
Appeal Decision

Site visit made on 2 June 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/L2250/W/19/3243424

Bowery Hall, Ship Close, Dymchurch, Kent TN29 0NS

- 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 E.I. Group against the decision of Shepway District Council.
 - The application Ref Y18/1380/FH, dated 29 October 2018, was refused by notice dated 19 September 2019.
 - The development proposed is residential development comprising 5no. dwellings with associated parking, landscaping and amenity space following the demolition of the existing building (revised application).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address from the revised planning application form and note correspondence from the applicant's agent that agrees the use of this address. I have also taken the description of proposed development from the revised planning application form although I note it is expressed differently on other documents.
3. The informative upon the Council's decision notice indicates that the planning permission has been refused on the basis of site plan drawing number 301 Rev.A, amongst other plans. However, I have been provided with two site plans of the same drawing number and date, albeit showing different site layouts. Both the appellant and Council have confirmed that the site layout that would host vehicular accesses from the north-western end of the site onto a track alongside the public house was the plan that was before the Council when it made its decision. For the purposes of clarity, I have considered the appeal on this basis of that plan.

Main Issues

4. The main issues raised in respect of the appeal are the effect of the proposed development on:
 - a) The setting of the nearby Ship Inn, a Grade II listed building, the character of the adjacent Conservation Area (the CA) and the open character of the area;
 - b) Highway safety; and
 - c) Protected species.

Reasons

Listed building, CA and open character

5. The Ship Inn is unusual in that it backs onto the main road (the A259) with its principal elevation facing the appeal site. Whilst the appellant contends that the public house fronts the A259, it was clear from my visit that the main frontage of the public house is that elevation that faces onto the appeal site. The Council's Conservation Adviser comments that this was likely to be the historic arrangement with the principal entrance facing out onto a triangular space in the old roadway. This was at a place where the old road from Hythe (old Hythe Road), which ran along directly on top of the sea wall, turned inland to the village centre before curving around by the Church and New Hall to continue south towards New Romney. Whilst traffic now passes to the rear of the Inn, the appeal site would historically have been a triangular junction space at the centre of the village, the meeting space between the roads from new Romney, Burmarsh and Hythe along the sea wall.
6. The appellant's Heritage Statement that supports the proposal includes historic maps that shows the old road leading from the sea wall to the land in front of the public house. It appears to me, having viewed the historic maps within the Heritage Statement that the existing path that crosses the appeal site is possibly a vestige of the historical route. I note that this is also the opinion of a local resident mentioned within the appellant's Heritage Statement.
7. The Heritage Statement also comments that this space is the last remaining element of the formerly extensive open space to the east and north east of the Inn. It also notes that the views across the site from Hind Close and from the east corner of the site give some insight into the original approach to the Inn from the old Hythe Road and enhance the impact of its front elevation and the appreciation of the significance of The Ship Inn.
8. Looking at the present-day situation the setting of the listed public house has been impacted by the erection of Bowery Hall, garages and other 20th Century development in the wider area. Nonetheless, most of the former junction within the immediate environs of the public house entrance remains open. This serves to preserve some of the settlement heritage of the village as it was historically. The open undeveloped character of the appeal site, therefore, has significance as it forms part of the historic setting of The Ship Inn and the historic village. Furthermore, the principal elevation of the public house has historically faced towards an open space and this is an important part of the character of the immediate area, as is the open site in allowing the listed building to be visually experienced. Indeed, the appellant's Heritage Statement identifies that the most significant element of the historical setting of The Ship Inn was its relationship to, and accessibility from, the old Hythe Road. Whilst the Statement suggest that this legibility has been entirely lost through development in the 20th Century, I do not agree with that opinion for the above reasons.
9. I acknowledge that the Church and New Hall south west of The Ship Inn are important to the historic setting of the public house and this has no doubt contributed to their inclusion within the CA designation. Although the open space to the east is not incorporated within the CA, it is important for those reasons set out in the above paragraph. Collectively this group of historic buildings, along with the open space of the former highway junction,

- circumscribe the historic village setting that defines the character of the place. The triangular appeal site, that retains much of its former openness despite the erection of the hall and garages, is of significant importance to the setting of the listed public house and contributes positively to the distinctive historic characteristics of the adjoining CA and the public house within it.
10. The existing buildings on site do not encroach upon the view of the public house available across the open area. The proposal, whilst utilising land that has previously been developed, would create built development further within the open part of the appeal site. This would obscure a substantial part of the principal elevation of the public house in views across the site. In addition, the proposed dwellings, hardsurfacing and domestic landscaping would substantially change the appearance of the site to one of urban residential. Developing the site would result in the current open character of the site being lost. This space provides a visual amenity in the context of the setting of the public house, even if not designated as open space in the Local Plan and being within separate ownership. Taking these collectively, the proposal would be substantially detrimental to the historic layout of the settlement, the visual appearance of the open site and the legibility of the public house in views across the site.
 11. I note that some open space and visual connection with the listed public house would be retained to the north western part of the site. Nonetheless, the proposed development would significantly diminish how the heritage asset of the public house would be experienced. The proposal would substantially change the character and appearance of the site and the setting of the listed public house. Although not being within the CA, the residential development of the site would also substantially alter the historic interest of the CA and an important view into it.
 12. I acknowledge that the density, orientation, design, height and appearance of the dwellings could be considered to be acceptable taken separately on their own merits. The proposal would not be out of keeping when considered in the context of other development in the locality. In addition, part of the site would host communal open space similar to that of other open spaces close by that from part of the wider residential estate. I accept that Bowery Hall is in a poor state of repair and would no longer fulfil its original purposes. Nonetheless, these matters do not outweigh the harm that I have identified above or justify the proposed development. Furthermore, I do not consider that landscaping within the development would overcome my concerns sufficiently that might lead me to a different conclusion.
 13. The National Planning Policy Framework (the Framework) indicates 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. Any harm to the significance of a designated heritage asset from development within its setting will require clear and convincing justification. The Framework is clear that where a proposed development will lead to substantial harm to a designated heritage asset, permission should be refused unless the substantial harm is necessary to achieve substantial public benefits that outweigh the harm.
 14. The proposed development would be harmful to the designated asset of the listed Ship Inn public house. I consider there would be substantial harm to this

designated heritage asset, and I give this considerable importance and weight. In addition, given the size and scale of the proposal effecting the adjoining CA as a whole, I consider there would be substantial harm to the character of the CA and the proposal would neither preserve or enhance it.

15. In accordance with paragraph 195 of the Framework I must weigh the harm against the public benefit of the proposal. Although the development would contribute to the District housing supply as a windfall site within a built up area, being a scheme of five units, the contribution and benefit to the public, in my view, would be modest, and insufficient to outweigh the harm identified. I conclude therefore that the proposed development would fail to accord with national policy that requires special regard to be given to the desirability of preserving the setting of a listed building (Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990). I do not consider the four stated criteria in the bullet points at the end of paragraph 195 apply in this case. With regard to the CA, I conclude that the proposed development would fail to accord with national policy that require special attention to be given to the desirability of preserving or enhancing the character or appearance of a CA (Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990).
16. For these reasons, I conclude that the proposed development would be harmful to the setting of the listed Ship Inn, the character of the adjacent CA and the open character of the area. The proposal would, therefore, conflict with Saved Policies LR9, BE4 and BE5 of the Shepway District Local Plan Review, Policy SS3 of the Core Strategy, draft Policy C3 of the emerging Places and Policies Local Plan Submission Draft and the Framework. These policies seek, amongst other matters, development to preserve listed buildings and their setting and to refuse development that would have an adverse effect upon the setting or character of a listed building; to refuse proposals that would adversely affect the character of a CA; and to resist the net loss of areas of open space of amenity value.

Highway safety

17. The proposed access to and from the site would be via a track alongside the public house, a single carriageway without pavements. The track facilitates access to the public house, as well as other residential properties in the area, although I observed there is also access via Ship Close that would also facilitate access to the public house and these properties from the A259. The track is also understood to have served Bowley Hall when in use. Whilst the plan indicates that the track would be two-way at the point of the site access, it would not be wide enough for two vehicles to pass.
18. The angle of the site access would encourage future occupiers of the development to travel via Tartane Lane and, therefore, only require the occupiers to traverse a short stretch of the track. I note the Kent County Council's Highway and Transportation advise a maintained maximum planting height of 1.05m either side of the proposed access. This would facilitate visibility in both directions along the track when leaving the site by vehicles.
19. Given the limited overall length and width of the track all vehicles using the track are extremely likely to be travelling at a low speed. I do not consider the vehicle movements generated by five new homes would result in significant highway conflict with other vehicles or pedestrians along this short stretch of track and, as such, the risk to highway safety would likely to be low.

20. I have been directed to Kent County Council's adopted Interim Guidance Note (no.3) that sets minimum parking standards for rural areas, including villages, for two parking spaces per dwelling plus 0.2 visitor parking spaces per unit. The proposed development would host two spaces for each dwelling but no visitor parking space. However, the adjoining highways have unrestricted parking and I consider they could accommodate the on-street parking of one additional vehicle that the proposal could generate without adversely impacting road safety or the free flow of traffic in the area.
21. It is not clear whether a large refuse vehicle could enter the site and turn to exit in forward gear. Notwithstanding this, the appellant has provided a plan (drawing number 301 Rev.B) that illustrates that communal collection points could be located within 15m of the refuse vehicle routes Tartane Lane and Hind Close, as would be required by the Council's Waste Services. This would negate the requirement for refuse vehicles to enter the residential development. It appears to me that refuse facilities that would meet the Council's operational requirements could be achieved and this could be secured by the imposition of a suitably worded planning condition.
22. For the above reasons, I conclude that the proposed development would not be substantially harmful to highway safety. As such, the proposal would comply with Saved Policies TR11 and TR12 of the Shepway District Local Plan Review, Policies T1 and T2 of the emerging Places and Policies Local Plan Submission Draft and the Framework. These policies seek, amongst other matters, that the access is not detrimental to the safety of vehicle traffic, cyclists and pedestrians and development that would create off-street parking on or near the site to have no adverse effect on road safety or traffic management.

Protected species

23. The appeal site, and in particular that part of the site that comprises scrub and rough grassland and those buildings within it that are proposed to be demolished, have the potential to provide habitat for protected species.
24. A Preliminary Ecological Appraisal Report has been submitted to inform the appeal. This Report identifies the site to be of low suitability for breeding birds, reptiles, foraging and commuting bats and that the buildings and trees are of negligible suitability for roosting bats. The Report identifies that these protected species require attention or action but not necessarily urgently and advises that consideration is required to be given to future action, such as, the requirement for pre-commencement surveys.
25. The report advocates precautionary measures, such as, the removal of buildings and suitable vegetation to be undertaken outside of bird nesting season (or the site checked for the presence of nesting birds prior to works if this is not possible), the site being checked for reptiles prior to work commencing and a bat roost emergence/re-entry survey be undertaken prior to demolition of the buildings. Given the site's low suitability for foraging and commuting bats the report advises that no further bat activity survey is considered necessary.
26. On the available evidence I am satisfied that the proposed development would be unlikely to have a significant effect on protected species. Given the site's low potential to host suitable habitat, harm to birds, reptiles and bats could be mitigated through the imposition of a suitably worded planning condition or

conditions. The Report also identifies opportunities for biodiversity enhancement by including suitable vegetation planting and incorporating bat and nesting boxes, hedgehog and invertebrate houses into the developments design. These measures could also be made a requirement of a suitably worded planning condition.

27. For these reasons, I conclude that the proposed development would be unlikely to harmfully compromise protected species at the site. As such, the proposal would not materially conflict with Saved Policy CO11 of the Shepway District Local Plan Review, draft Policy NE2 of the emerging Places and Policies Local Plan Submission Draft and the Framework that seek, amongst other matters, to withhold permission for development that would endanger plant or animal life or cause loss of, or damage to habitats and landscape features of importance for nature conservation and that require all new development to conserve and enhance the natural environment, including all legally protected or priority habitats and species.

Other Matters

28. The development would provide benefits in terms of delivering an additional five windfall homes to boost local housing supply and would, in part, re-use the site. I acknowledge that the appeal site would represent a sustainable location in regard to accessibility to local public transport connections, shops and services. I also note the site to being at a low flood-risk. Nevertheless, I have found that the proposal would be harmful to the setting of the listed public house, the character of the adjacent CA and the open character of the area. Consequently, the presumption in favour of sustainable development does not apply in this case.
29. I have been provided details pertaining to a modification to Public Footpath HM223 at Dymchurch that traverses the appeal site. However, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.
30. It is appreciated that pre-application advice was sought in this case and that a previous proposal has been submitted to and determined by the Council and that the proposal before me has sought to address previous Council concerns in relation to developing this site. Whilst this may be so, I am required to and have considered the proposal before me on its own merits.

Conclusion

31. Although I have found in favour of the appellant in terms of the effect on the second and third main issues, this does not overcome the identified harm in relation to the first main issue.
32. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR