



Appeal Decision

Site Visit made on 9 February 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Appeal Ref: APP/E2205/W/20/3256481

Hornash, Hornash Lane, Shadoxhurst, ASHFORD, TN26 1HT

- 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 R Parmar against the decision of Ashford Borough Council.
 - The application 19/01101/AS, dated 31 July 2019, was refused by notice dated 23 January 2020.
 - The development proposed is the construction of 6 dwellings and 4 car ports.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The dwellings are described as 'detached' on the application form. As four of the dwellings proposed are semi-detached rather than detached, I have omitted this word from the description used in the banner heading in the interests of accuracy.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the risk of flooding
 - the character and appearance of the area, including landscape and the retention of trees
 - the setting of the Grade II listed building, Hornash
 - the living conditions of neighbouring occupants of 10 Hornash and future occupants of plot 1 with regard to overlooking
 - the protection of wildlife
 - whether affordable housing should be provided.

Reasons

Flooding

4. The site lies within flood zones 2 and 3 as shown on the Environment Agency's flood zone maps. Based on the analysis carried out in the appellant's flood risk assessment¹, the latter category is flood zone 3a rather than 3b (the functional floodplain). Nevertheless, the site remains at a medium to high probability of flooding.

¹ Herrington Consulting Limited, flood risk assessment, September 2019.

5. In areas at risk of flooding, Policy ENV6 and Section 14 of the National Planning Policy Framework (the 'Framework') require the use of a sequential test, with the aim of steering new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Further advice is provided in the Planning Practice Guidance² and the Environment Agency's standing advice³. These documents supersede advice previously contained in the Planning Policy Statement 25: Development and Flood Risk Practice Guide.
6. No such sequential test has been carried out. The appellant has argued that the study area for such a test should be the defined village of Shadoxhurst. However, the Environment Agency suggests it should be the district⁴ as does the Council who confirm that there are substantial areas in the Borough outside of flood zones 2 and 3 where windfall development could take place rather than in this location⁵. Given that the development is for housing, which the Council plans for at a Borough level, I give weight to these views. Even if the village of Shadoxhurst were to be taken as the appropriate study area, there has still been no assessment of alternative sites or housing capacity as suggested in the Environment Agency's standing advice. I am not convinced by the argument that the appeal site is the only remaining site that might come forward for housing in Shadoxhurst, as it is apparent that other sites have come forward in the recent past⁶.
7. I conclude that as no sequential test has been carried out, it has not been demonstrated satisfactorily that there are no alternative, preferable sites for housing that would have a lower risk of flooding. As a consequence, the proposed development would put future occupants at an unnecessary risk from flooding, notwithstanding that there may be ways to mitigate the risk from flooding on the site itself. The development would therefore conflict with Policy ENV6 of the Ashford Local Plan 2030, which requires new development to contribute towards an overall flood risk reduction. Given the failure to meet the sequential test, there is no need for me to apply the exception test.

Character and appearance

8. Shadoxhurst is an elongated settlement centred on Woodchurch Road and its junctions with Tally Ho Road, Bethersden Road and Hornash Lane. Development along Hornash Lane is mainly linear in form with a line of houses fronting the southern side of the lane with their rear gardens backing on to open countryside.
9. Part of the site forms the rear garden to Hornash. It contains a garage and swimming pool and lies within the confines of the village. The rear part of the site lies outside the confines of the village. However, it is previously developed land, there being a collection of former stables and ancillary buildings on the part of the land that would be occupied by dwellings. One of the larger stable buildings has been removed but its concrete base remains.

² Planning Practice Guidance, flood risk and coastal change.

³ Environment Agency, flood risk assessment: the sequential test for applicants.

⁴ Environment Agency, consultation response, 10 September 2019.

⁵ Ashford Borough Council, officer's assessment sheet.

⁶ 18/01247/AS, Elite, Hornash Lane, Shadoxhurst.

