



Appeal Decision

Hearing Held on 30 June 2020

Site visit made on 30 June 2020

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 July 2020

Appeal Ref: APP/Z3825/W/19/3243352

The Mount, Ifield, Crawley RH11 0LF

- 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 Mrs Rosemary Bensley against the decision of Horsham District Council.
 - The application Ref DC/18/2215, dated 15 October 2018, was refused by notice dated 5 July 2019.
 - The development proposed is erection of a detached dwelling, detached garage and associated landscaping.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mrs Rosemary Bensley against Horsham District Council. This application is the subject of a separate Decision.

Main Issues

3. I consider the main issues in this case are the effect of the proposed development on: (i) the character and appearance of the surrounding area and (ii) the living conditions of future occupants with particular reference to noise and disturbance.

Site and surroundings

4. The appeal site is a triangular parcel of land at the end of an unmade track that also serves a stable complex and leads past recently constructed kennels belonging to a dog boarding and breeding business. The site lies in countryside outside the settlement boundary as defined in the Horsham District Planning Framework 2015 (HDPF) and is presently overgrown. It stands in a relatively elevated position from where there are views across the agricultural land to the south.
5. The Mount consists of a small collection of residential properties and agricultural buildings as well as the kennels business and stables noted above. The village of Rusper is just over 2 miles away by road and the nearest main town is Crawley to the south east about 4 miles away. The site lies close to, but not directly below, the flight path for Gatwick airport to the north east.

The appeal proposal

6. The application seeks permission for a detached house over 3 storeys with an associated garage. The building would be of an asymmetric shape with brick elevations on the ground floor and thatched panels cladding the first floor. Above this there would be a smaller second floor tower structure forming a 'writing room' which would be largely glazed to give views across the surrounding countryside.
7. The building would be on varied levels to reflect the sloping nature of the site and would have a series of carefully landscaped garden spaces to the south and east, including new hedging that would wrap around the building to provide a link between separate sections of established hedge. The building would have flat roofs with photovoltaic cells installed on them to provide power.

Planning history and policy

8. The design process has been informed by a series of consultations with the independent design review panel Design South East (DSE) and pre-application advice from Horsham District Council. DSE produced a series of reports commenting on the design strategy and recommending modifications and areas where further revisions or information were considered to be needed. The final set of recommendations was issued in March 2018 and, in July 2018, DSE concluded that they could support the proposal as a design that met the criteria set by paragraph 55 of the National Planning Policy Framework 2015 (the Framework). This has now been replaced by paragraph 79 of the 2019 edition of the Framework but which has very similar wording.
9. Paragraph 79 notes that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more specific circumstances apply. The criteria relevant to this case require the design to be of exceptional quality, in that it is truly outstanding or innovative, reflecting the highest standards in architecture and it should help to raise standards of design more generally in rural areas. The design should also significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area.

Reasons

Character and appearance

10. The appellant accepts that the proposal would be contrary to the location policies in the HDPF but considers that it meets the tests for a paragraph 79 house in the countryside. The Council however suggest that the site is not 'isolated' in the meaning of that paragraph as there are other properties in proximity to it and the test should not, therefore, be applied.
11. The meaning of 'isolated' in this context has been considered by the courts in the case of *Braintree District Council v Secretary of State for Communities and Local Government & Ors* [2018] EWCA Civ 610. Here, the judge found that the word 'isolated' simply differentiates between the development of housing within a settlement and new dwellings that would be isolated in the sense of being separate or remote from a settlement. Whether a proposed new dwelling is, or is not, 'isolated' in that sense would be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case.

12. I note that 2 other nearby sites in The Mount have been described as '*isolated*' by the Council in recent planning decisions and I see no reason why this description should not also apply to the appeal site. It may be that paragraph 79 was not invoked in those cases but in my view that does not mean the assessment of the whether the sites were '*isolated*' in the sense of the word as contemplated in *Braintree* should lead to a different conclusion in respect of this location.
13. In this case, whilst there are some low key buildings in proximity to the appeal site, these are remote from services and clearly not part of a cohesive or established settlement. The site is at the end of the access track and there is open countryside beyond. The closest dwelling is that permitted as part of the kennels complex and linked to it by planning condition.
14. The Mount is, for the most part, a narrow country lane with only sporadic development along it. I therefore consider the site to be '*isolated*' within the meaning of paragraph 79 and that the proposal can be considered against the criteria set out within it.
15. The design concept has been carefully explained in the documents submitted by the appellant and has been reviewed in detail by DSE. I find no reason to disagree with the finding that the house would incorporate innovative cladding techniques through the use of thatched panels on the first floor elevations or that there would be a clear improvement to the immediate landscape quality of the site itself, which as noted above is presently degraded and overgrown.
16. It is also the case that the house would make very good use of sustainable technology for its energy requirements although the installations would not now be unusual or ground-breaking; rather they would reflect the standard that is now expected if best practices in sustainability for new build properties are to be achieved.
17. The concept of providing a wildlife corridor across the green planted roof of the ground floor is a novel concept and the restoration of the hedge is to be welcomed. I am also impressed by the means in which the house would integrate with the landscape at ground floor level and consider that the planting strategy for the gardens, together with the other measures detailed in the Ecological Enhancement Strategy would provide an overall enhancement to the biodiversity of the site.
18. I am however concerned about the design concept of '*the beacon in the landscape*' which is expressed by the writing room on the second floor. Although this element would have a small floor area in comparison to the rest of the house, it seems to me that the glazed box projecting above the thatched elevations of the first floor would appear somewhat strange and out of place when seen from public viewpoints, such as the footpath across the field to the north east and Hillybarn Road to the east. Whilst these views may be limited by vegetation in places, I saw at the site inspection that there would nevertheless still be locations where the new building was prominent in the landscape.
19. It has been explained in the design rationale for the building that the writing room is intended to reference the Gatwick radio tower, located some distance away on the opposite side of the valley, and the disused test transmission antennae currently on the site. The writing room, it is suggested, would continue the use of the site for the '*transmission of message*'¹.

¹ Presentation to Design South East January 2018

20. However, this nuance is unlikely to be appreciated by a casual observer of the building, particularly if they are unaware of the distant tower, and I consider that this, together with the rather 'boxy' and undistinguished form of the first floor, means that the building would lack the architectural subtlety and finesse that would be expected from a paragraph 79 house and would cause it to be seen as a somewhat clumsy and unattractive intrusion into a view that is otherwise largely uninterrupted by built form.
21. I appreciate that the kennels are seen in some views across the landscape and that the new house would serve to screen these in views from the south. However, the kennels are single storey and similar in appearance to an agricultural building that could be expected to be found in this rural location. In contrast, the new house would be significantly higher, breaking the skyline on the ridge to a much greater degree.
22. The first design report from DSE makes the point that to justify a dwelling in such a location, the Framework requires that it should significantly enhance its setting. This could be achieved, the report notes, by an '*unapologetic approach (as would have been taken by the traditional country house) or by something that blends in more with its 'natural' setting*'.²
23. I do not disagree with this analysis, but it seems to me that the proposal falls between these two concepts. The ground floor would be a simple and unassuming structure that would be largely assimilated into the site through the surrounding, carefully designed landscaping. However, the upper sections are intended to make a statement in the wider surroundings by unashamedly interrupting the skyline and thereby contrasting with the natural setting.
24. As such, it would draw the eye as an unusual but, in my opinion, confusing addition to the landscape. From a distance, the use of thatch on the upper floor walls would not be obvious and, in the longer views, the form of the building would not necessarily indicate that its function was residential, neither would it appear as a typical agricultural building. Consequently, the shape of the visible part of the building would have an appearance that was at odds with its rural setting.
25. As noted above, the portion of the house that would be clearly visible would not, in my view, be seen as a pleasing or beautiful country house, admired for its architectural attractiveness and presenting a built structure designed to complement its landscaped setting. This does not, of course, mean that the design should have to follow traditional or classic lines, but I believe it should still have an elegance of form that would set it above the normally expected standards of good design if it is to meet the criteria set by Paragraph 79.

Noise and disturbance

26. Because of the proximity of the adjacent kennels, the appellant has produced a noise report which considers the impact of the noise from the barking of the dogs on the amenities that would be experienced by the occupiers of the proposed new property. This concludes that, with windows open, the daytime and night-time acceptable noise level criteria set out in British Standard BS 8233 would be unlikely to be achieved. It would also be the case that the noise consultants do not expect that the optimum desirable noise level criteria for external areas would be met.

² d:se Design Review 7 November 2016

27. The report finds that acceptable internal levels should be able to be achieved with closed windows and the appellant has submitted that an air handling system would provide fresh air without the need to open windows. It also considers that internal and external noise levels could be reduced through perimeter screening and façade/glazing sound reduction.
28. I am told that the kennel business can accommodate about 50 dogs. The owners specialise in breeding and boarding bulldogs who are kept in kennels that have an outdoor section with an open grill to the front. The internal sleeping areas are climatically controlled through automatic roof windows, one slope of which would directly face the proposed new dwelling. The main kennel building is 'L' shaped with the open sides facing east and north but there are extensive areas around the buildings where the dogs are taken out for individual exercise throughout the day.
29. At the site visit, the kennels were only housing the owners' dogs, as travel restrictions meant that there was no demand for boarding. Nevertheless, the noise created by those dogs was considerable, with individual animals following those in neighbouring pens when they started barking. When the building was full, I can understand that the noise levels could prove extremely intrusive.
30. The Council's witness from the Environmental Health department made the point that a kennel facility of this type would be highly unlikely to be permitted in such proximity to a residential property, should that house already exist. She also noted that the noise from barking dogs is not one that the human ear readily learns to ignore; it can be sudden and sporadic and is registered as a warning sound intended to attract attention. For these reasons, the Council considers that, given the likely noise levels, even with closed windows the living conditions of the occupiers of the new house would be unacceptably compromised.
31. The application plans show that the new dwelling would be about 1m from the boundary with the kennels and at the site visit I saw that some of the exercise areas for the dogs are immediately adjacent to the appeal site boundary. This includes an area by the garden at the east of the house. It is also the case that the ground floor plan of the house appears to show full height glazed doors from the kitchen/dining area, the garden room and the guest suite opening directly into the gardens. It does not seem to me to be good design to have to rely on closed windows to maintain acceptable sound levels within the property, particularly in summer, when there is clearly an intention that the internal spaces should open out to be used in conjunction with the landscaped exterior.
32. It is also the case that the owners of the kennels are very concerned that there would be unacceptable disturbance during the construction period that could cause their dogs serious health problems. Bulldogs are, apparently, very susceptible to stress which can cause breathing difficulties and the owners are concerned that it would be detrimental to the animals' well-being to subject them to noise from building works that would, at their closest, be only 1m from the boundary of their property.
33. Whilst construction activity could be restricted to within the normal working day and, being of a temporary nature, would not usually be a reason for refusing planning permission for development, the business owners have explained that they would feel the need to close the kennels during any such activity.

34. As some of their income is obtained from boarding dogs whilst their owners are on holiday, it is obviously a concern that they remain able to ensure that the animals in their charge, and their own breeding stock, could be kept in an environment that would not cause them stress or anxiety that might affect their health.
35. I appreciate that the property would initially be occupied by the present owner of the land, the appellant, for whom it has been specifically designed and that she is well aware of the impact of the kennels. I also realise that the background noise levels are not typical of a quiet country location, given the proximity to the Gatwick flight path. Nevertheless, any future owners of the house are likely to experience the impact from the purpose designed kennels into the future and this could lead to undue pressures on the business.
36. Therefore, whilst the impact of the construction works on the dogs is not a matter which, alone, would justify a refusal of planning permission, I do attribute some weight to the economic impact that it would have on the business, particularly considering that it has already suffered a reduction in custom due to recent travel restrictions imposed because of the Coronavirus pandemic.

Conditions

37. I have considered whether the conditions suggested by the Council and accepted by the appellant would overcome any of the matters of concern outlined above. Whilst most of the conditions suggested are reasonable and necessary should the design of the house be found to be acceptable, they would not, in my opinion, address the objections to the scheme if that was not the case. In respect of the landscaping condition, this could ensure the retention of an approved scheme, but only for the 5 years specified. Beyond that time, it would be difficult to control how a private garden was maintained even though this would be an integral part of delivering the benefits that would be needed to justify building a dwelling in this location.
38. In addition, it has been suggested that additional screening measures could be employed to mitigate the impact of noise. However, I do not have a detailed scheme before me to demonstrate what this would involve or how effective it could be. Without such details I cannot be confident that such measures would be effective or acceptable.

Conclusions

39. The test set by paragraph 79 of the Framework is a high one and I appreciate that much effort on the part of the appellant's design team has gone into seeking a solution to the challenges set by this site and responding to the comments of the design review panel, in an attempt to produce a scheme that would meet that test. They have followed the recommended route of undertaking pre-application consultations and a design review in order to eliminate subjectivity as much as possible when carrying out an analysis of the proposal.
40. I note that the appellant draws attention to the fact that it is not mandatory for decision takers to accept the findings of statutory consultees such as, in this case, the Council's Landscape Officer and Environmental Health Officers who objected to the proposal. Nevertheless, the opinion of the design review panel is also an advisory one that does not necessarily take precedence over the views of the elected members of the Council.

41. At the end of the day, the decision takers responsible to the local electorate for ensuring that a proposal is acceptable in terms of the adopted Development Plan, or any other material considerations, are those elected members of the Planning Committee and, in the event of a dispute, the relevant Secretary of State at appeal. Therefore, while I attach considerable weight to the views of DSE, these views are not necessarily the determining factor when reaching a decision.
42. Paragraph 79 of the Framework is a material consideration that carries substantial weight but the starting point for the consideration of any proposal remains the adopted Development Plan. In this case policies 2, 3 and 4 of the HDPF sets out the spatial strategy for the District and seek to limit development to within specified boundaries, to ensure the sustainability of new residential development. The appeal site does not fall within one of these identified areas. Policy 26 restricts development in the countryside to that for which such a location is essential. The proposal fails to comply with these policies.
43. Therefore, as this proposal does not comply with the locational policies of the Development Plan, for planning permission to be granted it must be shown to be of the exceptional quality required by paragraph 79 of the Framework and that this outweighs the conflict with the adopted plan. Policies 32 and 33 set design standards for new development but are not as stringent in their requirements as the specific criteria included in Framework paragraph 79.
44. For the reasons set out above, I am not persuaded that the design of the house is of the standard required by paragraph 79. The problems with its appearance in relation to its location have been identified above and I have serious concerns about its relationship with the kennels in terms of noise. I also consider that, even if the building was not readily visible from public viewpoints, this would not reduce the need for the building to be of '*exceptional quality*' in its intrinsic design if it were to be justified by paragraph 79.
45. I consider that the design of the building would not '*significantly enhance*', its immediate setting and would not have a positive impact on the wider surroundings beyond the immediate site boundaries. Whilst the harm to the character and appearance of the area might be limited to longer views and be offset to a degree by the quality of the landscaping within the site, there would still be a degree of harm. I am therefore not persuaded that, overall, the proposal would be '*sensitive to the defining characteristics of the local area.*' This is the area outside the settlement boundary which is characterised by open fields and areas of woodland where built development is predominantly low key and of an agricultural nature.
46. Consequently, I consider that the harm identified through the failure to comply with the Development Plan is not outweighed by the quality of the design and that the proposal does not meet the criteria of paragraph 79 of the Framework, which does not outweigh the HDPF in this instance. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Alex Bateman BA (Hons) MSc MRTPI	Mohsin Cooper Ltd
Mr Nathan Chilvers BA(Hons) Dip Arch ARB	Mohsin Cooper Ltd
Mr Giles Hopgood CMLI	PLACE Design & Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mr Oguzhan Denizer BA (Hons)	Senior Planning Officer, Horsham District Council
Ms Aimee Richardson BA(Hons), MPlan	Principal Planning Officer, Horsham District Council
Ms Fiona Hiron BSc Environmental Health	Area Environmental Health Officer, Horsham District Council
Lee Money	Area Environmental Health Officer, Horsham District Council

INTERESTED PERSONS:

Cllr George Sallows	Rusper Parish Council
Mr Ralph Taylor	Neighbour
Mrs Maria Taylor	Neighbour

DOCUMENTS

- 1 Costs application by Mrs Rosemary Bensley
- 2 Council's response to Costs application
- 3 Appellant's comments on Council's costs response