
Appeal Decision

Site visit made on 15 December 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal Ref: APP/K1128/W/20/3258497

Frogmore Orchard, Ashprington, Totnes, Devon TQ9 7UL

- 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 V Gardiner, Mrs J Kinniburgh, Ms P Richardson, Mrs S Marchand & Mrs R Murnane against the decision of South Hams District Council.
 - The application Ref 2070/19/FUL, dated 21 June 2019, was refused by notice dated 18 March 2020.
 - The development proposed is the provision of a dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. Although the Council has given six reasons for refusal on the decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify five main issues
3. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area including the South Devon Area of Outstanding Natural Beauty (the AONB), and the undeveloped coast;
 - Whether the proposed development would be in a suitable location, having regard to local and national planning policies;
 - Whether the proposed development would preserve or enhance the character or appearance of the Ashprington Conservation Area (the Conservation Area);
 - The effect of the proposed development upon housing mix with particular regard to the effect on the range and variety of the local housing stock; and,
 - The effect of the proposed development with regards to ecology.

Reasons

Character and Appearance

4. The National Planning Policy Framework (the Framework) is clear that Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty, and that great weight should be given to

conserving these qualities. In my view, whilst only being a small component of the AONB as a whole, the appeal site contributes somewhat positively to the landscape and scenic beauty of the AONB by reason of its picturesque location which forms part of the setting of the village. Whilst the appeal site is located near to the built up area of the village, the site is located outside of the village, separating the village from the outlying development at Frogmore Farm. I shall return to the consideration of the location of the site in the below section within this appeal.

5. Policy DEV25 of the Plymouth and South West Devon Joint Local Plan (the JLP) requires development proposals which are located within the AONB, to conserve and enhance the natural beauty of the protected landscape with particular reference to its special qualities and distinctive characteristics or valued attributes. The policy reflects paragraph 172 of the Framework.
6. The Appellants' LVIA submitted in support of the planning application, concluded that the proposal would only have a very limited impact on the landscape qualities of the AONB and that measures could be implemented to mitigate any harm that arose. In these respects, the proposed development would result in a change in character of this undeveloped space which contributes to the setting of the village and, thereby, would result in some harm to the AONB.
7. In my view, whilst the measures proposed by the Appellants may reduce the level of harm to the AONB, the proposal would urbanise an undeveloped site and would result in the built up form of the village coalescing with the outlying development at Frogmore Farm. In addition to the domestic paraphernalia that would be likely to be present in relation to the proposed dwelling, the increase in built form at the site's location would result in some harm to the AONB.
8. Notwithstanding the above, and whilst I note the Appellants' submissions that the proposal would not be highly visible from within the wider surrounding area, paragraph 172 of the Framework requires that great weight is given to conserving and enhancing the landscape and scenic beauty within the AONB in all instances, irrespective of the prominence of the appeal site. In my view, and for the reasons given above regarding the urbanisation and domestication of the site, the proposal would be at odds with, rather than enhance, the prevailing rural character of the AONB in a location which the Framework highlights as having the highest status of protection in relation to landscape and scenic beauty. The proposed mitigation measures would not be sufficient to overcome this harm.
9. Policy DEV24 of the JLP concerns Undeveloped Coast and Heritage Coast and broadly confirms that development will not be permitted where it would have a detrimental effect on the character and appearance of these areas. This policy provides a set of criteria against which development proposals should be assessed and which, amongst other matters, requires that development protects, maintains and enhances the unique landscape and seascape character and special qualities of the area, and that it can be demonstrated that the proposal requires a coastal location.
10. It is noted that the undeveloped coast designation avoids settlements. However, the site is located outside of the logical boundary of the settlement. Whilst the Appellants submissions concerning the visibility of the site and conclusion of the LVIA as described above are acknowledged, for the same

reasons given in relation to harm to the AONB, the appeal scheme would not protect, maintain or enhance the unique landscape character of the area. Furthermore, there does not appear to be any evidence before me that demonstrates an overriding requirement that additional housing must be in this location.

11. In light of the above, the proposed development would result in harm to the AONB and would have a detrimental effect on the undeveloped coast. Whilst the harm to the AONB can be described as limited by reason of the location of the site and the mitigation measures put forward, there would be some harm nonetheless. Accordingly, and for the reasons given above, the appeal scheme would conflict with Policies DEV24 and DEV25 of the JLP and would fail to accord with the provisions of paragraph 172 of the Framework.

Location of Development

12. Policy TTV1 of the JLP provides details of the distribution of development across the area based on a hierarchy of sustainable settlements. Whilst the submissions of the Appellants are acknowledged, having regard to the definitions included within TTV1 of the JLP it is evident, owing to its characteristics and location, that the appeal site does not fall within a main town, smaller town and key village or a sustainable village as identified within the plan. As such it would fall within category four - smaller villages, hamlets and the countryside where development is only permitted where it supports sustainable development and communities including as provided for in Policies TTV26 and TTV27 of the JLP. In this regard, the proposal is for an open market dwelling and I consider Policy TTV26 of the JLP which concerns 'Development in the countryside' is of direct relevance to the appeal proposal.
13. Policy TTV26 of the JLP seeks to protect the special characteristics and role of the countryside. The policy is in two sections. The first section seeks to restrict isolated development within the countryside unless there are exceptional circumstances, such as provision of a dwelling for a rural worker, securing the future of a significant heritage asset or be of a truly outstanding or innovative sustainability and design. These criteria are consistent with paragraph 79 of the Framework.
14. Paragraph 79 of the Framework provides that planning policies and decisions should avoid the development of isolated homes in the countryside. Having regard to *Braintree District Council v Secretary of State for Communities and Local Government & Ors* (2017) EWHC 2743 (Admin) and the subsequent Court of Appeal Judgement, the term isolated in relation to paragraph 79 of the Framework, should be given its ordinary objective meaning of "far away from other places, buildings or people". Given the proposed dwelling would be adjacent to existing buildings, it would not strictly be isolated when applying the aforementioned definition and, therefore, does not require assessment against the first part of Policy TTV26 of the JLP.
15. However, the second part of Policy TTV26 of the JLP concerns all development in the countryside as defined by the development plan, and is applicable to the appeal scheme. In this regard, the appeal scheme does not propose the reuse of a traditional building or would respond to a proven agricultural, forestry or other occupational need that requires a countryside location. The proposed development is not advanced as being for the improvement or protection of public rights of way and, whilst it is understood would not prejudice the

agricultural operations of the farm, the proposal would not be complementary to agricultural operations.

16. Furthermore, irrespective of the grade classification of the agricultural land, for the reasons given above in relation to character and appearance, the proposed development would not enhance the immediate setting of the site. In these respects, the proposal would not comply with the requirements of the second part of Policy TTV26 of the JLP and would conflict with this Policy when taken as a whole.

Heritage Assets

17. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision.
18. The appeal proposal would result in the removal of a section of a stone wall which separates the appeal site from the adjacent winding and narrow highway on the approach to the village. From the evidence before me and from observations made on my site visit, such boundary treatments are found throughout the village and are an important characteristic of the Conservation Area. The removal of a section of this wall which contributes positively to the Conservation Area to provide access to the site would therefore be harmful to the character and appearance of the Conservation Area.
19. Notwithstanding the above, there are examples close to the site where parts of the characteristic walls which form boundaries with the public highway have been removed to provide access and it is noted that the appeal proposal would retain a significant portion of the wall and would, in my view, maintain the character and sense of enclosure in this part of the Conservation Area. In light of these factors and in terms of the advice contained within the Framework, the harm to the significance of the Conservation Area would be less than substantial, affecting only its immediate surroundings.
20. Paragraph 193 of the Framework provides that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Any harm should require clear and convincing justification in line with paragraph 194 of the Framework. Where a development proposal leads to less than substantial harm, this harm should be weighed against the public benefits in line with paragraph 196 of the Framework.
21. In terms of benefits associated with the proposal, while it is noted that the Appellants maintain that the scheme would better reveal the well at Frogmore, the proposed removal of the section of wall would result in significantly improving visibility for vehicles entering and exiting the village along the narrow winding lane adjacent to the site and, in regard to the benefits associated with highway safety, would outweigh the less than substantial harm to the significance of the heritage asset.
22. For the above reasons, the appeal scheme would comply with Policy DEV21 of the JLP which concerns development affecting the historic environment, and would accord with those parts of the Framework which seek to preserve or

enhance the character or appearance of Conservation Areas and the significance of heritage assets.

Housing Mix

23. Policy DEV8 of the JLP seeks to ensure that there is a range of housing within the area and so that development proposals redress imbalances in housing stock where identified. This Policy further provides that developments should provide a mixture of housing types as supported by local housing evidence.
24. The Council have put it to me that there is overprovision of detached four bedroom dwellings at Ashprington. In this regard the Council have drawn on data from the Office for National Statistics (the ONS) dating from 2011, which indicates that 46% of dwellings in Ashprington being detached compared to 38% across the South Hams area as a whole. Furthermore, the data shows that approximately 35% of dwellings at Ashprington have four or more bedrooms compared to 27% across the South Hams district as a whole. Consequently, it is suggested that there is a need for terraced one or two bedroom housing in order to create a more balanced profile.
25. Notwithstanding the above, a Supplementary Planning Document (the SPD) was adopted in July 2020, which, amongst other things, provides further guidance in relation to overall housing mix in relation to the District as a whole. The SPD confirms that the key metric for ensuring diversity of size is based on the number of bedrooms with the Strategic Housing Market Assessment Part 2 (the SMNA) providing the threshold for the number of dwellings required by bedroom. The evidence taken from the SHMNA indicates that a further 316 units of four or more bedrooms would be required across the District during the plan period and which would represent approximately 34% of overall housing mix.
26. As noted above, the Council's ONS data indicates that approximately 35% of dwellings at Ashprington comprised four or more bedrooms and, in the context of the SHMNA it would not appear to have a significant oversupply of such units relative to the district need for 34% identified in the SHMNA for the plan period. As such, the proposed development of a further single residential unit of four or more bedrooms would not, in my view, result in a significant imbalance in the housing mix at Ashprington.
27. For the reasons set out above, it has not been demonstrated that the proposed development would result in an imbalance within local housing stock. Consequently, the appeal scheme would not be contrary to Policy DEV8 of the JLP.

Ecology

28. Paragraph 175 of the Framework states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
29. The evidence before me indicates that the planning application was supported by an ecological report dated July 2018 which concluded with the recommendation that further surveys would be required with regards to the presence of Cirl Bunting and bats, and that a reptile clearance programme would be needed. This report further confirmed that by the provision of

- opportunities for nesting birds and roosting bats, and the planting of an orchard would ensure that there was no net loss of biodiversity.
30. Following the initial report, a second ecological survey was conducted which, following consideration of further details pertaining to the appeal scheme, concluded that the proposal would not be harmful in relation to Cirl Bunting or harmful to bats. The second report further concludes that, given that further details regarding the scheme had been considered, following enhancements to potential bird nesting and bat roosts and in relation to additional planting there would be a net gain in terms of biodiversity.
31. I have not been provided with any substantive evidence which contradicts the findings of the second ecological report and I have no reason to consider that the appraisal is inaccurate or incomplete given that reasonable actions were taken by the Appellants in securing a second report once further details of the appeal scheme were known. Having considered all the evidence before me, it is my opinion that the proposal would not cause harm with regards to ecology or protected species, particularly given that mitigation measures could potentially be secured by condition which would result in a net gain for biodiversity at the site.
32. I therefore find that the proposed development would not pose a threat to habitats or protected species, and that suitably worded conditions would be able to mitigate for any findings during clearance and construction. The appeal scheme therefore complies with Policy DEV26 of the JLP which, amongst other matters, requires that development should support the protection, conservation, enhancement and restoration of biodiversity. In this regard and for the same reasons, the proposal would accord with the provisions of section 15 of the Framework which provides that planning permission should be refused if significant harm to biodiversity cannot be avoided or mitigated, and that developments result in a biodiversity net gain.

Other Matters

33. The Appellants submissions refer to the pre-application advice provided by the Council. The Framework stresses the benefits of early engagement and of good quality pre-application discussion. Whilst it is not binding, it is clearly unfortunate if it is indicated that the proposal could be supported but then the final outcome is an adverse one. Nevertheless, at appeal the proposal is considered afresh and, as a consequence of this, the provision of positive feedback given at pre-application stage does not warrant allowing the appeal.

Conclusions

34. In summary of the above, whilst I have found that the appeal scheme would not result in harm to ecology, the Conservation Area nor would result in a significant imbalance in housing mix at Ashprington, the proposed development would be in conflict with those parts of the development plan which concern the location of development and its impact on the character and appearance of the surrounding area including the AONB and undeveloped coast. In this regard and in accordance with the Framework, I attach great weight to the harm to the AONB and, while the proposal would comply with some parts of the JLP, I conclude that the appeal scheme would conflict with the development plan when taken as whole. The conflict with the development plan weighs significantly against the proposal.

35. In terms of benefits, the proposal would provide some biodiversity gain, improvements to highway visibility, would contribute towards housing stock within the District and could better reveal the well at Frogmore. The scheme would provide economic benefits in terms of employment opportunities during the construction phase and through future spend of residents which would thereby help support the local economy. However, in my view and by reason of the scale of the appeal scheme, the benefits associated with the proposed development would be limited and would not outweigh the harm as identified above, particularly bearing in mind the degree of protection afforded to AONBs, and would not outweigh the conflict with the development plan when taken as a whole.
36. For the reasons given above I conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR