
Appeal Decision

Site visit made on 26 April 2022

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Appeal Ref: APP/A2470/W/21/3282349

Field House, Exton Road, Whitwell, Rutland LE15 8BW

- 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 June Titterton-Fox against the decision of Rutland Council.
 - The application Ref 2020/0034/FUL, dated 11 January 2020, was refused by notice dated 19 March 2021.
 - The development proposed is a single storey three bedroom earth-sheltered dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey three bedroom earth-sheltered dwelling at Field House, Exton Road, Whitwell, Rutland LE15 8BW in accordance with the terms of the application, Ref 2020/0034/FUL, dated 11 January 2020, subject to the conditions set out in the schedule to this decision.

Main Issues

2. The main issue is the effect of the development on the character and appearance of the area including the setting of nearby heritage assets.

Reasons

Character and appearance

3. The appeal site which is currently used for the grazing of the Appellant's livestock is some 5.5 acres in size and located on the northern edge of Whitwell, a small linear settlement to the north of Rutland Water. Access to the site is from Exton Road via a gated stone track.
4. A mature hedgerow bisects the site dividing it into two distinct fields. The northern, western and eastern site boundaries are delineated by mature hedgerows supplemented by a number of mature trees on the south-western boundary. A public right of way providing access to the of open countryside between Whitwell and Exton runs along the eastern site boundary and currently provides views across the eastern portion of the site. To the south are a number of residential properties which currently enjoy open views across the appeal site.
5. Whilst the site lacks any redeeming landscape features it nonetheless possesses a pleasant open character which contributes positively to the bucolic setting to the north of Whitwell. There is no suggestion from the Council that it is a 'valued' landscape in the terms set out in paragraph 174 of the National

Planning Policy Framework (the Framework). It is in effect ordinary attractive countryside albeit enclosed by existing built development on its southern edge and is not visible over a wider area.

6. The proposal seeks permission for a single storey, three-bedroom, earth sheltered dwelling. The innovative dwelling would be built into the ground in a manner that respects the site's natural topography. It would be orientated so that the principal elevation would face towards south-west towards the site access onto Exton Road. The side (north-west and south-east) elevations as well as the roof would all be covered with bunded soil and pasture grass. The largely concealed front (north-east) elevation would be finished in local natural stone and the principal rear (south-west) elevation would be largely glazed. Vehicle parking would be provided in a hollow which similar to the dwelling would be built from local limestone and steep sloping, bunded soil with a ha-ha at its top edge to safeguard the house from livestock.
7. The Council's first reason for refusal cites the visual impact of the dwelling which is said to be contrary to paragraph 131 of the Framework¹. This states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design. It goes on to state that significant weight should be given to *'outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings'*.
8. In a similar vein Policy CS19 of the 2011 Rutland Core Strategy (the CS), and Policy SP15 of the 2014 Site Allocations and Policies Development Plan Document (SAPDPD) expect new development to contribute positively to local distinctiveness and sense of place taking account of scale, height, appearance, materials and relationship to adjoining buildings and landscape features.
9. Having read the Planning Statement submitted with the application, there can be little doubt that the proposed *'state of the art'* dwelling has been carefully and sensitively designed to the most exacting environmental standards. The *'autonomous'* dwelling would incorporate principles of high thermal mass design which would exceed the UK's Zero Carbon standard. It would be fossil fuel free in operation and able to achieve an off-grid existence able to generate a surplus of energy that could be fed back into the grid. It would also be capable of managing its own water supply and waste. All this means that the energy requirements of the dwelling would be a fraction of that of a conventional house. The sustainability credentials of the house have not been challenged by the Council and consequently, I conclude that the dwelling would achieve *'high levels of sustainability'*.
10. In terms of its overall design, the dwelling would be built in a hollow created in the landscape and earth covered. According to the Council's Appeal Statement *'The site topography permits the creation of the hollow at the point where the land slopes steeply from the northeast to the south and south-west, just to the north of the existing tractor access to the field'*. Cognisant of the cross-sections provided with the application and my own observations on my site visit, I can see no reason to disagree with the Officer's assessment in that regard.

¹ Paragraph 131 was replaced by paragraph 134 in the latest (July 2021) version of the Framework. The Council's Appeal Statement, which is dated April 2022 refers to an older, superseded version of the Framework

11. Given that the dwelling would be built into the hillside with no part of its structure protruding above the naturally occurring topography, it follows, largely as a matter of logic, that it would have a very limited impact on the surrounding landscape even before one considers further mitigation in the form of a landscaping scheme. Those parts of the dwelling that would be visible outside the site would be limited to south-western elevation. This would have a striking contemporary appearance that would add a new and architecturally distinct element to the local landscape that is likely to generate considerable local interest. In short, it would possess the “wow” factor. In that regard, I have little doubt, that the proposal would *‘help raise the standard of design’* in the area.
12. On my site visit I viewed the site from various locations. Whilst the dwelling including parking courtyard, might well be visible for example from the public right of way, Exton Road, the eastern end of the churchyard or perhaps neighbouring gardens, these would be occasional glimpsed views depending on the time of year. Overall, and after the initial construction stage, the dwelling would benefit from a high degree of visual concealment in public and private views. This is aptly demonstrated by the montages submitted at the appeal stage². One would effectively need to know exactly where to look in order to see the house and even then, there would only be filtered glimpses of the stonework or perhaps glazing in the front elevations in gaps through the boundary landscaping or along the driveway.
13. The boundary landscaping would be retained and strengthened as part of the scheme³ with paragraphs 5.6-5.8 of the LVA set out an outline planting strategy which would form the basis of a soft landscaping scheme that could be secured by condition. Subject to such a condition, I concur with the findings of the Landscape and Visual Appraisal (LVA)⁴ that the residual visual impact of the dwelling in the medium/long term would be negligible. Accordingly, I am satisfied that the dwelling would *‘fit in with the overall form and layout’* of its surroundings and would be anything but *‘visually intrusive’*.
14. Having considered all the material submitted with the application which included a detailed Planning Statement, LVA, Heritage Assessment and a full suite of drawings including cross sections, CGIs and a full topographical survey, supplemented by own observations on site, I am unclear what further information the Appellant could have submitted with the application to enable the Council to properly consider the landscape and visual effects of the scheme.
15. The Council has levelled a number of criticisms at the LVA including its failure to show images of the dwelling in situ. However, that matter has now been addressed by the montages submitted with the appeal. Although the Council has responded to the montages by reaffirming its position that the proposed development will be visually intrusive, no positive case has been advanced at the appeal stage and there is nothing before me to explain how the Council came to that conclusion.

² See Appendix 6 of Appellant’s Grounds of Appeal

³ A new hedge has already been planted along the eastern site boundary to screen views from the public right of way. paragraphs 5.6-5.8

⁴ See paragraph 6.14

16. Contrary to what is shown on the submitted plans, the Council argues that the dwelling would require a '*substantial access drive*'. However, no explanation as has been provided as to why this would be necessary for a single dwelling. I note that the Appellant has since confirmed that the dwelling would be served by the existing track⁵ which would be greener once relayed with grasscrete type finish, allow grass to form. Accordingly, I conclude that the proposal would result in a degree of landscape and visual betterment with regards to the access driveway.
17. The Council suggests that insufficient information has been submitted in respect of lighting. However, the matter is addressed in paragraphs 4.6/6.17 of the LVA which concludes "*In the longer term, when the Site has matured, the overall level of change is assessed as minor to negligible*". From my own observations and in light of the dwelling's proposed orientation and the fact that it is customary for people to draw their curtains at night, I see no reason to disagree with that conclusion. Even at the appeal stage the Council has failed to provide a cogent explanation as to what further information could have been submitted or exactly how any harm would be caused or for that matter why such matters could not be dealt with in the usual way by condition.
18. The Council's Appeal Statement⁶ highlights a number of areas where it considers inadequate information was submitted including details regarding the Appellant's commercial enterprise and how animals would use the site. However, such concerns have little or nothing to do with the landscape or visual impacts of the proposal and are therefore largely irrelevant.
19. Finally, the Council has referred to a lack of information about satellite aerials and cable runs. However, in my experience, it is very unusual for this minutiae level of detail to be submitted with a planning application. In the absence of any argument to the contrary, I am satisfied that such matters could be dealt with via an appropriately worded planning condition.
20. I have noted comments made by Design Review Panel which the Council appeared to be overly reliant upon in reaching its decision. However, for the reasons set out above I consider the proposal would be a welcome addition to the area complementing the rich architectural fabric of Whitwell.
21. Based on the foregoing I find the Council's view that the dwelling would be '*visually intrusive and impact adversely on the form and character of the area*' to be without merit. Accordingly, there would be no conflict with CS Policy CS19, SAPDPD Policy SP15) or paragraph 134 of the Framework.

Heritage Assets

22. Nearby heritage assets include the Whitwell Conservation Area (WCA), Home Farmhouse (Grade II) and The Church of St. Michael (Grade II*). The site is not however within the WCA nor within the curtilage of any listed building. On the contrary the plans show that the dwelling would be some distance away from the nearest listed building to the south-east of the site and there would be very limited intervisibility between the proposed dwelling and the abovementioned assets.

⁵ See paragraph 5.7 of the Appellant's Grounds of Appeal and 3.8 of the Heritage Statement

⁶ See paragraphs 8.4-8.6

23. Rather than a direct impact, the Council's second reason for refusal refers to the effect of the proposed dwelling on the setting of The Church of St. Michael which occupies an elevated position on the far side of the A606 some distance away.
24. The Framework explains that setting is "*the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral*".
25. Against that definition, I find it difficult to understand how a privately owned site located over 100 metres to the north, on the opposite side of a main road and outside the conservation area could possibly form part of an area in which the church 'is experienced'. Even in the alternative, as there would be no material visual impact on views to/from the church, I am satisfied its setting would be preserved. In the absence of evidence to demonstrate that the dwelling would be intervisible in views to/from Home Farmhouse, I am not persuaded there would be any negative effect on the building's setting.
26. In terms of the WCA, I have already accepted that there would be a minor change to the landscape but overall, the visual effects would be largely contained to the site itself and mitigated in the medium long-term. Hence the rural setting to the north of the WCA would be preserved. To that end, it follows that there would not be any harm to the setting of the WCA.
27. I have carefully considered comments made by the Council's Conservation Officer. However, these comments appear to be predicated on a fundamental misunderstanding of the intended use of the land post-development. As the dwelling would be a farmhouse, the majority of the land surrounding it would remain in agricultural use as it is now. Conditions removing certain permitted development rights and defining the extent of any curtilage could be imposed to prevent additional buildings and residential paraphernalia being placed on the land. In light of the above, most if not all of the points raised by the Conservation Officer fall away.
28. I conclude that the proposal would not conflict with CS Policy CS22, SAPDPD Policy SP20 or the Framework insofar as they seek to preserve or enhance heritage assets. Given that there would be no harm to the heritage assets, it is not necessary to undertake the public benefits test set out in paragraph 202 of the Framework.

Other Matters

29. Although raised as an issue by local interested parties, the fact that the appeal site is outside the settlement boundary and therefore in the countryside for planning purposes, was not cited as a reason for refusal.
30. A number of objectors argue that the dwelling would have a detrimental effect on their privacy. However, this matter was considered by the Council at the application stage who concluded there would be no unacceptable adverse impact on the living conditions of neighbouring occupiers. Given the orientation of the proposed dwelling and the degree of separation from existing properties, I see no reason to take a contrary view.

31. The fact that the Appellant previously applied for a caravan and camping licence on the site, is not a material planning consideration to which I can ascribe any degree of weight.
32. The "*Planning Practice Guidance*" states that Inspectors may use their powers to make an award of costs where they have found unreasonable behaviour, including in cases where no application has been made by another party⁷. I have given serious thought to exercising these powers in this instance given the failure of the Council to adduce any positive evidence of its own to support its case that the development 'will' be visually intrusive' and 'will' harm nearby heritage assets.
33. Within the overall legal framework of section 38(6) of the Town and Country Planning Act 1990, it is as much for the Council to make out its case as to why planning permission should be refused as for the Appellant to make out a case that it should be granted. Moreover, for the Council to have acted 'reasonably', it must "*produce evidence to substantiate each reason for refusal*"⁸, within a context where those reasons should have been clearly and precisely stated.
34. At the appeal stage the Council simply repeated the contents of its Officer Report with one or two minor additions. It has manifestly failed to present a positive case to explain how the development would cause unacceptable harm to the '*form and character of the area*' nor nearby heritage assets. Instead, it sought mainly to rely on a perceived lack of information⁹. Not only did this contradict its assertion that the dwelling would be '*visually intrusive*', but most of the concerns raised were either irrelevant to the actual reasons for refusal, were addressed by the submission of additional information at the appeal stage or could have been dealt with by condition for instance lighting, landscaping schemes and the removal permitted development rights.
35. Because of these failings the Council has come perilously close to crossing the '*unreasonable behaviour*' threshold. Nevertheless, I have exercised my discretion not to initiate an application for costs on this particular occasion. The Council should however take note of these comments to avoid any prospect of such an award being made in the future.

Conditions

36. The Council has suggested a number of planning conditions which I have considered against advice in the Planning Practice Guide (PPG). In some instances, I have amended/amalgamated the suggested conditions in the interests of brevity, to avoid repetition and to ensure compliance with the PPG.
37. Those conditions suggested by the Council covering time limits and the approved plans are necessary to provide certainty. Conditions covering facing materials, landscaping, levels, lighting, the extent of residential curtilage¹⁰ and the removal of certain permitted rights are necessary to ensure the development does not harm the character and appearance of the area. To ensure net gains to biodiversity I have imposed a condition relating to bird/bat boxes. Drainage conditions are necessary to ensure the development does not add to flooding problems in the area.

⁷ Paragraph reference ID: 16-036-20140306 [see also 16-029-20140306].

⁸ PPG ID: 16-049-20140306

⁹ This argument is repeated in paragraph 8.3 of the Council's Appeal Statement

¹⁰ This condition was not suggested by the Council but I consider it to be necessary

Conclusion

38. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, Drawing Numbers: 1:1000 Location Plan dated 3rd February 2020, 1:1000 Site Plan dated 3rd February 2020, 1:00 Scale Proposed Elevations, 1:100 Scale Proposed Floor Plan, 1:500 Scale Vehicular Access Visibility Splays.
- 3) No development above ground level shall be commenced until details of the external materials to be used in the construction of the dwelling have been submitted to and agreed, in writing, by the Local Planning Authority. The development shall be completed in accordance with the approved details.
- 4) No development above ground level shall be commenced until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the site which shall include details of all boundary treatments including those to be erected adjacent to the Viking Way. The development shall be completed in accordance with the approved details.
- 5) All landscaping shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees, hedges or shrubs which, within a period of 5 years of being planted die are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No development shall commence until details of existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill, have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the agreed scheme.
- 7) No external floodlighting shall be installed on the dwelling or within its curtilage until details have been submitted to and approved in writing by the Local Planning Authority.
- 8) Notwithstanding the provisions of Article 3, Schedule 2, Part 1 Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement, other alteration, buildings, enclosures or swimming pool shall be erected or carried out except with prior planning permission.
- 9) Before occupation of the dwelling hereby approved, details of Bat and bird boxes to be fitted to the dwelling shall be submitted to and approved in writing by the Local Planning Authority. The approved Bat and bird boxes shall be fitted to the dwelling before occupation and shall remain in situ thereafter.
- 10) No development above ground level shall commence until details of the drainage at the site access onto Exton Lane has been submitted to and

approved in writing by the Local Planning Authority. The agreed details shall be implemented prior to first occupation of the dwelling and retained thereafter.

- 11) No occupation of the development shall take place until details of surface and foul water drainage have been submitted to and agreed, in writing, by the Local Planning Authority and the agreed method of surface water drainage has been fully installed and is available for use.
- 12) The extent of the residential curtilage associated with the dwelling hereby approved shall be agreed in writing by the Local Planning Authority. Except for the areas so approved, all other land within the appeal site shall remain in agricultural use.