10. While development on the site would depart from the generally linear form of dwellings along Hornash Lane, the previously developed nature of the site means that the appeal proposal would not introduce buildings into open countryside. While not the predominant form of layout in the village, there are occasional examples along Hornash Lane where dwellings occupy positions behind the frontage development, including a recent permission for the redevelopment of former farm buildings⁷ to the east of the site. It is also the case that Policy HOU5 allows residential development adjoining or close to the existing built up confines of designated settlements, of which Shadoxhurst is one, subject to criteria.
11. However, the form of the proposed development with small plot sizes and closely spaced buildings would be at odds with the overall character and appearance of development along Hornash Lane. The dense nature of the development would create a hard built up environment that would contrast with the much lower density development flanking it. The small plot sizes would provide limited opportunity for mature planting and would fail to provide a soft transition to the countryside, as is the case with existing dwellings along Hornash Lane, including those set behind the frontage development. I acknowledge that the area of the site reserved for flood mitigation would remain open and part of the countryside but the built up part of the development would still suffer from the poor design characteristics described above.
12. I note the Council's concerns about the potential for harm to trees on the site. There are no mature trees in the immediate vicinity of the proposed dwellings. There are mature field trees along the side boundaries and on the land to the rear where flood mitigation measures are proposed. While I understand the concern that such works could harm the roots of these trees, it seems to me that there is sufficient land to enable such works to take place while at the same time retaining the trees. As the details of such works, and the methods for protecting the trees to be retained during such works, could be secured by condition I do not consider this to be a justified reason for resisting development on the site.
13. I conclude that, while tree protection could be secured through a condition, the form of development proposed with tightly spaced buildings on small plots would harm the prevailing character and appearance of the area. It would as a result conflict with criterion (f) of Policy HOU5 and criterion (b) of Policy HOU10 of the Ashford Local Plan 2030, which require new development to sit sympathetically within the wider landscape, preserve or enhance the setting of the village including the surrounding grain and built pattern of development, and include an appropriately sized and designed landscape buffer to the open countryside.

Setting of listed building

14. Hornash is a Grade II listed, two storey, weatherboarded house set endwise to Hornash Lane. It is in a very poor state of repair, the chimney stack having fallen into the roof and the building damaged by fire. I note that there is an extant application to demolish and rebuild the dwelling⁸. As this has yet to be determined, I shall give great weight to the listed building's conservation as

⁷ 18/01247/AS, Elite, Hornash Lane, Shadoxhurst.

⁸ 20/01224/AS

required by paragraph 193 of the Framework and the statutory test in Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

15. The significance of the listed building lies in it being one of the earliest buildings in the village and an example of local vernacular architecture. Residential development along Hornash Lane and the stable buildings to the rear have reduced its original rural setting and confined it to its existing curtilage, but some relation to open countryside to the rear can still be gained in views from Hornash Lane.
16. The development would result in a reduction in the curtilage of the listed building and the demolition of its garage and swimming pool. Neither of these latter structures are of any historic or architectural merit and their removal would have a neutral effect on the setting of the listed building. However, the dense built up nature of the proposed development would be at odds with the more spacious setting of the listed building and would erode what association it still has left with the surrounding countryside. It would for those reasons fail to preserve the setting of the listed building.
17. I consider that the erosion of the listed building's curtilage would lead to less than substantial harm to the significance of the listed building, a view that was also reached in the appellant's heritage statement⁹. The appellant has argued that the provision of housing is a public benefit that outweighs this harm. While I accept that additional housing is in principle a public benefit, there is no overriding reason why it should be provided on this site or could not be provided in a different manner without causing harm to the setting of the listed building. I therefore do not agree that it would outweigh the harm so caused.
18. I conclude that while the proposed development would cause less than substantial harm to the setting of the Grade II listed building, Hornash, that harm is not outweighed by public benefits. As a result, it would conflict with Policy ENV13 of the Ashford Local Plan 2030, which seeks to preserve or enhance the heritage assets of the Borough, as well as the statutory test referred to above.

Living conditions

19. The proposed dwellings have been orientated such that there would be no direct overlooking between primary windows, either within the scheme or between the proposed dwellings and those adjacent. The front elevations of plots 2/3 and 4/5/6 would look towards one another but as these face onto shared space the relationship would be acceptable.
20. Plot 1 would look out over the garden of 10 Hornash, particularly if the conifer hedge along the intervening footpath were removed. Similarly, plots 2/3 would have a clear view into the rear garden of plot 1. However, intervisibility between dwellings and neighbouring garden space is not unusual, even in a rural setting such as Shadoxhurst. 10 Hornash has a sufficiently large garden to allow additional screening along the boundary if deemed necessary, and future occupiers of plot 1 would be aware of the relationship between dwellings within the scheme. Screening at ground floor level could be secured through boundary fencing.

⁹ Heritage Statement, Andrew Street, July 2019.

21. I conclude that while some additional overlooking of garden space would occur, the degree of intervisibility would not be so great as to amount to unacceptably harmful overlooking. The development would not therefore conflict with Policies HOU5 or HOU15 of the Ashford Local Plan 2030, which seek to protect private external open space.

Protection of wildlife

22. The appellant commissioned a preliminary ecological appraisal¹⁰ to identify whether any protected species were present on the previously developed part of the site. As a result of identifying a building and trees that might contain bat roots, further field observations were carried out as summarised in the bat emergence/re-entry survey report that forms part of the appraisal. The appraisal and survey found no evidence of protected species. The work was carried out by a suitably qualified ecologist in accordance with well-established practice and I accept the findings.
23. The ecological appraisal did not include the land to the south of the previously developed area, which would be used for flood mitigation. However, as no built development would occur here, and any details of flood mitigation works and tree retention and protection could be secured by condition, I consider that if further ecological appraisal is required it could form part of the conditional requirements.
24. I conclude that, based on the submitted evidence and the ability to control further works by condition, no harm would be caused to protected species or the biodiversity value of the site. Accordingly, the development would not conflict with Policies HOU5 and ENV1 of the Ashford Local Plan 2030 in so far as they relate to the protection of wildlife.

Affordable housing

25. Policy HOU1 requires the provision of affordable housing '*on all schemes promoting 10 dwellings or more (and on sites of 0.5 hectares or more)*'. In this case the number of proposed dwellings falls below the first policy threshold, but the area of the site falls above the second threshold.
26. If the wording of Policy HOU1 is read literally, a development would need to meet both policy thresholds before providing affordable housing although I doubt this is what is intended, and I note the supporting text uses the conjunction 'or' rather than 'and', as does the definition of major development in the Glossary to the Framework, with which the policy seeks to be consistent. The appellant does not consider the proposal to amount to major development, implying that the reference to a site size threshold should only be interpreted as applying in cases where the number of dwellings in a development is not known, for example in relation to an outline application. The Council has interpreted it in a different manner to include any housing development on sites over 0.5 hectares, including those with less than 10 dwellings.
27. As a scheme for 6 dwellings the proposal would not normally need to provide affordable housing. The previously developed area of the site, to which the built part of the development would be confined, is less than 0.5 hectares. The only reason the site contained within the red line on the location plan is larger is because of the inclusion of the land to the south, which would be used for flood

¹⁰ PJC Consultancy, preliminary ecological appraisal and bat emergence/re-entry survey report, June 2019.

mitigation rather than to provide housing. For practical purposes in assessing the capacity of the site to accommodate housing, it would not amount to major development. For that reason, I conclude that proposed development should not be required to provide affordable housing, and consequently it would not conflict with the requirements of Policy HOU1.

Other Matters

28. Subsequent to the Council's decision to refuse planning permission, advice has been received from Natural England of the potential significant adverse effect of new development on water quality in relation to the Stodmarsh Lakes Special Area of Conservation, Special Protection Area and Ramsar site. The Council is currently seeking to identify mitigation measures that would address this adverse effect. I note that the appellant has queried the relevance of the Natural England advice depending on the catchment area for drainage for the site; and has also proposed an onsite package treatment plant as possible mitigation of the water quality.
29. Given the potential for a significant adverse effect on sites of European importance, an appropriate assessment would be necessary under the Conservation of Habitats and Species Regulations 2017. That assessment would need to consider in more detail what, if any, harm would be caused and whether the proposal put forward by the appellant would address that harm. However, given my conclusion to dismiss the appeal on other grounds, it is not necessary for me to carry out such an assessment as part of this appeal.
30. Kent County Council has requested financial contributions towards infrastructure provision, although these are not the subject of a reason for refusal, and the Borough Council has not commented upon the need for them. I note that the contributions are also dependent upon the proposal being considered as major development, which for the reasons set out under the affordable housing issue above, I do not consider to be the case here. Having regard to both these matters, I do not consider the lack of financial contributions towards infrastructure to be a determining issue in this appeal.
31. The Parish Council has questioned the interpretation of Policy HOU5 (b) by the Council in terms of accessibility to a range of services. While I note the Parish Council's disagreement with the Borough Council on this issue, it is not one before me to determine as part of this appeal.

Conclusion

32. I have found no harm would be caused to the living conditions of neighbouring or future occupants, wildlife or trees on the site, subject to suitable conditions. I have also found there to be no need for a contribution towards affordable housing. The absence of harm on these issues carries a neutral weight in my decision.
33. I recognise that there would be a public benefit from the provision of additional housing to meet housing demand, and this carries modest, positive weight.
34. However, I have found that the proposed development would fail the sequential test as regards flood risk, and would therefore be an unacceptable location for housing development in the absence of any evidence that this is the only site available for such development in the area. I have also found harm would be caused to the character and appearance of the area, and to the setting of the

Grade II listed building, Hornash. This latter harm attracts great weight in accordance with the advice in paragraph 193 of the Framework.

35. I consider that the harm caused by these latter considerations outweighs the modest benefit arising from additional housing provision, and as a consequence the development would conflict with the development plan when taken as a whole. There are no other material considerations that would outweigh the harm so identified.

36. As a result, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR