
Appeal Decision

Site visit made on 14 January 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2020

Appeal Ref: APP/J0405/W/19/3229766

Canal Bank House, Watery Lane, Marsworth HP23 4LY

- 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 Vince Narduzzo against the decision of Aylesbury Vale District Council.
 - The application Ref 18/01450/APP, dated 25 April 2018, was refused by notice dated 28 November 2018.
 - The development proposed is the redevelopment of Canal Bank House and erection 6 x four bedroom dwellings and revised access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I note the appellant has submitted revised plans. However, the proposed changes would be significant, with different implications to the original proposals, and the interested parties have not had a chance to comment on these. Therefore, I have determined the appeal based on the plans available to the Council when it refused planning permission.

Costs

3. An application for costs has been received from the appellant, which has been subject to a separate decision.

Main Issues

4. The main issues are:
 - The accessibility of the site by those using sustainable modes of transport
 - The effect of the development on both the landscape and Marsworth Conservation Area.
 - The effects of the development on highway safety
 - The effect of the development on flood risk
 - Whether the proposal has included sufficient mitigation for impacts to the wider area as a result of the six new dwellings proposed, regarding leisure and recreation.

Reasons

Accessibility

5. The site of the proposed houses is near the edge of the village of Marsworth. I would regard the centre of this village as being to the east of the canal, around Vicarage Road. It is along Vicarage Road that there is a pub, infant school and Church. There is also the Memorial Hall to the far side of this street from the site.
6. Between the site and this centre of the village is a section of Watery Lane and the longer Church Lane. This route is a significant distance to walk, with some incline, but I do not regard it as being such that occupants of the proposed houses would not walk or even cycle this route.
7. The proposed improvements to Church Lane by the appellant would also enhance the likelihood of walking with the inclusion of footways and also a wider carriageway to enhance highway safety.
8. I recognise that the facilities within the village are limited, but there is some provision which would be useful to future residents of the proposed development which is likely to be sufficient for them to not have to overly-rely on private vehicles to travel further. This village is considered a moderately sustainable village, which I would regard as sufficient to support a development of the size proposed.
9. My attention has been drawn to recent appeal ref APP/J0405/W/17/3176674 at the former White Lion public house also in Marsworth. In this case the Inspector found that the distance of the proposed houses at this site meant that the residents of the proposed dwellings would have to rely heavily on the facilities and services of other larger settlements "which would invariably involve regular travel by the private motor vehicle which is the least sustainable mode of transport". However, the site at Canal Bank House is closer to some of the village facilities than the former White Lion pub, even if it is further from bus stops. As such, I have come to a different conclusion to the Inspector for this other site within the village.
10. Therefore, on this issue, I regard the proposal to be in accordance with the National Planning Policy Framework (the Framework), which requires that development takes opportunities to promote sustainable transport and provide safe and suitable access for all users.

Visual and Historic/Heritage Asset Impact

11. The development of six houses would be in a site which is currently used predominantly as a paddock, with some stables present. The land is generally open with some trees and hedgerows to the boundaries. As such, the proposed houses would have a significant effect in altering the character of the site.
12. The site is separated from the main built-up section of the village by a canal. As such, I would not regard this as the 'heart' of the village, even if some of the properties in this area are old. To this western side of the Canal the character of this area is distinctly more rural. There are clusters of dwellings with some other detached houses also scattered in the wider landscape, but this is a rural area with the site being within the countryside, rather than in the village envelope. Furthermore, the current paddock use is typical of this wider

- countryside landscape and therefore contributes positively to the rural open character of this area.
13. The proposed housing development would replace this paddock and urbanise a relatively large area of open 'greenfield' land that would appear as an intrusion into the countryside. Furthermore, the six houses proposed would result in developing much of an area of open land between existing separate small groups of dwellings, which would form more of a large residential cluster not typical of this rural landscape. This would all have a negative contribution to the landscape compared to existing.
 14. There is a sense of some enclosure to the site, with boundary hedgerows/trees and the canal. However, the site still appears as part of the open countryside, especially with its long boundary with the large field to the northwest for example. The site appears as a largely open area of undeveloped land visually connected with the open countryside beyond. I note the track through the field to the northwest, but this is not a prominent feature and does not form a clear visual partition between the village envelope and the countryside. This is a typically rural/agricultural track adjacent to a hedgerow and so does not mean the site is separate in some way from the countryside.
 15. As such, the proposed development would fail to complement the existing settlement character or the villages layout. Instead it would appear as a significant intrusion into the countryside, rather than any logical rounding off of the settlement, which would therefore have an adverse impact to the visual amenities and landscape setting of the village and wider area. I recognise that much of the site would be open space, but the significant increase in built development on the site would have a substantial visual impact and change the character of the site fundamentally. Furthermore, the site is prominent from public footpaths to a degree that this development and the visual harm it would cause would be evident to the public. The surrounding trees would not be sufficient to mitigate the visual impact of the proposed development.
 16. The site is also adjacent to the designated Marsworth Conservation Area (CA). There are also listed buildings near the site. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) is relevant to this appeal as it requires special regard as to whether to grant planning permission for development which affects a listed building or its setting. Also, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas in the exercise of planning functions.
 17. However, in this case the site is outside of the CA, although paragraph 194 of the National Planning Policy Framework (the Framework) states that - *"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification."* Furthermore, paragraph 193 states that *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.."*
 18. The significance of the CA lies in the historic pattern of development of the village which has developed around the canals, and its historic buildings, some of them listed. In this case the site is outside of the CA boundary, but due to its

close proximity and size of site I would regard it as being within the setting of the CA.

19. The site, being currently a predominantly open area of land, allows for views between the CA and the Grand Union Canal, which is important to the history of Marsworth. The CA Appraisal mentions also, for example, the view from the canal towpath to Gurney's Farm House, which is a positive building within the CA. Where possible, the inter-visibility of the canal and CA is an important feature of the CA character and significance. These views provide a visual connection between the CA and the historic canal.
20. Whilst the proposed six houses would not densely develop the site, the buildings would obscure a significant amount of views from the CA, between Watery Lane and the canal. Considering the positive contribution that the openness of the site currently has, providing views between the canal and CA boundary, the development of the site would not preserve the significance and character of the CA.
21. Furthermore, in terms of the proposed houses and their arrangement, they would have the appearance which reflects agricultural/rural buildings. This has a clear rural character, but the arrangement of the dwellings as shown in the submitted drawings, with groups of houses around courtyards, is not reflective of the prevailing character of the village (other than Gurney's Farm House) or the wider rural area around the site, where detached dwellings in large plots are more typical. The development as a whole would appear as a relatively large and formal residential development with an open space which could also appear more formal than typical of this rural area.
22. I recognise that Marsworth Wharf has a very different design and arrangement to the prevailing character of the area, but this may have reflected what was originally on this site. In any case, I do not have full details of this development to be able to fully compare. I have based my considerations on primarily what the prevailing characteristics of this area are.
23. The proposed off-site works to address the highway safety and access issues would result in a change of character to Church Lane, within the CA. The CA appraisal describes Church Lane as follows:

Church Lane has a much more enclosed and intimate feel than Vicarage Road and views are channelled by trees and hedgerows rather than buildings. Boundaries play an important role with hedgerow, bushes and trees defining the edge of the road and contributing to its rural character.
24. The proposed widening and the inclusion of footpaths to Church Lane would diminish the enclosed and intimate rural character of this lane. It would become more open and formal. Such a change, whilst beneficial from a highways perspective, would be detrimental to the positive character of Church Lane within the CA. However, I am aware that the details which were submitted with the planning application for highway improvements have not been accepted as sufficient by the Council to address their concerns about access to the site along these roads, and so the final works that would be necessary are not certain at this point.
25. There are listed buildings and structures (Locks 1 and 2, Bridge and Canal House) in the area. There is no reason for refusal from the Council with regards

the impact of the proposed development to the setting of these listed buildings. In my view, the layout and location of the proposed dwellings is such that I would agree that there would be no harm to the setting of the listed buildings in the area.

26. However, I have found there would be harm to the CA, due to the adverse effect of the development within its setting to the significance of this heritage asset. This would be less than substantial harm. As required by the Framework, this less than substantial harm needs to be assessed against any public benefits.
27. In this case there would be the provision of six dwellings towards local housing needs. Economic benefits for the construction industry and to the vitality of the village and its local businesses/facilities are also likely. The appellant argues that the proposal would be an efficient use of land in a relatively sustainable and accessible location, providing dwellings of high quality design with good environmental qualities. There would also be potential biodiversity benefits from the on-site open space area.
28. However, having considered all benefits they do not outweigh the harm to the Conservation Area significance, to which I attached great weight. I therefore find no clear and convincing justification to outweigh the harm that would be caused to the significance of the Conservation Area as an important designated heritage asset. Furthermore, I also have concluded the development would result in harm to the landscape, through the introduction of dwellings onto a site which currently contributes positively to the landscape as a paddock with good levels of openness.
29. Therefore, for all the reasons set out above, the proposal is contrary to policies GP35 and GP53 of the Aylesbury Vale District Local Plan. These policies seek to, amongst other things, require development to respect the historic scale and setting of a site, and seek to preserve or enhance the special characteristics of CAs. The proposal is also in conflict with the Framework as the harm to the significance of the heritage asset is not outweighed by public benefit and there is no justification that would override this harm.
30. I acknowledge that there may be views of the proposed development from the public right of way network, but in my opinion the convenience, amenity and public enjoyment of the routes would not be adversely affected in any significant way. As such, I do not regard the proposal as being contrary to policy GP84 of the Local Plan.

Highway Safety

31. The site is at the end of the narrow Church Lane and Watery Lane. Both roads are narrow, especially over the canal bridge, typical of many rural highways. The proposal would introduce six new houses onto a site which is connected to the village by Church Lane.
32. From the evidence before me and from my own observations, an intensification of use of these highways is a concern due to their narrowness and alignment. The narrow carriageway would mean that that with more traffic on these roads there would likely be more cases of vehicles coming into situations where they would need to brake suddenly and reverse when encountering another vehicle coming the opposite way. This could result in highway safety implications.

33. To address this matter, the appellant submitted proposals to upgrade Church Lane with widenings for example. At the time the planning application was determined, this was not considered by the Council or the Highway Authority as sufficient to address the issue of highway safety.
34. Subsequently, planning application ref: 19/01995/APP was submitted to the Council for a similar housing scheme on the site. This included amended drawings of the proposed highway improvements. As stated by the appellant, the Highways Authority have no objection on the basis of highway safety or access to the site if the improvements to both Church Lane and Watery Lane are incorporated as proposed. This includes widening and new footways. In my opinion, highway improvements based generally on that proposed may be sufficient to address highway safety concerns, but the Highway Authority comments on these proposals appear to relate to the latter application, now subject to a separate appeal.
35. Therefore, I recognise that these latest highway improvement plans were not part of the planning application to which this appeal relates and was therefore not part of any consultation that was undertaken as part of these proposals. However, this plan does indicate that this issue could potentially be addressed so that it would accord with the relevant advice of the National Planning Policy Framework. If I were to be considering this proposal favourably I would need to seek further comment from the Council and the Highway Authority on this matter, but having regard to the harm I have identified to the CA significance and the wider character and appearance of the area (which includes the potential visual impact of widening these roads and introducing formal footpaths), I have not sought to pursue this matter further.

Drainage/Flood Risk Issues

36. One of the Council reasons for refusal was that there was no Flood Risk Assessment (FRA) with the planning application. An FRA has now been submitted which stated the site is in Flood Zone 1 and so had a very low risk of flooding.
37. However, the Council and the Lead Local Flood Authority (LLFA) being Buckinghamshire County Council has written recommending refusal based primarily on the lack of sufficient detail in regard to surface water drainage.
38. The proposal consists of an attenuation pond, a swale, permeable surfaces, and underground storage as a form of sustainable urban drainage system (SuDs). However, this is to be connected with a Thames Water foul sewer.
39. Planning Practice Guidance (PPG) sets a hierarchy of drainage options to be used as reasonably practicable (Paragraph: 080 Reference ID: 7-080-20150323). This hierarchy includes the discharge to a combined sewer as the last solution if no others are available. However, the appellant has argued that soakaways would not work due to the site geology and that it cannot design to discharge into the adjacent canals as the Canals and River Trust have a general policy against this.
40. Whilst these points made by the appellant may be the case, there is insufficient evidence that there has been enough testing to demonstrate that infiltration cannot be achieved (which is top of the PPG hierarchy). Furthermore, there is

no response from the Canal and River Trust to confirm that discharge into the canal would be impossible.

41. There is also some doubt over whether there would be an agreement from Thames Water for connection. From the correspondence I have seen it is apparent that Thames Water may only allow connection if there was no alternative option. Even if the sewer system has capacity it is not sufficiently clear that Thames Water is in full agreement based on the evidence to accept the surface water drainage from the proposed development. This results in a significant issue as there is no surface water drainage strategy fully evidenced and agreed in place if the development were to be implemented at this time. This could result in surface water flooding of the site and potentially of adjacent land and properties.
42. Therefore, based on the evidence before me, the proposal is contrary to the relevant sections of the Framework, which requires development to be appropriately flood resistant and for sustainable drainage systems to be incorporated.

Planning Obligation

43. The Council have stated that had the planning application been acceptable in all other respects the appellant would have been required to enter into a Section 106 Agreement to secure appropriate contributions towards off-site leisure and recreation facilities.
44. At the time of determination of the planning application there was no legal agreement submitted and there still is no such agreement before me now. However, I am aware that the appellant has made it clear that they would be willing to enter into such an agreement.
45. Nonetheless, even if such a legal agreement to provide sufficiently towards off-site leisure and recreation facilities were to be submitted, in accordance with Aylesbury Vale District Local Plan policies GP86, GP87, GP88 and GP94, this would be neutral in the planning balance as it would mitigate for the impacts of the development. As I have found clear harm against the policies of the Local Plan and the Framework I have not pursued this matter further.

Planning Balance

46. The Council considers that it can demonstrate a sufficient supply of deliverable housing sites. I have found that the most important policies for determining this appeal, relating to Conservation Areas and design, are consistent with the Framework and attract significant weight. However, the Council state that some of the policies which relate to the supply of housing are out of date.
47. Whilst this may result in the 'tilted balance' under paragraph 11 of the Framework being engaged, this paragraph also states that where the development plan is out of date, permission should be granted unless there are specific policies in the Framework that protect areas and assets of particular importance (which includes heritage assets such as conservation areas), which provide a clear reason for refusing development. As the proposal would fail to preserve the character and appearance of the Conservation Area there is clear conflict with the policies relating to heritage assets set out at chapter 16 of the Framework.

48. Nevertheless, the proposal would contribute towards the provision of six new dwellings. Whilst this is beneficial in provision of new homes, as just six units are proposed I give this matter modest weight.
49. There would also be the benefit of improved highway widths and footways along Church Lane as proposed, but these could result in harm to the CA character and so I give this matter little weight in favour of the development.
50. There would be economic and social benefits, such as through the construction period, New Homes Bonus generated, and there being more people locally living in the proposed houses to support local facilities and services.
51. However, all these benefits would be modest and would not outweigh the harm I have identified. Even if the 'tilted balance' as set out in paragraph 11 of the Framework was engaged, the harm is significant and demonstrable when assessed against the Framework. Furthermore, the proposed development does not accord with the development plan policies that are outlined above.
52. I recognise that there has been much discussion with the Council including a pre-application process. However, the Council has ultimately dismissed the application and I have considered the proposal on its merits.

Conclusion

53. For the reasons given above the appeal is dismissed.

S. Rennie

INSPECTOR