
Appeal Decision

Site visit made on 7 August 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 03 September 2020

Appeal Ref: APP/C1625/W/20/3246479

The Kitchen Garden, Nuthill, Upton St Leonards

- 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 Clifton Homes Ltd against the decision of Stroud District Council.
 - The application Ref S.19/1915/FUL, dated 10 September 2019, was refused by notice dated 16 December 2019.
 - The development proposed is erection of custom-build dwelling, restoration of walled garden, repair and conversion of existing outbuildings, provision of access and ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the appeal the appellant submitted an amended site plan¹, seeking to move the proposed dwelling towards the centre of the site. The Procedural Guide: Planning Appeals – England (2020) sets out that, 'The appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'². The amended plan would materially alter the proposal and although the Council has commented on it, interested parties may not have been aware of it. As such, I do not accept the amended plan, as to do so would be likely to prejudice interested parties.
3. Subsequently, the appellant submitted an amended location plan³ seeking to amend the red line defining the appeal site, in order to exclude land that they are not certain is in their ownership. This was accompanied by another amended site plan⁴ based on that revised site outline. However, although the revised red line would exclude some land along the southern boundary, it would also include small areas of additional land to the west and north-west of the site, the ownership of which has not been confirmed. As such, I cannot be certain that requisite notice of the proposal has been given to all owners or tenants of the land and that they have had the opportunity to comment. Therefore, as there is potential for interested parties to be prejudiced, I do not accept those amended plans either. Consequently, I have considered the proposal on the basis of the plans that were before the Council at the time it made its decision.

¹ Ref. 13136/002 Rev. B

² Paragraph M.2.1

³ Ref. 13136/001 B

⁴ Ref. 13136/002 Rev. C

4. I note the Council's concern that the original application may not have been valid due to the ownership uncertainty, however the Council determined the application and the appellant therefore has a right of appeal. Ownership would be a matter to be dealt with in any future application.
5. Historic England guidance on enabling development and heritage assets⁵ has been used by both main parties in their evidence, however during the appeal process that guidance was updated, and is now published as a Good Practice Advice Note (GPA4)⁶. The main parties have therefore been given the opportunity to comment on the updated version.

Main Issues

6. The main issues are whether the appeal site would be a suitable location for the proposed development, having regard to the settlement strategy and national policy, and access to services and facilities; and the impact of the proposal on the character and appearance of the area.

Reasons

Location

7. The appeal site is outside the settlement boundary of Upton St Leonards and therefore, according to the Stroud District Local Plan 2015 (LP), it is in the countryside. LP Policy CP2 sets out that housing will take place within settlement limits, and that limited development will take place outside of those designated areas in accordance with other policies in the LP.
8. LP Policy CP15 is one such policy, which sets out that in order to protect the separate identity of settlements and the quality of the countryside, proposals outside identified settlement limits will not be permitted except where they comply with at least one of six principles and meet additional specified criteria. The main parties identify point (4) as the most relevant principle, and as no evidence has been presented in respect of the other principles, I see no reason to disagree. Point (4) allows development outside settlement limits where, "It is demonstrated that the proposal is for enabling development required in order to maintain a heritage asset of acknowledged importance".
9. The evidence before me is that the wall around the appeal site has local historic significance, as it is thought to have been the kitchen garden to the nearby Bowden Hall, which is Grade II listed. It is therefore evidence of the former operational estate of that Hall. The wall is also a significant feature in the street scene in those places where it is at full height, and is visible from both inside and outside of the site and from a public footpath which links Bowden Hall to Nuthill. Consequently, although there is no conclusive evidence before me that the wall is locally listed, it can nevertheless be considered a non-designated heritage asset (NDHA).
10. Historic England guidance in GPA4 sets out that the case for enabling development rests on there being a conservation deficit, which is the amount by which the cost of repair of a heritage asset exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs. It goes on to state that, 'It is not in the public interest to pursue enabling development if there are alternative means of delivering the same outcome for the heritage asset, such as other sources of public or private investment'⁷, and that, 'The amount of enabling

⁵ Enabling Development and the Conservation of Significant Places (2008)

⁶ Historic England, 2020 GPA4: Enabling Development and Heritage Assets

⁷ Paragraph 10

development that can be justified will be the minimum amount necessary in order to address the conservation deficit and to secure the long-term future of the asset⁸.

11. The appellant has provided a development appraisal which sets out costings for the appeal proposal, and a quote from a construction company regarding remedial works to the wall and outbuildings. These suggest that the market value of the property in its existing condition is £200,000, and that the repair of the walled garden would cost £222,872. The proposal overall is costed at £1,500,077 and the completed market value of the scheme is given as £1,500,000.
12. The Planning Practice Guidance (PPG) sets out that disrepair and damage and their impact on viability can be a material consideration in deciding an application. The appellant states that the wall is severely dilapidated in parts and I saw on site that parts of the wall had fallen and other parts had been reduced almost to ground level. The appellant contends that the wall will continue to fall into disrepair as the current land use cannot pay for the repair works necessary. However, I have not been provided with a structural or condition survey of the wall, and therefore have no substantive evidence of any imminent risk of failure, the extent of work needed to maintain the wall, or what is required to achieve a reasonable level of conservation that will sustain the NDHA in the long term.
13. The quote sets out only a very brief description of what is proposed, with no detail of the extent of any element of the works, such as the amount of brickwork to be infilled, relaid or requiring re-pointing, or the length of wall requiring replacement coping. Furthermore, it does not specify the height of the wall on completion of the works and no elevations of the repaired wall have been provided. Although the submitted site plan refers to the wall being re-built 'to match existing', the existing wall is of various heights and therefore, it is not clear what the final result would be. While in some instances it might be appropriate to secure such details by condition, the absence of detail at this stage means that there is insufficient information before me to demonstrate that the quote is a robust estimate of the cost of the works. Therefore, it has not been demonstrated that the works listed in the quote are the minimum necessary to repair the wall in order to maintain the heritage asset.
14. While a current market value for the site is given, there is no evidence before me of how this was arrived at, or that the site has been marketed. As such, I cannot be certain that it is a robust and accurate value for the site. Although the appellant suggests that the wall itself would have limited economic value, there is no assessment before me of the value of the site as a whole after repairs to the wall.
15. The appellant suggests that other options for the site have been considered, however the only one mentioned is a previous scheme for 3 dwellings recently dismissed at appeal⁹. There is no substantive evidence before me that other uses, including non-residential, have been explored as an alternative to the proposed enabling development, or that market testing has been carried out. Nor is there evidence that other approaches to the conservation of the NDHA have been contemplated, such as grant funding for repairs or charitable ownership.
16. Accordingly, as there is no compelling evidence before me to support the cost of repairs or the market value stated, I cannot be certain that there is a conservation deficit, or if there is, the amount of that deficit. Even if there were a deficit of the amount the appellant suggests, due to the lack of consideration of alternatives, it

⁸ Paragraph 14

⁹ APP/C1625/W/18/3198796

has not been demonstrated that the proposal represents the minimum amount of enabling development necessary in order to address that deficit and secure the long-term future of the wall. Therefore, I do not consider the proposal to be enabling development, and as such it would not be a form of development in the countryside which LP Policy CP15 permits.

17. Consequently, the proposal would not benefit from the support in paragraph 202 of the National Planning Policy Framework (the Framework) for enabling development.
18. Policy CP3 seeks to ensure development reduces the need to travel and promotes sustainable communities based on the services and facilities available at each settlement. The site is outside of Upton St Leonards, a Tier Three settlement with limited facilities, where Policy CP3 only allows development limited to that needed to help meet the housing needs of the settlement. There is no compelling evidence before me that the proposal would meet an identified housing need for this village.
19. Framework paragraph 78 sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Paragraph 79 seeks to avoid isolated dwellings in the countryside except in specified circumstances. Given the proximity of the site to other dwellings on the edge of Upton St Leonards, I do not consider that it is isolated. Future residents are likely to use local services and facilities, however it has not been suggested that these are under threat, and as such the benefit of one additional household would be minimal.
20. Framework paragraph 103 sets out that the planning system should actively manage patterns of growth in support of the objectives in paragraph 102, including identifying and pursuing opportunities to promote walking, cycling and public transport use. It recognises however that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
21. The appeal site is within a walkable distance of local services and facilities, however Nuthill is a narrow, unlit lane with steep banks and no footway, providing few opportunities for pedestrians to seek refuge from passing traffic. The appellant's Technical Note on the accessibility of the site identifies that in places, vehicles have to mount the verge for two cars to pass, therefore it might be expected that drivers would be travelling with caution. However, the Technical Note also identifies that 85th percentile speeds were above the 20mph speed limit. I note that there is no evidence of crashes or safety issues in the last 5 years, however it is unclear how often the lane is used by pedestrians and cyclists, and as such the lack of accidents does not necessarily equate to a safe environment.
22. Consequently, although Nuthill may fall within the definition of a 'Quiet Lane', it nevertheless presents some hazards to pedestrians and cyclists, and is therefore unlikely to be an attractive route for them, even during the day. Accordingly, future residents are likely to be reliant on the private car.
23. Therefore, the location of the appeal site would compromise the ability of future residents to access sustainable modes of transport. While lack of a footway is common in rural areas, this does not justify allowing a new dwelling in the countryside which would be reliant on the car. The proposal would not therefore be in a sustainable location in this respect.
24. The appellant suggests that a pedestrian gate could be inserted in the north-west side of the site, reducing the walking distance to local services and avoiding a blind bend. However, the appeal site does not extend up to the lane along this boundary, and there is a significant level difference between the site and the lane.

As such, it has not been demonstrated that pedestrian access could be delivered, and it therefore carries minimal weight.

25. Therefore, while only one dwelling is proposed, rather than the 3 proposed previously, no further opportunities to promote walking or cycling have been demonstrated in this scheme. As such, although this proposal would generate fewer car trips than 3 dwellings, its location has not become any more sustainable than was found by the previous Inspector.
26. The appellant has referred me to a scheme at Bondend Road approved at appeal in 2013¹⁰, which apparently has no footways, however I do not have any details of that scheme, and am mindful that it was approved before the current LP was adopted. As I cannot be certain that the circumstances of that case were comparable to the scheme before me, I give it little weight.
27. Accordingly, the proposal would conflict with LP Policy CP15 and therefore with the settlement strategy in Policies CP2 and CP3. Furthermore, it would conflict with Framework paragraphs 102 and 103. Therefore, it would not be a suitable location for the proposed development, having regard to the settlement strategy and national policy, and access to services and facilities.

Character and appearance

28. The northern side of Nuthill contains several scattered dwellings set in large plots with outbuildings and parking areas, giving this side of the lane a residential character. On the southern side of the lane are fields and the appeal site, with little development visible other than glimpses of agricultural type buildings, giving it a rural character markedly different from the other side of the lane. Mature trees and hedges give Nuthill a verdant appearance, to which the vegetation on the appeal site makes a significant contribution. Although the existing walls are somewhat overgrown, due to their height and prominent corner location, they are nonetheless a distinctive feature of the street scene.
29. The existing walls, hedges and trees screen much of the interior of the appeal site from view from Nuthill, however the access offers views into the site. From that viewpoint, the interior of the site appears largely undeveloped, with only the modest stable buildings visible on the edge. As such, the site contributes to the rural character of this side of the lane. From the heritage evidence submitted, it appears that the site historically only contained a few small buildings mainly around the edges of the site, of which only remnants survive.
30. The proposed access would be wider than the existing, and as such would offer views into the site, towards the proposed extended and renovated stable block and the dwelling beyond. While the proposed dwelling would only be single storey, and set back into the site, it would have a large footprint and be oriented with the widest part towards the access. As such, it would appear as a substantial building. Although no drawings of the stable block have been provided, it is evident from the site plan that a double garage is proposed, projecting beyond the existing modest stable building, along with a large area of hardstanding. Consequently, the proposal would introduce considerable built development into the site, giving it a domestic and developed appearance, which would detract from its rural, undeveloped character.
31. The final height of each section of wall has not been specified, and while gates are shown across the access, there are no details before me of their height or design. Furthermore, no drawings of the proposed garage or greenhouses have been

¹⁰ Council Ref. S.13/1844/OUT

submitted. Therefore, I cannot be certain that the proposed gates or repaired wall would adequately screen the proposed dwelling and accompanying development from view from the lane.

32. Additionally, the submitted arboricultural information indicates that many of the trees on the appeal site are in poor condition and should be removed. Due to their size and prominence in the street scene, the loss of these trees would have a significant and harmful impact on the verdant character of the lane. Although the appellant indicates that they will be removed regardless of any development of the site, nevertheless their loss would further increase the likelihood that the proposed development would be seen from the lane.
33. While replacement planting could be secured by planning condition, any trees or planting of significant size are likely to need to be located away from the wall and proposed outbuildings in order to avoid future damage. Therefore, replacement planting is unlikely to mitigate the harm to the street scene, and it has not been demonstrated that it would be effective in screening the proposed development.
34. The proposed dwelling would be of contemporary design, use a variety of materials, and would have a very different appearance to other traditional properties nearby. However, there is no compelling evidence before me that it is an outstanding or innovative design, that it would promote high levels of sustainability or help raise the standard of design in the area. As such, the design quality of the dwelling alone would not justify or outweigh the harm resulting from the overall development.
35. Consequently, the proposal would diminish the undeveloped character of the site and the verdant, rural character and appearance of the lane, and as such would harm the character and appearance of the area. It would therefore conflict with LP Policy CP14, which supports high quality development which protects, conserves and enhances the built and natural environment and, amongst other things, requires development to achieve an appropriate design and appearance which is respectful of its surroundings.
36. While I recognise that the previous proposal for 3 dwellings was not dismissed on character and appearance grounds, I do not have details of the proposed access, design or layout of that scheme, or of the works proposed to the wall. Therefore, I cannot be certain that it would have had a comparable impact on the character and appearance of the area to the proposal before me, which I have considered on its own merits.

Planning Balance

37. LP Policy ES10 supports proposals which protect, and where appropriate, enhance the heritage significance of locally identified heritage assets. The Framework identifies the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. Paragraph 198 states that the effect of an application on the significance of an NDHA should be taken into account in determining the application.
38. The proposed repairs to the historic wall could better reveal its significance, subject to appropriate design and materials, and these works could be secured by condition. It is also likely that the occupants of the proposed dwelling would have an interest in maintaining the wall in the long term. Due to its local significance and links to the nearby listed building, retention of the wall, an NDHA, would be a public benefit.

39. However, it has not been demonstrated that this proposal is the minimum necessary to achieve maintenance of the NDHA, or that residential use is the only viable use of the site. Furthermore, given the lack of detailed information on its condition, there is no compelling evidence before me that there is an urgent need for repair of the standing parts of the wall, or that there is a significant risk to the NDHA if this proposal were not to go ahead. Furthermore, for the reasons above, the proposal as a whole would not make a positive contribution to local character and distinctiveness. Therefore, overall I afford the heritage benefits modest weight.
40. The proposal would contribute to housing supply and make more efficient use of underutilised land, as supported by local and national policies. It would also result in economic benefits through construction and occupation. Furthermore, given the presence of stables and use of the whole site for horses, the site as a whole can be considered previously developed land, as the Framework definition includes land occupied by a permanent structure, including the curtilage of the developed land. However, in the context that the Council can demonstrate a Framework compliant supply of housing land, the benefits of one additional dwelling would be limited.
41. The appellant proposes that the dwelling would be a self-build or custom build, and has submitted a completed UU containing obligations to that effect. However, the plan attached to the UU shows the revised red line, for which I have no ownership information. I therefore cannot be certain that all relevant parties have entered into the agreement. The plan is integral to the definitions in the UU, and cannot be separated from it. Consequently, the UU is flawed and I cannot take it into account. There is no other UU before me with another plan. It is not clear how matters relating to self-build, such as the required 3-year period of ownership, could be secured by condition. Therefore, although from the evidence before me there is some need for self-build plots, there is no mechanism before me to ensure that the proposed dwelling would contribute to meeting that need. I therefore give this very limited weight.
42. The potential of the dwelling to provide natural surveillance would be limited by its position and height, and it has not been demonstrated that it would provide any benefit in this regard compared to the surveillance offered by the existing 2 storey dwellings along the lane. As such this carries minimal weight.
43. The proposal has the potential to result in biodiversity net gain, and would make adequate provision to avoid, mitigate and, if necessary, compensate for loss of habitat for Great Crested Newts. Those measures could be secured by condition. The enhancement measures proposed are relatively limited however, and the Ecological Impact Assessment refers only to the loss of a small number of trees, rather than the removal of the majority as the appellant suggests is needed for good arboricultural practice. Furthermore, there is no landscaping proposal before me to consider. Consequently, I cannot be certain that the proposal would result in any significant ecological enhancements, and this therefore carries limited weight.
44. The proposal would not adversely impact on the capacity of the local highway network or the setting of the AONB, and suitable access and drainage could be achieved. The appeal site has historic associations with Bowden Hall, however there is no suggestion from either main party or interested parties that the appeal proposal would harm the setting of the listed building. From the evidence before me and from what I saw at my site inspection, I have no reason to disagree. These matters are however of neutral consequence and do not weigh in favour of the proposal.
45. I have found that the proposal would conflict with the settlement strategy in the LP, would not be a sustainable location for the proposed dwelling, and would harm

the character and appearance of the area. The LP identifies the core policies that seek to deliver high quality sustainable development as sitting at the heart of the Plan. The Framework sets out that the planning system should be genuinely planned, and that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Accordingly, given the importance afforded to these matters in local and national policy, the conflict with the relevant policies of the LP carries very substantial weight. While there are other considerations that weigh in favour of the proposed development, in particular the heritage benefits, these would be modest, and consequently would not outweigh the conflict with the development plan.

Other Matters

46. The site has the potential to impact on the Cotswolds Beechwoods Special Area of Conservation (SAC) and Cotswolds Commons and Beechwoods Site of Special Scientific Interest (SSSI). However, as the appeal is being dismissed for other reasons this is not a matter that needs to be addressed.

Conclusion

47. For the reasons given above, the appeal is dismissed.

L McKay

INSPECTOR