a safe walking distance of nearby day-to-day services and facilities. As a result, the safety of future pedestrian residents would be compromised. This would be exacerbated by the proposal being a retirement complex for the over 60s, some of whom would have, or could develop, limited mobility, mobility scooters or wheelchairs. Accordingly, the proposal would be contrary to LP Policies SP1, SP2, TRA5 and HOU5 b) whose aims are outlined above, and LP Policy SP6 which seeks to ensure ease of movement.

Highway safety with regards to access

23. A new access would be created off Church Hill. There would be a significant intensification of the use of the access when compared to its current use by a single dwelling. There is no dispute between the parties that vehicles would be able to turn within the site in order to exit the site in a forward gear.
24. However, there is dispute between the parties as to whether adequate visibility splays can be achieved on land within the control of the appellant and/or the highway authority without crossing third party land. Hence there is dispute that the increase in pedestrian and vehicular traffic would not cause any detriment to highway safety. The Highway Authority maintains its objection despite the appellant submitting additional information including a Transport Assessment and topographical survey.

25. The Highways Authority would require visibility splays of 2.4m x 43m which would cross third party land. But the appellant suggests visibility splays of 2.0m x 43m would be adequate and would not cross third party land. There are also concerns that plans do not accurately show the extent of publicly maintainable highway in order to be certain that third party land is not involved.
26. Whilst access is a reserved matter, the principle of a safe and adequate access is crucial for all road users. I acknowledge that the NPPF at paragraph 109 advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. However, as the Highway Authority has objected on the basis of insufficient information I am unable to be certain that the proposed new vehicular access would be achievable.
27. I am therefore unable to conclude whether this part of the proposal would be acceptable. Accordingly, the proposal would be contrary to LP Policies HOU5 and TRA7 which seeks to ensure that development can be safely accessed and that proposal will not be permitted on local roads beyond that which local roads could reasonably accommodate in terms of capacity and road safety.

Parking

28. LP Policy TRA3(a) sets out parking standards for residential development as 1 space per 1-bed dwelling and 2 spaces per 2-bed unit. There would be an additional requirement for on-site visitor parking based on 0.2 spaces per dwelling in major residential schemes where layouts permit. The Council calculates that the proposal would therefore generate a need for 77 resident and visitor car parking spaces. The proposal's indicative layout shows 22 residents' parking spaces and 1 staff parking space. This represents a significant shortfall likely to result in residents parking on the road. Even providing 1 space per unit would still see a sizeable shortfall.
29. Part b) of the policy deals with non-residential development, which does not apply in this instance. However, Policy TRA3 allows proposals not falling within the listed residential and non-residential uses to provide a level of parking proportionate to its activity, if agreed by the Council and Highway Authority. In exceptional circumstances, a departure from the standards will be allowed if one of six criteria are met. Criterion a) would be most relevant in this case as it relates to taking account of specific local circumstances that could lead to a lower level of parking provision including the site's accessibility to public transport, shops and services, highway concerns and local on-street parking problems.
30. The appellant considers that car ownership levels amongst future residents would be low, because the proposal would be for residents over the age of 60 (and spouses over the age of 55). Whilst the site's generally suitable location in relation to services and facilities could see some future residents deciding not to keep a car, many older people continue to drive well into their 70s and 80s.
31. The appellant refers me to a recent grant of planning permission³ for sheltered accommodation at Cheeseman's Green Lane, Kingsnorth and to a letter from Kent County Council (KCC) as Highway Authority indicating it was willing to

³ LPA ref: 15/01663/AS

accept parking provision similar to that proposed here, using parking guidance SPG4. Neither party has provided me with a copy of KCC's parking guidance SPG4 and it is not clear how this relates to LP Policy TRA3(a) and (b), although mention is made in the supporting policy text that the SPG4 standards have been brought forward as a minimum standard of non-residential development.

32. I have not been provided with full details, plans or any other documents or committee reports of the Cheeseman's Green proposal. I note the submitted KCC letter is dated December 2015. I have not been made aware of any change of circumstances in the intervening 4 years that means there is a different application of parking standards by KCC and what parking provision was finally accepted by the Borough Council when it granted planning permission. As such I am unable to make any meaningful comparisons with the appeal scheme before me, which I must consider on its own merits.
33. I am not persuaded that the level of car ownership would be as low as the appellant suggests to warrant a departure from the parking standards. However, as the application is in outline and the plans are illustrative only, this is a matter that would need to be addressed at reserved matters stage to ensure adequate parking to the satisfaction of the Council. Accordingly, I do not find conflict with LP Policy TRA3a) at this outline stage.

Living conditions of the existing neighbouring occupiers

34. In terms of outlook, residents on Church Hill (in particular Oak Lodge, High Hopes, Chedzoy and No.8 and its adjoining semi) face towards the appeal site and currently look towards the extended garden of the Briars and beyond to fields and countryside. The three closest properties are bungalows/dormer bungalows, so are much lower than the proposed two storey building with accommodation in the roof. Therefore, the outlook for these dwellings in particular would be significantly changed with views of a large building of substantial bulk and mass derived from its size, height, configuration, and fairly uniform design and roofscape. Whilst adequate separation distances may be achievable, Model Image 1 on drawing 10-001 PL-02 illustrates the enclosed and confining outlook residents of the existing dwellings would encounter, exacerbated by the number of windows that would face towards them.
35. Whilst the scheme is in outline, I find the likely quantum of development with the associated mass, scale and configuration of the building would likely result in an unneighbourly, dominant and overbearing form of development that would create an unsatisfactory outlook for existing occupiers of neighbouring properties in Church Hill.
36. In terms of noise and disturbance, this would result from the car park court and the proposed access. The illustrative proposed layout plan 18-001 PL-02 shows a parking court sited along the northern edge of the site adjacent to the rear garden boundaries with a number of properties on Church Row. Although in outline, this illustrative layout shows there would be limited locations for the car parking, as well as the provision of adequate outside garden spaces (discussed below) and the quantum of built form the appellant proposes.
37. The proximity of the car parking and access drive to neighbouring back gardens, with associated uncontrolled comings and goings at all times of the day and night, with engines, door slamming and voices, would cause noise and disturbance to residents of these properties. Even if car ownership levels of

future residents were low, this would not prevent vehicle comings and goings and associated noise and disturbance. Furthermore, headlights from vehicles that would drive into the spaces would shine directly into the rear gardens of these properties exacerbating the general disturbance, particularly at night.

38. I acknowledge that at reserved matters stage, boundary treatments could be enhanced and the appellant mentions an acoustic barrier, and these could help mitigate against some noise and disturbance. I also acknowledge that the proposed development would be a better neighbour than some development, as future residents would generate less noise than perhaps families with children and would be more likely to use the outdoor spaces for quieter pursuits, mainly sitting.
39. However, I am not persuaded that the various measures would adequately overcome the harm that would be caused to the living conditions of these existing residents living in close proximity from poor outlook and noise and disturbance. Accordingly, the proposal would be contrary to LP Policy HOU5 which seeks, amongst other things, to ensure that development does not adversely impact on neighbouring uses or a good standard of amenity for neighbouring residents.

Living conditions of future occupiers with regard outside garden space

40. LP Policy HOU15 sets out external space requirements for flats as 5m² private outdoor for 1-2 bedroom units, with an additional 1m² for each additional bed space. Balconies would also count as private outdoor amenity space and the policy requires these to be at least 1.5m in depth.
41. The illustrative proposed layout plan 18-001 PL-02 shows a number of areas of communal gardens around the site, as well as smaller areas of private gardens immediately adjacent to the front of the building, although it is not clear if these would only be for use by occupiers of the adjacent ground floor apartments. Due to the orientation of the building the landscaped grounds would be on the north side of the building and most likely in shade. The illustrative plans do not indicate any balconies as private outside space for other residents. If at reserved matters stage these were provided, they would have to be carefully sited to ensure there is no unacceptable overlooking of existing gardens and properties. Furthermore, the building is shown sited close to the southern site boundary such that there would be limited space for any meaningful private or communal outside space to take advantage of the sun.
42. However, as the application is in outline and the plans are illustrative only, this could be addressed at reserved matters stage to ensure adequate usable external space is provided in accordance with LP Policy HOU15. Accordingly, I do not find conflict with LP Policy HOU15 at this outline stage.

Ecology

43. There are statutory obligations for biodiversity and habitat protection. The NPPF states at paragraph 175 that development should be refused if there would be significant harm to biodiversity or that it cannot be adequately mitigated or compensated for.
44. No ecological information or habitat surveys have been submitted to demonstrate that protected or notable flora or fauna are not present within or on adjacent land. There is no dispute between the parties that the site is laid to

grass and is a garden with likely limited ecological and biodiversity value. Nonetheless, in the absence of any basic ecological surveys, it is not possible to establish the biodiversity value of the site and the likelihood or not of the presence of any protected species and any mitigation measures. Accordingly, the proposal is contrary to LP Policies ENV1 and HOU5 that seek, amongst other things, to safeguard features of nature conservation interest and to conserve biodiversity interest.

45. I acknowledge that landscaping could provide some biodiversity gain but this does not outweigh the potential harm there may be to existing biodiversity. Surveys should only be required by condition in exceptional circumstances.

Surface water drainage and flood risk

46. Local Plan Policy ENV9 requires all developments to include appropriate sustainable drainage systems (SuDS) for the disposal of surface water to avoid any increase in flood risk. The appellant proposes that surface water from the proposed development would be disposed of using purpose-built soakaways in the gardens of each property at least five metres from the property and three metres from adjoining property boundaries.
47. The proposal would involve major development on a greenfield site. The significant footprint, built form, roofscapes and areas of hardstanding would have implications for surface water disposal. KCC, as the Lead Local Flood Authority, advise that very limited information has been submitted on how the surface water would be managed. They have requested more information from the appellant to support the key assumptions that have been made, to provide a clear description of key drainage features and to provide supporting calculations to show the operation of the system and drainage model.
48. Drainage details can be submitted as part of a condition, usually prior to commencement. However, in this case the site is underlain by Weald Clay, which has limited permeability, and would make the proposed soakaways unlikely to be adequate to serve the development of this scale. Therefore, due to the local geology in this instance, it is necessary establish drainage principles up front. The appellant has not submitted the requested additional drainage information.
49. In the absence of such information I cannot be satisfied that the proposed development, in principle at least, would not result in an increase to flood risk. Accordingly, the proposal would be contrary to Local Policy ENV9, whose aims are outlined above.

Planning obligation

50. Local Plan Policy HOU1 requires new housing development of 10 dwellings of more to provide a total of 30% affordable housing. LP Policy COM1 expects new developments to expand or enhance infrastructure, community and social facilities and that provision is to be secured via a planning obligation as set out LP Policy IMP1. Policy COM2 requires appropriate provision or contribution towards various recreation and open space facilities.
51. To mitigate against the impacts of the proposed development the Council has detailed, in Table 1 of its committee report, the required contributions of 30% affordable housing and financial contributions towards informal green space, libraries, outdoor sports and strategic parks. I note that allotments and

cemeteries are not listed in Table 1, but appear in the Council's recommendation, and 'accessible housing' is included in Table 1 but not in the recommendation. The Council does not provide an explanation for these inclusions and omissions.

52. The appellant is willing to provide 30% affordable housing and the various contributions, but has not submitted a planning obligation to secure them. As the outline planning permission is the permission, a planning obligation must be secured at outline stage, and not at reserved matters. The Procedural Guide: Planning Appeals England (August 2019) requires a duly executed and certified copy of the planning obligation to be submitted at the time of making the appeal or within 7 weeks from the start date.
53. However, as I am dismissing the appeal for other reasons, I have not requested a duly executed and certified copy of the planning obligation and do not need to consider the obligations further. However, the proposal remains contrary to LP Policies HOU1, COM1, COM2 and IMP1, which have been detailed above.

Other Matters

54. The appellant's evidence of need for housing for older people is of a national and general nature, with some documentation being over 16 years old. Whilst the proposal would provide retirement accommodation to help provide the borough with a mix of housing, I find there is no substantive evidence to persuade me of the need for such a specialist housing proposal in Kingsnorth.
55. I am aware of the documented social and welfare benefits to residents of this type of housing, as well as its ability to reduce the burden on health and social services. The erection of a building for 44 homes would also bring some efficiencies and savings in terms of construction, materials and energy. However, these benefits would not outweigh, alone or in combination, the harm I have identified.
56. A substantial number of third parties, including the Parish Council, raise a series of other concerns about the proposal. But in view of the Council's suggested grounds for refusal and my conclusions on the main issues there is no need for me to address these in the current decision.
57. I acknowledge the appellant's concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

58. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed and outline planning permission is refused.

K Stephens
INSPECTOR