



Appeal Decision

Site visit made on 23 November 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal Ref: APP/C1760/W/20/3254339

The Barn, Dennis's Lane, Broughton, Hampshire SO20 8AY

- 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 Alan Taylor against the decision of Test Valley Borough Council.
 - The application Ref 19/02327/FULLS, dated 21 June 2019, was refused by notice dated 28 April 2020.
 - The development proposed is the conversion and extension of outbuilding to form dwelling and installation of sewage treatment plant.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the development on the character and appearance of the area, having particular regard to whether the scheme would preserve or enhance the character or appearance of the Broughton Conservation Area (the CA) and preserve the setting of the Grade II Listed Building, The Cottage.
 - the effect of the proposal on any biodiversity on the site, and
 - the effect of the proposal on the Solent and Southampton Water Special Protection Area (the SPA).

Reasons

Character and appearance

3. Dennis's Lane is a reasonably narrow unmade road that runs parallel with the site and links Rookery Lane with Clarendon Way, a long distance right of way. The site is accessed from Dennis's Lane and consists of the bottom section of the rear garden to The Cottage, a Grade II Listed Building. The site lies within the CA and is bounded by some trees and hedging.
4. The CA in this area is significant as it includes the individually designed detached dwellings that front Rookery Lane, often with reasonably large landscaped gardens, including the listed buildings of The Cottage and Grandfathers, a Grade II* Listed Building. The generally verdant surroundings, with a mix of trees and hedges, are complemented by the open meadow land to the Wallop Brook providing this part of the CA a pleasant rural character.

5. The Cottage is significant because it is an attractive thatched cottage of 17th century origins and its prominence in the road makes a positive contribution to the CA.
6. At the rear of the land associated with The Cottage, stands a garage/store outbuilding. This has steeply pitched roofs, pointed gables and is raised up above the level of Dennis's Lane. It is not a building which has a design and appearance that clearly references other structures within the CA. Nevertheless, it has a fairly simple form, with the narrow gables, a lack of openings to the roof slopes and a modest bulk which extends across only part of the width of the site. Parts of this outbuilding are visible from sections of Dennis's Lane and from a section of the adjoining Clarendon Way, particularly more so during the autumn and winter months, when the leaves would have fallen from some of the surrounding vegetation. However, because of the outbuilding's size and form it appears as an ancillary structure and does not have an undue presence in its rural surroundings.
7. Planning permission has been granted to convert this outbuilding to a dwelling. The evidence indicates the scheme has commenced, and could lawfully continue, although works are at a very initial stage. The permission includes a single storey extension to the end gable and changes to the elevations including some rooflights. Importantly, the reasonably modest bulk and appearance of the permitted structure as extended, especially at first floor level, would be largely retained.
8. The proposal would move the building further into the site and, in my view, substantially extend the structure including at first floor level. The two storey form of the building would extend across much of the width of the site increasing the mass of the built form. The crown roof, with its flat section forming part of the profile of the end gable, would appear as an awkward and bulky element of the design that would not be a characteristic feature of other buildings within the CA¹. The proposed south west elevation, with the dominance of windows, especially the quite large rooflights that would break the eaves line and extend down the side wall, would not be a sympathetic architectural composition that would contribute positively to a locally distinctive building.
9. The proposed boundary treatments could screen much of the domestic paraphernalia associated with the separate residential use. However, the provision of the gated car parking area to the north east would be likely to be more apparent than with the permitted scheme. This would be on the side of the building which would be associated with the more, generally open countryside. Although this impact could be reduced by comprehensive landscaping, and the impact would be localised, this would not be a positive feature of the proposal compared with the approved scheme.
10. Drawing all these matters together, the proposed dwelling would result in a building extending across much of the width of the site at two storey level resulting in a bulky structure with elements of the design that would not be locally distinctive or integrate successfully with the rural character of the surroundings. There may only be glimpsed views of the first floor and roof form of the building from surrounding public land, such as parts of Dennis's Lane

¹ I note the appellant's submissions that this element of the design could be altered to a double gable, however, this is not the submitted scheme before me for determination.

and Clarendon Way. Nevertheless, the increased bulk and the related undue dominance of the building, compared with the approved dwelling scheme, would still be perceptible and this would be harmful in these rural surroundings, including the CA.

11. Furthermore, the site itself lies within the CA. From within the site, and the immediately adjoining private land, the presence of the building would be clearly apparent and the design, bulk and extent of the development would harm the rural character and appearance of the CA.
12. In terms of the setting of The Cottage, the proposed dwelling in its extended form would be seen in succession along Dennis's Lane after passing the listed building. However, the adverse changes that I have identified would not be perceived until within the vicinity of the structure. Also the repositioned and extended building would still be a reasonable distance from The Cottage. Consequently, I am not persuaded that the identified harm that would result from the proposal in terms of the CA would be experienced in association with the setting of the listed building in this case. Its significance and setting would not be affected by the proposal.
13. The main parties comment on the case of the dwelling recently permitted to the rear of Grandfathers. As both that site and the present site lie within the settlement area, the principle of a dwelling is considered acceptable, subject to compliance with other policies of the development plan. The appellant highlights a series of concerns with how the Council approached and determined that scheme compared with the present proposal. However, the details of the design and size of each dwelling, and the impact on the setting of respective adjoining listed buildings and the effect of the development on each part of the CA, are very much site dependent. I therefore attribute limited weight to the approval of a dwelling elsewhere within the CA and this appeal proposal is required to be determined on its own merits.
14. I have also had regard to the findings of the Inspector when he dismissed a scheme for an alternative dwelling proposal on the site in March 2019. The present scheme seeks to address those concerns and is a different proposal. Consequently, while I afford the previous appeal decision substantial weight, I have assessed the present proposal based on the details before me and the impacts which I judge would result from the proposed dwelling to the area.
15. In this case, the proposal would preserve the setting of the listed building. However, it would not preserve or enhance the character or appearance of the CA. The significance of this heritage asset would be adversely affected, although in terms of the CA as a whole, only to a minor extent. As a consequence, the harm to the CA would be less than substantial within the meaning of paragraph 196 of the National Planning Policy Framework (the Framework). In accordance with the Framework, this harm should be weighed against the public benefits of the proposal.
16. The scheme would help to deliver a unit of accommodation within the settlement area of Broughton with access to and support for local facilities and services, both during construction and in subsequent occupation. The proposal would provide a self-build dwelling helping to meet part of the identified need for such accommodation. The evidence indicates that it would be to a Passivhaus standard with a near to zero energy requirement and would exceed the Life Time Home Standard. The site falls within a garden area where there is

the existing built form of the outbuilding. The dwelling would retain some of the structure of the existing building and therefore have elements of sustainability in this respect. The appeal scheme would provide a spacious dwelling with the ability to provide landscaping around the site, ecological benefits including bird boxes and from the planting, and overall a range of coordinated and high quality residential facilities.

17. However, the approved scheme would also provide a dwelling on the site. Despite the practical problems identified by the appellant, I have no conclusive evidence that it would not be built if the present scheme was not approved. I see no substantive reason why that scheme could not also provide a satisfactory dwelling. Consequently, as in all likelihood the present scheme would provide an alternative rather than an additional dwelling on the site, I attribute the benefits of the appeal proposal limited weight.
18. The Framework advises that any harm to the significance of a heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the potential harm to the significance. I have found that the public benefits of the proposal afford limited weight and therefore they would not outweigh the harm to the CA and its significance, which although minor, in accordance with the Framework, is required to be attributed great weight.
19. In the light of the above analysis, I have found the proposal would preserve the setting and significance of The Cottage. However, I conclude that the proposal would harm the character and appearance of the area and not preserve or enhance the character or appearance of the CA. It would therefore conflict with Policies COM2, E1, E2 and E9 of the Test Valley Borough Local Plan 2011-2019 (adopted January 2016) (the Local Plan) which seek, notably, that development should integrate, respect and complement the character of the area.

On-site biodiversity

20. The application was supported by an ecological report which included an analysis as to whether bats may be affected by the development. This evidence indicates that the general area surrounding the outbuilding is a relative hotspot for foraging bats with large amounts of activity and high species diversity recorded in survey data. A daytime inspection for bats was undertaken on 15 September 2019 which found no evidence of bat roosts and commented that internally the building is unlikely to support roosting bats, although the report comments that the building is obviously used by a small number of bats briefly as a sheltered foraging spot.
21. The report concludes that the outbuilding has a low potential to support roosting bats in crevices such as under roof tiles and therefore includes a recommendation that work to dismantle the building is carried out following a precautionary method statement to include an update emergence survey prior to the start of work.
22. No dusk emergence surveys were undertaken as part of this application and the report relies on the findings of such surveys in August and September 2015, when it was concluded the building did not contain a roost. It is argued that there is no evidence to indicate that the circumstances have changed.

23. The dusk emergence surveys are now quite dated and the lack of up-to-date dusk emergence surveys means that there is less certainty now than before that the outbuilding is not used, in the limited opportunities that may be available, as a roost. Given that the general area is deemed a relative hotspot for bats, the lack of the recent dusk emergence surveys is a serious drawback. This may mean that the presence of a protected species has not been identified and if bats were present they may not be adequately protected as part of a proposal which would see the building moved and substantially altered. I appreciate that approval has been granted to convert the outbuilding to a dwelling. However, that does not outweigh the responsibilities to have regard to protected species as part of the considerations with this proposal.
24. Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances. I do not consider that there are exceptional circumstances in this case and that a planning condition attached to a permission requiring an emergence survey prior to work starting would not be appropriate or reasonable.
25. Taking all matters into account, as I cannot be reasonably certain whether bats are present and, if so, that they would be adequately protected, I consider that I need to take a precautionary approach. Consequently, I conclude that the evidence does not adequately demonstrate that the scheme would not have an adverse effect in respect of biodiversity of protected species on the site. Accordingly, the scheme does not demonstrate compliance with Policy E5 of the Local Plan and other statutory requirements in respect of these matters.

Solent and Southampton Water SPA

26. Natural England advises that there are high levels of nitrogen and phosphorus input to the water environment of the Solent region caused by wastewater from existing housing and from agricultural sources. This is said to be causing eutrophication at designated nature conservation sites which includes the SPA. This results in dense mats of green algae that are impacting on the Solent's protected habitats and bird species.
27. Natural England further advises that there is uncertainty as to whether new housing growth will further deteriorate designated sites. Work on this issue is on-going with the local planning authorities, the Environment Agency and the water companies. It is explained that this may lead to identified mitigation measures in the future. At the time the application was considered, it appears there was no mitigation strategy in place so that the advice from Natural England was that one way to address the uncertainty was to achieve nutrient neutrality whereby an individual scheme would not add to nutrient burdens.
28. The appellant has set out detailed calculations of the measures to be taken, including the waste water treatment plant, reed bed system, garden proposals and other actions to seek to demonstrate that the scheme would be at least nitrogen neutral, if not better. However, while it appears that these matters may be promising, they do to some extent rely on changes to the curtilage area, such as a reduction and maintenance of a specified allotment area and

provision of the wetland, that would be difficult to secure in the long term as the land falls within the garden of the proposed dwelling. It would be unreasonable, given the fairly modest extent of the garden, to set detailed restrictions on how a garden could be used. Indeed there is no secure mechanism before me to ensure that all aspects of the mitigation would be effective in the longer term, especially under different occupiers.

29. Natural England commented at the appeal stage and raised queries with the detail of the submissions to achieve nitrogen neutrality, including some of the calculations. These comments included that Natural England would expect to see further detail in regard of the proposed management and maintenance. Natural England recommended that a long term monitoring and maintenance strategy is submitted to satisfy the competent authority that the system will operate effectively for the lifetime of the development.
30. The appellant has commented on further efforts of the local authorities to address this matter such as the joint project work with PUSH and Natural England. However, that is not an approach to mitigation that is before me and secured that would address the issues in this appeal.
31. Reference is also made to the development at Grandfathers where a legal agreement secured the conversion of a paddock to a woodland area thereby contributing to a nitrogen compliant housing development. It is argued that the surplus from that development could be used to ensure that the present scheme was acceptable as both developments are close to each other and, in terms of nitrogen pollution, would be read together. However, that development is separate from the present proposal and the appellant would not have control over the provision or long term security of the delivery of that scheme and the related mitigation. I therefore give those measures in connection with another scheme limited weight in support of the appeal proposal.
32. I do acknowledge the approved scheme for a dwelling on this site and the evidence does not show that proposal would achieve, as part of the requirements of that permission, nitrogen neutrality. However, the present alternative scheme is for a larger property, although with the same number of bedrooms, and therefore has the potential to be occupied by more people thereby, in all likelihood, increasing the nitrogen release by comparison. Consequently, the fallback position of the approved dwelling carries only moderate weight and would not outweigh the concerns in respect of this matter.
33. Drawing all these matters together, concerted efforts have been made to seek to demonstrate that the scheme would address the nitrogen issues that have been raised with the proposal. However, Natural England has not been able to confirm that they are satisfied with the details. I place substantial weight on the advice of Natural England and I also have identified some concerns with deliverability of the measures in the longer term which seek to achieve nitrogen neutrality.
34. It follows that I am unable to conclude that the proposal, either alone or in combination with other housing schemes, would not have a significant and adverse effect on the integrity of the SPA. I am not aware of any overriding public interest which would justify permitting the proposal or that there are any alternative solutions which would have no or a lesser effect on the integrity of

the protected site. Consequently, in accordance with the Conservation of Habitats and Species Regulations 2017, I conclude that planning permission cannot be granted. The scheme would therefore also be in conflict with Policies COM2 and E5 of the Local Plan which seek, in this respect, to ensure that biodiversity is conserved.

Conclusion

35. The setting of The Cottage, a Grade II Listed Building, would not be affected by the proposal. However, this is neutral in the overall considerations. The benefits of the proposed development, which I have summarised above, afford limited weight. On the other hand, the harm to the character and appearance of the area and the CA, and the concerns in respect of on-site and off-site biodiversity, are matters which I cumulatively attribute substantial weight against the scheme. Consequently, the benefits would not outweigh the identified harm.
36. For the reasons given above, the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR