
Appeal Decision

Site visit made on 29 May 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2020

Appeal Ref: APP/D3505/W/19/3242371

Land South of Vicarage Lane, Heath Farm, Waldingfield Road, Acton CO10 0AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs M Chance against the decision of Babergh District Council.
 - The application Ref DC/19/03687, dated 2 August 2019, was refused by notice dated 1 November 2019.
 - The development proposed is for the erection of detached single storey dwelling together with new vehicular access from Vicarage Lane.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the block, location and site plans (Drawing Refs 2635-03(1), 2635-01 and 2635-04) but have treated each element of the drawing as indicative, apart from the details of the access, when considering the likely impact of the proposal on the matters set out in the main issues below.

Main Issues

3. The main issues are: -
 - the effect of the proposed development on the character and appearance of the area, including whether it would preserve or enhance the setting of the Grade II listed building known as The Old Vicarage; and
 - whether the proposal is consistent with policies relating to housing in rural areas, including with regard to need and accessibility to local shops, services and facilities.

Reasons

Character and appearance and the setting of the listed building

4. The appeal site forms part of a roughly rectangular parcel of relatively flat agricultural land situated to the southern side of Vicarage Lane, on the edge of the village of Acton. The field shares common characteristics with the varied field pattern that envelopes the village. The field boundary to the lane and the

- western boundary between the site and The Old Vicarage are enclosed by mature trees and lower level planting. The south and east boundaries of the site are presently open.
5. In the immediate context of the site, the built edge of the settlement is very clear and distinct as houses are primarily focussed to the northern side of Vicarage Lane. Development to the south is limited to The Old Vicarage and the cluster of farm and other buildings further to the east, close to the junction with Waldingfield Road. This transition from what is more urban and rural in form is therefore instantaneous, as development becomes sparser with a greater propensity for open and undeveloped fields.
 6. Taken together these stated features, give rise to a clear and distinct pattern of development that makes a significantly positive contribution to the rural setting of the village edge, and therefore the character and appearance of the area.
 7. The Old Vicarage is a grade II listed building, designed by the architect Ewan Christian, the significance of which is derived from its architectural and historic interest. The building probably dates from the 19th Century and is a two-storey house with attic rooms, arranged on a H-shaped plan with gabled cross wings to the east and west ends. It is constructed of flint and brick, with precast stone quoins and dressings, a tiled roof with two tall brick chimneys set diagonally, and a vestibule to the front. The use of flint ensures that the architecture is typically ambitious and decorative.
 8. I am mindful of definition of 'setting' in the National Planning Policy Framework (the Framework) as being the surroundings in which a heritage asset is experienced. The Council suggests that old Ordnance Survey maps show the property to be some distance from the village and its church, which is also constructed of flint. It is unclear whether the property was built as a vicarage or the reasoning for its location. However, its more isolated position would have increased its importance in the rural landscape.
 9. The intervening land has since been largely infilled with planned developments. Although this has eroded much of the historic setting of the listed building and had a negative effect on its significance, the southern side of Vicarage Lane has remained largely unaltered. This aspect of its setting therefore remains largely well-preserved.
 10. Accordingly, in so far as is relevant to this appeal, although the curtilage of the listed building and any other buildings situated therein would appear to have a closer historical association with the house, the largely undeveloped nature of the land surrounding The Old Vicarage provides a rural context which forms an integral part of the historic setting of this listed building and contributes to its understanding and significance. This includes land to the south and east of the listed building, as the southern boundary has been purposely kept open to the appellants' field. The curtilage of the listed building therefore appears to bleed seamlessly into the countryside. I note that the appellants have accepted that this is an important facet of the significance of the listed building. Similarly, given that the eastern wing is articulated in flint, it is likely that this part of the building was designed to be of greater importance and to look over the east garden of the house and the countryside beyond.

11. Although mature planting between the site and listed building reduces the visibility between them, I am mindful of the English Heritage guidance on setting¹, particularly as vegetation is subject to seasonal change and ephemeral. Moreover, when trees are not in leaf during autumn and winter there would be a greater degree of visibility. Nonetheless, I do not find the absence of a visual connection to be a determinative factor, as it is the physical presence of the proposed built development that would be harmful to the significance of the heritage asset. Moreover, the proposal would significantly and permanently alter the land to the southern side of the road and compete with The Old Vicarage, which is the only purpose designed and built house to the southern side of the lane from the crossroads with Tamage Road to junction of Waldingfield Road.
12. The proposal would therefore erode an important and well-preserved aspect of the setting of the Old Vicarage, that contributes to its significance. Furthermore, although the farm buildings to the east project further beyond the frontage and are of a much greater scale and coverage, the proposal would, nonetheless, appear discordant when viewed against the prevailing pattern and character of residential development, that is almost entirely to the northern side of the lane.
13. The existing accesses from the southern side of Vicarage Lane have been in situ for some time and subsumed in the streetcene. However, mature trees and hedge planting would be removed to facilitate the proposed access. This would fragment the planting and introduce a visual break and development in the form of hard surfacing. The proposal would therefore stand out as a prominent intrusion into the uninterrupted green frontage. Whilst planting could be put in place to soften the appearance of the proposal, this would be unlikely to have a meaningful effect for some time and the proposal would be visible through the new access. The proposed development would therefore reduce the undeveloped qualities of the southern side of this part of Vicarage Lane, where residential accesses are not a common feature within this rural setting. The proposed development would therefore have an unacceptably harmful effect on the appearance of the area.
14. I appreciate that the Council has previously determined an application at The Old Vicarage for an outbuilding², in which they assessed the proposal in relation to the immediate setting of the listed building. However, that proposal is not comparable with the appeal scheme before me, as it was for development within the curtilage of the listed building. Nevertheless, I have had regard to the setting in relation to the appeal before me and consider that it extends beyond the immediate surroundings of its curtilage.
15. I have been referred to the proposed allocation³ of land to the west of the appeal site in the emerging Babergh & Mid Suffolk Joint Local Plan Preferred Options (July 2019) (the JLP) and that a planning application has also been submitted for the site⁴. As the JLP is not at an advanced stage of preparation, emerging policies and site allocations are not matters that have a significant bearing on my consideration of the merits of this appeal, particularly as there

¹ Historic Environment Good Practice Advice in Planning: 3 (2nd Edition) The Setting of Heritage Assets, published on 22 December 2017.

² Planning reference: B/16/01431 for a new cart lodge and first floor office.

³ Allocation Reference: LA045.

⁴ Planning Reference: DC/19/03126.

may be unresolved objections to contend with. Therefore, whilst I have had regard to the policy, in accordance with the requirements of Paragraph 48 of the Framework, the potential inclusion of the site allocation in the JLP has attracted very limited weight in my consideration of the merits of the appeal. Furthermore, I note that the proposal for that site would be for a significant quantum of housing on land surrounded by roads on all sides, including the part of Vicarage Lane that bends away to the south. It would also be separated from the listed building by a large field. For these reasons, it would not be comparable with the smaller scale of the appeal proposal.

16. The dwelling granted permission by the Council at the farm to the east⁵, would take its access from and be more closely associated with Waldingfield Road. It would also be contained between existing built development associated with the farm and a further dwelling to the south, some distance across the field to the appeal site. Similarly, although a further dwelling⁶, that appears to be under construction, will be closer to the listed building than the appeal proposal, it will be situated in an otherwise built up frontage to the northern side of Vicarage Lane. For these reasons, these developments are not comparable with the appeal scheme.
17. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposal would be harmful to the setting of the listed building, which would have a negative effect on its significance as a designated heritage asset. This would equate to less than substantial harm to the significance of the designated heritage asset. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals.
18. In the context of paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. Whilst there is no threshold for the assignment of weight to the quantity of proposed dwellings within the planning balance, the appeal before me would deliver one family home, which would contribute to the overall housing mix and supply in the District.
19. I also recognise that the proposal could be said to make more efficient use of the site. However, paragraphs 117 and 122 of the Framework are clear that making efficient use of land should include taking into account the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive and healthy places. Similarly, there would be some biodiversity enhancements to the site but many of the enhancements could be carried out without the proposed development, which would require initial clearance of the site, including puncturing the green frontage to Vicarage Lane and the creation of a hardstanding.
20. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period. Future occupiers would also contribute to the vitality of the rural community through activity.

⁵ Planning Reference: DC/18/05085.

⁶ No planning reference provided but address noted as 58 Vicarage Lane.

21. The location of the proposed development being closer to the appellants' support network would be private benefits restricted to the appellants and their family, albeit there would be a small public benefit in terms of the minimisation of energy consumption associated with any reduction in travel. However, although I address need later, other accommodation in the locality might be similarly effective in this respect without harming the character or appearance of the area or setting of the listed building.
22. In accordance with paragraphs 195 and 196 of the Framework, considered together, I conclude that the public benefits I have outlined above do not outweigh the great weight to be given to the less than substantial harm that I have identified.
23. For the reasons outlined above, despite the fact that the proposal could be constructed to current building regulations standards using renewable technologies, energy and water efficiency and good quality materials, I conclude that the appeal scheme would have an unacceptably harmful effect on the character and appearance of the area and would be harmful to the setting of the listed building. Hence, the proposed development would not accord with Policy CN06 of the Babergh Local Plan Alteration No 2 (Adopted June 2006) (LP) and Policy CS15 of the CSP. Together these policies require that proposals for development within the setting of a listed building should be of an appropriate scale, form, siting and detailed design to harmonise with the existing building and its setting; retain setting which is appropriate to the listed building and the relationship with its surroundings; respect those features which contribute positively to the setting of a listed building, including space, views from and to the building and historic layout; and respect the local context and character of the different parts of the district.
24. The proposal would also conflict with paragraphs 130, 192 and 193 of the Framework. In particular, paragraph 193 states 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
25. Given the significant extent of the break in built development in the frontage of southern side of Vicarage Lane, I do not subscribe to the notion that the appeal proposal would be for development in the form of infilling. I have not therefore found in relation to Policy HS28 of the LP, which refers to such developments.

Rural housing

26. Policy CS2 of the Babergh Local Plan 2011-2031 Core Strategy & Policies (Adopted February 2014) (CSP) sets out the Council's spatial strategy to 2031. It outlines a settlement hierarchy, including hinterland villages like Acton. The policy suggests that development is directed to towns or urban areas, and to the Core and Hinterland Villages. However, the site is outside of the settlement, in the countryside, where development is only permitted by the policy in exceptional circumstances subject to a proven justifiable need and requires that all proposals in relation to Hinterland Villages be assessed against Policy CS11 of the CSP. This also requires development to meet a proven local need, such as affordable housing or targeted market housing identified in an adopted community local plan / neighbourhood plan.

27. I acknowledge that the appellants have suggested there is a need for the proposed development associated with their personal circumstances⁷. Moreover, the proposal would meet the needs of the family and would be closer to relatives who are part of a support network. Furthermore, I understand that it has been challenging to find a suitably sized and affordable single-storey family home, in the locality, as an alternative. I have not, however, been provided with substantive evidence to demonstrate that there is a shortage of affordable accommodation in the locality or that the proposal would be relatively affordable to construct.
28. In light of the above, the proposed development would be contrary to the spatial strategy in Policies CS2 and CS11 of the CSP, as it would encompass housing outside a defined settlement boundary where no exceptional circumstances have been demonstrated.
29. Be that as it may, I am conscious that Policy CS11 of the CSP is also supportive of development that is adjacent or well related to the existing patterns of development and which supports local services. Policy CS15 of the CSP also seeks to minimise the need to travel by car using the following hierarchy: walking, cycling, public transport, commercial vehicles and cars. Similarly, paragraphs 78 and 103 of the Framework seek to restrict housing in rural areas to locations where it will enhance or maintain the vitality of rural communities and suggest that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
30. A greater dependency on car use is therefore inevitable in some rural locations, particularly to access opportunities for employment. The appeal proposal would be opposite housing situated on the northern side of the lane, which is situated within the Built-Up Area Boundary of Acton. Both parties have drawn attention to caselaw relevant to the District⁸ in which it is clarified that the sequential assessment, outlined in Policy CS11 of the CSP, is not required for sites adjoining the Built-Up Area Boundary, as sequentially they are within the same tier as other similar sites. Furthermore, the proposal would not, of itself, generate a large number of traffic movements, and future residents would not be restricted to travelling by private motorised transport, as there are local shops, services and facilities within a reasonable walking distance of the site.
31. In light of the above, I conclude that the proposed development would be contrary to Policies CS2 and CS11 of the CSP as there would not be a proven justifiable need for the proposed development. However, the appeal site would represent an appropriate location for housing, having regard to its accessibility to local shops, services and facilities. The proposal would therefore accord with elements of Policies CS11 and CS15 of the CSP in this regard and paragraphs 78 and 103 of the Framework.

Other Matters

32. The appellant has referred to the conduct of the Council in the determination of the planning application, including the approach to and consistency of its decision-making. In particular, I note that there is some disagreement between the main parties as to the effect on landscape character. Whilst this is primarily

⁷ I have had regard to the content of the appellants' personal statement that was added to the Supporting Statement that accompanied the planning application.

⁸ R (on the application of East Bergholt PC) v Babergh District Council CO/2375/2016

not a matter for me to consider as part of this appeal, I have considered the individual merits of the appeal scheme afresh in relation to the relevant policies and evidence before me.

33. Due to the intervening distances achieved the indicative details of the proposal suggest that there would not be harmful effects on the living conditions of the occupants of neighbouring houses or the proposal, particularly in respect of privacy and daylight. Whilst I note concerns by third parties, there is no substantive evidence that highway safety would be compromised as a result of the proposed access arrangements and I note that the Highway Authority did not raise any concerns in this respect. Furthermore, there is no evidence to suggest that the proposal would be at risk of flooding or there would be a risk from the site of land contamination.
34. Nonetheless, consideration of these matters does not lead me to a different conclusion on the main issues, as I have adjudged the proposed development to be harmful.

Planning Balance

35. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
36. The development plan for the area comprises the LP and CSP, both of which predate the current Framework. However, the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework⁹.
37. The blanket approach to the application of settlement boundaries, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. Furthermore, exceptional circumstances for development in the countryside beyond settlements, found in Policies CS2 and CS11 of the CSP, are not wholly consistent with the Framework, which only applies to isolated development. However, Policy CS2 is consistent with the aim of the Framework to direct housing to locations where it is supported by local facilities and services through an established pattern of distribution; and Policy CS11 responds to local circumstances as required by Paragraph 77 of the Framework. In light of this I have regarded the underlying objectives of the policies, as being consistent with the revised Framework but I have afforded reduced weight to the conflict of the proposal with these policies in the light of their approach to exceptional circumstances for development in the countryside, which lessens the magnitude of that conflict.
38. Policies CN06 of the LP and Policy CS15 of the CSP do not exceed the statutory duty referred to above or go further than paragraph 192 of Framework, which require decision makers to "take account of the desirability of sustaining and enhancing the significance of heritage assets". Policy CS15 of the CSP is consistent with the Framework in terms of its aim to achieve well designed places and the accessibility to services and facilities. However, both policies fail to acknowledge the balancing exercise required by paragraph 196 of the

⁹ I have had regard to extract from the appeal at Cockfield quoted in the appellants' Supporting Statement.

Framework; and Policy CN06 also refers to Annex C of PPG15 (Guidance on alterations to listed buildings), which has been superseded. The policies are therefore out of date, for the purposes of the Framework. Hence, I attach only moderate weight to the conflict of the proposal with these policies, which lessens the magnitude of that conflict.

39. Given that I have not found against Policy HS28 of the LP, I have not considered its consistency with the policies of the Framework.
40. I note the appellants' position in respect of the Council's housing land supply at the time of the planning application, including the approach to this matter set out in several appeal decisions¹⁰. I also acknowledge the Council's position that it can demonstrate five-years supply of deliverable housing land within the district, which is more current. Although the appellants have not provided any substantive evidence to dispute this position, I am mindful that this should not represent a ceiling on the delivery of housing, as the Framework supports the Government's objective to significantly boost the supply of homes.
41. Furthermore, as two of the policies most important for determining the appeal are out-of-date, namely Policy CS15 of the CSP and Policy CN06 of the LP, in line with footnote 7 to paragraph 11 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. However, I am mindful that in light of my finding in relation to heritage matters, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the proposal is not sustainable development, for the purposes of the Framework and therefore, the presumption in favour of sustainable development does not apply.
42. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage assets, in this case the setting of a Grade II listed building, and the proposal would accord with development plan policy in respect of its accessibility to local shops, services and facilities. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the character and appearance of the area, including to the setting of the Grade II listed building. Whilst two development plan policies most important for determining this appeal are out-of-date, the proposal would not amount to sustainable development under the terms of the Framework. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.
43. In the final balance, I consider that the harm to the character and appearance of the area, including the setting of the Grade II listed building, would outweigh the benefits of the proposed development outlined above. Therefore, the other material considerations in this case do not indicate that the appeal scheme should be determined other than in accordance with the development plan.

¹⁰ Appeal Ref: APP/D3505/W/18/3206195 and a further unreferenced appeal in Hitcham.

Conclusion

44. 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, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR