



Appeal Decisions

Site visit made on 6 July 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal A Ref: APP/N1730/W/20/3246394

Land north of Church Lane, Dogmersfield RG27 8SJ

- 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 and Mrs B Leversha and N Foster against the decision of Hart District Council.
 - The application Ref 19/02153/FUL, dated 20 September 2019, was refused by notice dated 5 December 2019.
 - The development proposed is Erection of 4no. dwellings and associated works.
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Appeal B Ref: APP/N1730/W/20/3250207

Land north of Church Lane, Dogmersfield RG27 8SJ

- 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 and Mrs B Leversha and N Foster against the decision of Hart District Council.
 - The application Ref 20/00275/FUL, dated 30 January 2020, was refused by notice dated 31 March 2020.
 - The development proposed is Erection of 3no. dwellings and associated works.
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Decision

1. Appeal A and B are both dismissed.

Procedural matters

2. The two appeals relate to the same site and each other. I have considered each proposal on its own merits, but as they raise similar issues, I have dealt with them in a single decision letter.
3. The Hart Local Plan (Strategy and Sites) 2032 (LP) was adopted in April this year. As a result, a number of saved policies referred to in the Council's Decision Notice, have been replaced and renumbered by similar policies within the adopted LP. Furthermore, two saved policies referred to in the Decision Notice remain saved by the LP. These are saved policy NRM6 from the South East Plan (2009) (SEP) and saved policy GEN1 of the Hart District Local Plan (Replacement) 1996-2006 (SLP). I shall take this into account in my decision without prejudice to any party.
4. Both appeals A and B are supported with draft Unilateral Undertakings (UU). The intention of these is to mitigate the impact of development on the Thames Basin Heaths Special Protection Area (TBHSPA). The contents of these Agreements and their capability to meet policy requirements are in dispute between main parties, I shall return to this matter later.

Main Issues

5. The main issues for appeals A and B are:

- whether the appeal site would offer a suitable location for new housing development taking into account local and national spatial housing policies,
- whether the proposed development would preserve or enhance the character and appearance of the Dogmersfield Conservation Area (DCA) and preserve the setting of the identified designated heritage assets, and
- whether the proposed dwellings would affect the integrity of the Bourley and Long Valley Site of Special Scientific Interest which is part of the Thames Basin Heaths Special Protection Area (TBHSPA).

Reasons

Locational suitability

6. The development plan for the district includes the LP and the Dogmersfield Neighbourhood Plan (2019)(NP). Policy SS1 of the LP establishes the district's spatial strategy and intended distribution of growth. This policy directs most growth to within defined settlements, previously developed land and allocated sites. It expects housing sites to be delivered within defined settlement boundaries; Hartland Village; through Neighbourhood Plans; and in accordance with its rural exception policy. Policy NBE1 of the LP establishes a set of exemptions for development in the countryside. In respect of housing this includes allowing affordable housing on rural exemption sites, for specialist housing or being of innovative design. Considering the evidence none of the Council's rural housing preclusions of this policy appear to be directly relevant to the proposal.
7. Policy DNP1 of the NP establishes the spatial policy for the parish. This seeks to direct new development to within the settlement boundary of Dogmersfield. It also explains that outside of the defined boundary green field development would not be supported unless it relates to set criteria. These criteria exclude housing development. Therefore, although the NP acknowledges the benefits of small-scale windfall housing, such development is to occur within its settlement boundary. The appeal site is outside of the settlement boundary defined by the NP and would consequently be in conflict with it. In such circumstances it is necessary to consider whether there are other material considerations which would justify making a decision other than in accordance with development plan policy.
8. The National Planning Policy Framework (The Framework) supports rural housing that would enhance and maintain the vitality of rural communities through supporting local services. The site is outside the defined settlement of Dogmersfield, but is not isolated. It is adjacent and opposite other dwellings, some of these are within the village limits. Dogmersfield is a small settlement, and includes a school, public house and church. Both proposals would deliver a small-scale windfall housing development that would make a small contribution towards local services. However, these benefits would be limited and would not appear to make a necessary or meaningful contribution to local services.
9. As the village would provide only a limited range of services future occupiers would need to travel to local settlements such as Odiham, Farnham and Fleet

for most basic needs. The Framework requires decision makers to acknowledge that access to sustainable transport solutions would vary in rural locations. Nevertheless, Church Lane lacks street-lights or a footway and the village is not served by a bus service. These factors when combined would reduce the likelihood of future occupiers walking or cycling to the limited local services. As a result, future occupiers would be largely reliant on the private car to access goods and services. The site is therefore in a location with poor accessibility for access to day-to-day services. As such, neither proposal would accord with the sustainable pattern of growth advanced by the Framework.

10. Consequently, the site would not offer a suitable location for new housing development having regard to local and national spatial housing policies. As this issue relates to strategic matters, both appeals A and B are found to be in conflict with the Council's strategic development policies.
11. Accordingly, the proposals relating to appeal A and appeal B, would be contrary to policies SS1, NBE1 and NBE2 of the LP. These seek amongst other things for development to be focussed within defined settlements, to meet a listed exemption within the countryside and have no adverse impact on the visual amenity and scenic quality of the landscape. Furthermore, the proposal would not satisfy saved policy GEN1 of the SLP which seeks development to avoid sporadic development that would be unrelated to existing settlement patterns. These policies are in general conformity with the Framework which seeks development to manage growth in support of sustainable communities.

Character and appearance

12. The village consists of a combination of low-density housing and open land resulting in a semi-rural character. Most groups of housing consists of ribbon development on one side of the highway, especially away from the village core. Church Lane has the characteristic of a country lane. It is without a footpath and includes dwellings mostly on only one side of the street. Many dwellings are set back from the highway and behind low-level planting and boundary treatment. The built form therefore reinforces the largely open rural character of the area. The site is a corner of a meadow which is part of a larger area of open space. This wider area is bisected by a Public Right of Way (PROW).
13. The roadside boundary consists of a tree and hedgerow boundary. Despite the boundary planting providing some screening, views into the site are possible due to several gaps in the hedgerow. These gaps are especially evident opposite the entrance of 'Church Rise' and adjacent to 'Rectory Cottage'. Views of the site from Church Lane would be intermittent. However, the glimpses and gaps evident afford clear opportunities to appreciate the open character of the land beyond. The site can also be clearly seen from the PROW, providing clear albeit distant views of the appeal site. Consequently, the site makes a positive contribution to the rural character and appearance of the DCA.
14. My statutory duty¹, requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 193 of the National Planning Policy Framework (the Framework) requires great weight to be given to an asset's conservation when considering the impact of a proposal on its significance. The Dogmersfield Conservation Appraisal and Management Plan (CAMP) identifies the significance

¹ section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

of the DCA. This explains that the open land and the prevalence of mixed farmland and scattered woodland is an integral part of its character. This also emphasises the importance of the open meadow to the character of the conservation area. This identifies important views from Church Lane, one that bisects the appeal site. This view and others are also considered within the appellant's Landscape Character Assessment (LCA). These views reveal the open land and illustrate that the site is visually connected to the adjacent larger area of open space. The importance that this site makes to the open character of the meadow is also clearly evident from the PROW. In contrast, views of the site from Chatter Alley are less open being largely obscured by intervening topography and planting. However, overall the appeal site is highly visible from several public vantage points.

15. I also have a statutory duty² to have special regard to the desirability to preserve the setting of a listed building. The identified nearby listed buildings consist of 'Tundry House', 'The Thatched Cottage' and 'Brian Cottage'. The significance of 'Tundry House' derives from its mid C19 age within a large plot in a rural setting. Its significance includes its architectural features of a hipped slate roof, sash windows and understated Tuscan order around the main entrance. The significance of 'The Thatched Cottage' relates to its C17 origins within the rural character of Church Lane. It also has architectural interest that include features such as exposed timbers and eyebrow windows. The significance of 'Brian Cottage' derives from its early origins from the C17 and its architectural interest. Features of interest include its thatched roof and its exposed timber frame with painted brick inserts in a rural context. 'Brian Cottage' and 'Tundry House' are some distance from the site and their significance would not be affected due to distance and intervening buildings and landscaping. Whereas, 'The Thatched Cottage' is adjacent to the site and makes a strong and positive contribution to the street. Although this is not directly opposite the site, its setting is within close proximity of both proposals.

Assessment of appeal A

16. In regard to appeal A, the proposal for 4 dwellings would result in development on part of the meadow. The proposal would include new boundaries, substantial built form and domestic activity which would combine to have a substantially harmful effect on the currently open character of the site. Furthermore, the proposed means of access would require the removal of part of the highway bank and boundary planting. These works would create further views into the site further revealing its developed nature. This would increase the intervisibility of the site and substantially alter the rural character of Church Lane.
17. The proposal would introduce relatively substantial dwellings within this open context. These would erode the open character of part of the meadow. Views of the site from the PROW would be partly diminished due to the separation distance. However, the appearance of dwellings would nevertheless be prominent and intrusive into this view. It would therefore erode the green and open character of this vantage. Consequently, the proposal would be highly visible from Church Lane and the PROW.
18. The proposed development would obscure important views of the open space identified in the NP and CAMP. It would also result in the removal of parts of

² section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

the hedgerow. The loss of these open views would undermine the character of the meadow and the sense of spaciousness of the remaining wider area. Consequently, the proposal would erode the rural character of the site. This would undermine the positive contribution that the open space makes to the character of the DCA. Also, the removal of part of the roadside hedgerow to create three new openings would intrude into the rural character of Church Lane. This would have a harmful impact on the significance of the DCA.

19. Furthermore, the proposal would be in close proximity to The Thatched Cottage. The access for the nearest proposed dwelling, formed by some hedgerow removal, would increase views of the proposal. This would be relatively intrusive and dominant to the rural character of this part of Church Lane. The proximity and intervisibility of the nearest proposed dwelling would substantially encroach into views of the listed building and thereby harm its significance. This form of encroachment would result in harm to the setting of The Thatched Cottage.

Assessment of appeal B

20. Turning to appeal B, and similar to the above considerations, this proposal would also result in new development within a corner of an area of open space. Therefore, the effect of the proposed development would be to diminish the quality and sense of spaciousness conveyed by the meadow and its contribution to the surrounding open character. This would therefore also have a harmful impact on the rural character of the area.
21. Furthermore, although viewpoint 2 identified in the NP would be largely retained, other open views through gaps in the hedgerow would be obstructed. This would be particularly evident from the southern corner of the site. This view would be subject to fundamental change which would be harmful to the rural setting of the site. Furthermore, the two proposed access points and associated works to the hedgerow would result in a further harmful alteration to this section of Church Lane. This harm would create new gaps revealing built form beyond. In contrast to appeal A, the proposal would retain the hedgerow in front of Church Rise, this would diminish the harmful effect of the proposal on the setting of The Thatched Cottage. This would substantially reduce the degree of harm to the setting of the listed building. Accordingly, this proposal would be of harm to the significance of the DCA. In contrast, the proposal would be of negligible harm to the setting of The Thatched Cottage.

Conclusion of character and appearance for appeals A and B

22. Consequently, neither proposal advanced by appeal A nor appeal B would preserve or enhance the character and appearance of the DCA. Moreover, the proposal associated with appeal A would not preserve the setting of 'The Thatched Cottage'.
23. Accordingly, the proposals subject to both appeals A and B would be contrary to policies NBE2 and NBE8 of the LP. These seek to prevent development that would have an adverse impact on the scenic quality of the landscape and to refuse development that would lead to harm to the significance of a heritage asset. The proposal would also fail policies DNP1 and DNP2 of the NP, which require development to respect the existing scale of the village and preserve the historic character of the conservation area. Also, neither proposal would satisfy saved policy GEN1(v) of the SLP which seeks development to provide

conservation of the district's landscape and heritage. These policies are in general conformity with the Framework that seeks development to be sympathetic with the local character.

24. Furthermore, the proposal associated with appeal A would not respect a key view identified in the NP and as such would not accord with its policy DNP4.

Special protection area (SPA)

25. The site is within the zone of influence of the TBHSPA. The significance of which derives from its habitat value for three heathland species of birds; the Dartmouth warbler, nightjar and woodlark. Saved policy NRM6 of the SEP requires that development, likely to have a significant effect on the integrity of the TBHSPA, must demonstrate that adequate measures are provided to mitigate any potential adverse effect. Also, policy NBE3 of the LP reinforces this provision. It requires development to include adequate measures to avoid or mitigate any potential adverse effects.
26. Due to its proximity to the appeal site there is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupiers of the development. Although this may be minimal by itself, a significant effect on the integrity of the TBHSPA would occur, when considered in combination with other residential development in the surrounding area. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage³. This responsibility now falls to me within this appeal.
27. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the SPA. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective and could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other matters

28. A small housing development was approved⁴ on Church Lane in 2015 for 3 dwellings. I do not have the full details of that approved development or of any benefits it offered. However, it is evident that it was approved prior to the adoption of the NP and LP. Although I understand that the previous Local Plan defined a similar settlement boundary, I am unconvinced that a similar policy context existed. I concur with the appellant that consistency in decision making is important. However, the approved scheme is adjacent to the village core and existing residential boundaries to its side and rear. Accordingly, I find the geographical and policy context of the appeal site to be demonstrably different to the 2015 approval. This would therefore not justify an exception to the Council's settlement boundary policy. Subsequently, I have only afforded limited weight to this in my consideration of the merits of these appeals.

³ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁴ Planning Application Reference: 15/02401/FUL

29. Although the Council has raised no objection to the impact on neighbouring living conditions, drainage design, highway safety, and access requirements of building regulation, these can only make a neutral contribution towards the planning balance.
30. I have considered whether planning conditions could be imposed to enable either proposal to be allowed. However, conditions to require hedgerow planting to the frontage or to the exposed rear boundaries would not address the identified harm to the open character. Therefore, these measures would not address the identified harm to the significance of the heritage assets.

Planning balance and conclusion

31. In terms of the advice in paragraph 196 of the Framework, the harm to the conservation area and The Thatched Cottage would be 'less than substantial' affecting only their immediate surroundings. The Framework sets out the need to address 'less than substantial harm' in a balanced manner against the public benefits associated with such schemes. The appellant has not advanced specific public benefits that might outweigh the identified less than substantial harm. However, it is noted that both proposals would deliver new housing adjacent to a village boundary and this would make a small contribution towards local services and facilities, benefits that I attribute moderate weight. In so far as these benefits constitute public benefits, these would be insufficient to outweigh the identified harm to the character of the DCA and the listed building. This would not therefore out-weight the less than substantial harm found to the identified heritage assets, in regard to appeals A and B.
32. The Framework seeks to significantly boost the supply of housing. However, the limited benefits of either proposal, to local services and facilities and biodiversity, would not out-weight the fundamental conflict identified with the Council's spatial housing policies for either appeal. These merits therefore do not indicate that these decisions should be made other than in accordance with the development plan. Moreover, I conclude that the both appeal proposals would conflict with the development plan when taken as a whole. These therefore do not represent the sustainable development for which the Framework advocates a presumption in favour. There are no other material considerations, including the Framework, that outweigh this conflict.
33. For the reasons given above, having regard to all matters raised, I conclude that Appeal A and Appeal B are dismissed.

Ben Plenty

INSPECTOR