



Appeal Decision

Site visit made on 25 April 2022

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 16th June 2022

Appeal Ref: APP/M1710/W/21/3282948

The former Monkwood Mission Church, Petersfield Road, Monkwood, Hampshire SO24 0HB

- 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 Tom Patton against the decision of East Hampshire District Council.
 - The application Ref 57217/002, dated 22 April 2021, was refused by notice dated 23 July 2021.
 - The development proposed is described as "*erection of a detached dwelling, including access, parking and amenity space, following the demolition of the existing dwelling*".
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Decision

1. The appeal is allowed and planning permission is granted, for the erection of a detached dwelling, including access, parking and amenity space, following the demolition of the existing dwelling, at the former Monkwood Mission Church, Petersfield Road, Monkwood, Hampshire SO24 0HB, in accordance with the application Ref 57217/002, dated 22 April 2021, subject to the conditions contained in the attached schedule.

Application for costs

2. An application for costs has been made by the appellant against the Council. That application is the subject of a separate Decision.

Background and main issue

3. The existing building on the appeal site is a timber building, formerly used for church purposes. In August 2020, planning permission was granted for the conversion of the building, from Class D non-residential institution, to Class C3 dwelling house with associated parking and amenity space (Ref 57217). Subsequently, works have been carried out to the building and its surrounds, pursuant to this permission. The present appeal proposal now seeks to replace the existing building with a new, purpose-built dwelling.
4. The development plan includes the East Hampshire District Local Plan adopted in March 2006 (the DLP), the Joint Core Strategy adopted in May 2014 (the JCS), and the Ropley Neighbourhood Plan, made in September 2019 (the RNP). On the Policies Map, the hamlet of Monkwood lies in an area of countryside, outside any settlement boundary. In such areas, most new housing is restricted by DLP Policy H14, and JCS Policy CP19, which permit only those developments which have a proven need for a countryside location. However,

replacement dwellings and residential extensions are dealt with separately under DLP Policy H16, which is discussed in more detail below.

5. In the light of the above, the main issue in the appeal is whether the development now proposed would accord with DLP Policy H16.

Reasons for decision

Policy H16 and its purposes

6. DLP Policy H16 states that, outside settlement boundaries, permission will be granted for the replacement or extension of a dwelling, subject to various parameters governing the maximum size of the new building compared to the existing. The policy also states, amongst other things, that “*proposals will be subject to (a) the existing dwelling benefiting from a lawful and permanent residential use*”.
7. The reasoning behind this policy is set out in paragraphs 5.182 – 5.192 of the DLP text. Having regard to both the explanatory text and the policy itself, it is evident that the purposes of Policy H16 are twofold. Firstly the policy is intended as an enabling policy, to facilitate the renewal and upgrading of the rural housing stock, as an exception to the otherwise restrictive policies that apply outside settlements, such as Policies H14 and CP19. Secondly, the policy also seeks to control the size of the resulting replacement or extended dwellings, so as to maintain a variety of different housing sizes, including smaller units.

The proposed development

8. In the present case, the proposed development seeks to replace the dwelling for which planning permission was granted in August 2020. It has not been disputed that that permission provided for a lawful permanent dwelling. In principle therefore, the appeal scheme is clearly aligned with Policy H16’s main purpose of facilitating the reasonable replacement of existing dwellings.
9. The proposed new dwelling would comprising a lounge, kitchen/diner, two main bedrooms, and a smaller first-floor room designated as a potential study, with a floorspace said to be 99 sq m. As such, it would amount to a modest-sized home, suitable for a small family. Although the new dwelling would be larger than the existing building, it does not appear to be disputed that it would fall within the size range which is permissible under Policy H16.
10. In both these respects therefore, the appeal proposal seems to me to accord fully with the aims of Policy H16.

Sub-section (a) of Policy H16: interpretation and application

11. The Council contends that the requirement in Policy H16’s sub-section (a), regarding lawful and permanent residential use, is not satisfied merely by the existence of the August 2020 planning permission. Instead, it is argued that the sub-section can only be complied with if, firstly, the residential use authorised by that permission has been brought into lawful existence, following the completion of the conversion of the existing building, in full accordance with the approved plans and conditions; and secondly, if the building has been subsequently occupied as someone’s main and permanent residence.

12. In considering the Council's submissions on this matter, I have had regard to the approach to the interpretation of planning policy as set out in the Supreme Court's judgement in the well-known case of *Tesco Stores v Dundee City Council*¹. That judgement makes clear that policies should not be construed in the kind of way that would be appropriate to a statute or contract. Rather, they are to be read in their proper context, and applied having regard to the facts of the particular case; as such, the application of policy will often require the exercise of planning judgement.
13. Looking first at the policy wording used in subsection (a), whilst I note the Council's interpretation, the actual words seem to me a good deal less prescriptive than the Council suggests. The sub-section does require the existing dwelling to benefit from a lawful and permanent residential use, but the meaning of that phrase is not defined in any further detail. The wording makes no mention of implementation or occupation. Nothing in the sub-section directly addresses the situation in the present case, where the right to residential use has been established by a valid planning permission. However, this alone does not seem to me to imply that such cases are ruled out. Having regard to the principles of the *Tesco Stores* judgement, it seems to me that there is no reason in principle why the appeal proposal should not be found admissible within the terms of sub-section (a), subject to consideration of the context and all other relevant matters.
14. In this case, the relevant context is that of Policy H16 as a whole, and its purpose and role within the development plan's suite of policies for the countryside. As discussed above, whilst Policy H16 is restrictive as to matters of size, in all other respects it is clearly designed to be permissive, and to serve an enabling purpose. In this light, it seems to me that the purpose of subsection (a) is to make clear that the policy is not appropriate for cases where, as a matter of principle, the lawfulness or permanence of a site's residential use has yet to be established. As such, the sub-section serves to clarify the scope of Policy H16, by filtering out those relatively limited number of cases where the principle of residential use is open to doubt; but in most cases, there is likely to be no such doubt. Having regard to this context, it is evident that sub-section (a) is not intended as a means of disapplying the benefits conferred by Policy H16 other than in relatively rare circumstances. Nor is the sub-section meant to be used as an additional 'hurdle', to reduce the numbers of qualifying developments in an arbitrary manner.
15. In the present appeal, although the Council questions how far the conversion works carried out on the existing building comply with the 2020 planning permission, it is not disputed that the scheme approved in that permission is viable and capable of being fully implemented. And similarly, despite the Council's doubts regarding some aspects of the building's subsequent occupation, there is no question as to the lawfulness and permanence of the residential use that the existing permission provides for. Moreover, none of the submissions before me gives any reason to doubt that, in the absence of the present appeal, the approved development would be likely to be fully completed (if indeed it has not been already), and would result in a converted building which would be habitable for use as a permanent dwelling. Consequently, it is clear in my view that the circumstances relating to the appeal site are not in any way comparable to those that sub-section (a) is

¹ *Tesco Stores v Dundee City Council*, [2012] UKSC 13

designed to deal with. It follows therefore that the appeal proposal is not of the kind that the sub-section is intended to filter out. In these circumstances, it seems to me that the Council's interpretation and application of sub-section (a) in the present appeal is clearly at odds with the spirit and intentions of Policy H16 itself.

16. In any event the Council itself acknowledges that, following the completion of the implementation of the 2020 permission, and the occupation of the building to their satisfaction, an application for a replacement dwelling identical to the present appeal proposal would then be compliant with Policy H16. Indeed, as the Council freely admits, this led them to advise the appellant, on more than one occasion, to first complete the conversion of the existing building, and secure a permanent occupier, before then going on to re-apply to demolish the building and replace it with a new dwelling.
17. I appreciate that this advice was intended to be helpful, and that this multi-stage procedure was seen by officers as a way to overcome the hurdle posed by sub-section (a). But self-evidently, this course of action would inevitably involve a great deal of waste, not least in terms of materials, building labour, and other resources, and this would have environmental as well as financial costs. It would also be likely to mean some disruption for the interim occupier, whose 'permanent' tenure would be cut short. The overall timescale would be considerably protracted. The eventual outcome would be a new dwelling similar to that already proposed. Overall, this extended procedure would therefore have clear adverse impacts, both private and public, in return for no discernible benefit.
18. There is no doubt that the advice given by the Council on these matters was driven by, and was a direct result of, the approach that they had chosen to adopt to the interpretation and application of sub-section (a). But in real-world terms, it is clear that the negative consequences of that advice, if followed in full, would be wholly disproportionate to the problem that it was intended to address, which was in effect simply how to circumnavigate what was seen as an obstacle in the policy wording. The fact that the Council's position on this policy matter should have caused them to give such advice seems to me to demonstrate in the clearest possible terms that, in relation to this case, their underlying interpretation of the policy, and the way in which it should be applied, is badly flawed.
19. I accept that there might be other cases where a different interpretation or application of sub-section (a) might be appropriate. But in the present case, it seems to me that the approach advocated by the Council would require the sub-section to be viewed in isolation from its policy context, and from the circumstances of the particular case, and without any scope for the exercise of planning judgement.
20. For the purposes of this appeal therefore, I find no basis on which to depart from the view that I have indicated earlier in this decision. For the purposes of sub-section (a) of Policy H16, I am satisfied that the existing building at the appeal site benefits from a lawful and permanent residential use, by virtue of the 2020 planning permission. The appeal proposal is therefore compatible with that sub-section, both in the letter and in spirit. It follows that sub-section (a) is not an obstacle to the development being found compliant with Policy H16 as a whole.

Conclusion with regard to compliance with Policy H16

21. I conclude that no conflict with DLP Policy H16 has been substantiated. For the reasons set out above, I find the proposed scheme to be in accord with Policy H16, which permits replacement dwellings in the countryside.

Other matters

The fallback scenario

22. In view of my conclusions with regard to Policy H16, it is not necessary for me to consider in any detail the arguments made by both parties regarding the role of the 2020 permission as a fallback scenario. Nonetheless, for the sake of completeness, had I come to the view that the proposal was in conflict with Policy H16 because of sub-section (a), then I agree with the appellant that the fallback position would have been a consideration commanding very substantial weight.
23. For the reasons already discussed, I find no reason to doubt that the permitted scheme, for the conversion of the existing building to a dwelling, could be fully implemented. In the event that permission for a replacement dwelling were not forthcoming, it seems more than likely that the 2020 permission would be completed. The fact that a significant amount of work has already taken place pursuant to that permission clearly demonstrates an intention to that effect. In this context, the minor departures or breaches that the Council seeks to identify are not significant enough to cast doubt on the seriousness of that intention. The fallback option therefore seems an entirely realistic scenario.
24. Compared to the fallback permission, the appeal scheme would offer a better standard of accommodation, meeting a wider range of needs, whilst still falling within the size thresholds of Policy H16. It would also provide a better quality building, with more durable materials, and higher standards of energy performance. And whilst the existing building is utilitarian and unattractive, the appeal scheme offers a visually pleasing design, better suited to the location. On this basis, there can be little doubt that the appeal scheme offers substantial advantages over the fallback.
25. To my mind, those advantages would have clearly outweighed any perceived policy conflict arising from sub-section (a). Consequently, even if I had come to a different conclusion with regard to the scheme's policy compliance, this would not have changed the outcome of the appeal.

Implementation and occupation in relation to the 2020 permission

26. In the light of the above matters, there is also no need for me to consider further any of the other matters raised by the Council regarding the 2020 planning permission. Those matters include whether the permission was lawfully implemented; whether the works carried out were in accordance with the approved plans and conditions; whether the building has in fact been occupied; and whether such occupation was either lawful or permanent. For the reasons that will be clear from the reasoning set out elsewhere in this decision, it is not necessary for the purposes of this appeal for me to reach a definitive conclusion on any of these matters, and for the avoidance of doubt, I have reached no such conclusions.

Other policies

27. In addition to Policy H16, the Council's refusal notice suggests conflict with a number of other policies, including H14 of the DLP and CP19 of the JCS. However, as I have indicated elsewhere, whilst these two policies apply generally throughout the countryside, Policy H16 is clearly designed to take precedence over them; indeed, if that were not so, then Policy H16 would serve no purpose. In view of my finding that the appeal scheme is compliant with Policy H16, it follows that Policies H14 and CP19 have no further relevance in this case.
28. Policy 2 of the RNP supports development within Ropley's settlement boundaries, and sets out criteria for proposals on garden land within those areas. The appeal proposal is outside the settlement boundary and would not take any significant amount of garden land. The policy does not appear to me to have any application to development outside settlements, but in any event, for the same reasons as above, it clearly does not override Policy H16. Even if the garden land criteria were considered applicable, there is no apparent suggestion that the appeal scheme would infringe any of these.
29. JCS Policy CP29 is a design policy, which includes a requirement for developments to respect their physical context and setting. However, the Council has confirmed that it takes no issue with any aspect of the proposed design, and I see no reason to disagree. No conflict with Policy CP29 therefore arises.

Precedent

30. I note the Council's apparent concern that the appeal proposal could encourage other similar developments. However, the appeal scheme has been found to comply with all the relevant planning policies. There seems no reason why encouraging other, similarly policy-compliant developments should be considered harmful. No precedent would be set for non-compliant schemes. In any event, all future proposals would have to be considered on their own merits.

Reasons for conditions

31. In addition to the standard time limit for commencement, a condition specifying the approved plans is necessary, to ensure certainty as to the nature of the development permitted.
32. Conditions regarding access and parking are necessary, for reasons of highway safety. However, given that some works to improve the site access have already taken place, it is not now necessary for this condition to take effect prior to the start of construction works, and I have amended it accordingly.
33. Although an indication of the materials to be used has already been submitted, further details are needed, to ensure a satisfactory appearance. However, I have amended this condition to make it clear that the indicative details already submitted are broadly acceptable.
34. A condition relating to energy efficiency is justified, to secure compliance with JCS Policy CP24. A requirement for ecological mitigation is needed, to comply with JCS Policy CP21. Where necessary, I have edited these suggested conditions, in the interests of clarity, and to avoid undue prescriptiveness.

35. The Council's desire for a restriction on permitted development is noted, but no such restriction was imposed on the 2020 permission, and there seems no reason why the present proposal should be treated differently in this respect. In the absence of any clear justification, a departure from the rights conferred by national legislation is not justified.

Conclusion

36. For the reasons set out above, I find that the proposed development would comply with DLP Policy H16. No conflict with any other relevant policies has been substantiated. The development would therefore accord with the development plan as a whole.
37. The development would bring environmental, social and economic benefits, due to the visual enhancement, the quality of the housing accommodation, the enhanced energy efficiency. It would also be likely to bring some modest economic benefits. All of these weigh in favour. No material considerations weigh against the development.
38. Having taken account of all the matters raised, none outweighs the above conclusions. The appeal is therefore allowed.

J Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans and details:
PAD/233/03 Rev B Proposed Site Plan
PAD/233/04 Rev B Proposed Plans
PAD/233/05 Rev B Proposed Elevations
PAD/233/05 Visibility Splay Plan
Habitat Creation and Management Plan: The Ecology Co-Op, Nov 2020
Materials Schedule: Patton Architecture and Development
- 3) The proposed new dwelling shall not be occupied until the site access and verge crossing have been constructed and laid out, with visibility splays of 2m x 215m in both directions, in accordance with the approved plans, Nos PAD/233/03 Rev B and PAD/233/05. Thereafter, the visibility splay areas shall at all times be kept free of any obstruction exceeding 1m in height above carriageway level.
- 4) The proposed new dwelling shall not be occupied until the proposed parking space and driveway have been constructed in accordance with the approved Site Plan, No PAD/233/03 Rev B, and made available for use. Thereafter, the parking space and driveway shall be retained as constructed, and shall be kept available for use for these purposes at all times.
- 5) No development above ground floor slab level shall take place until full details of the materials to be used on the external surfaces of the proposed building have been submitted to the local planning authority and approved in writing. The details to be provided shall be in general accordance with the approved Elevations Plan, No PAD/233/05 Rev B, and the approved Materials Schedule. Thereafter, the building shall be constructed using these approved materials.
- 6) No development shall take place until an energy efficiency scheme has been submitted to the local planning authority and approved in writing. The scheme shall incorporate measures to produce an overall energy saving of 10% compared to the minimum requirements of the Building Regulations. The new dwelling shall be constructed in accordance with the energy efficiency scheme as thus approved, and shall not be occupied until a verification report and completion certificate has been submitted to the local planning authority, demonstrating compliance with this requirement. Thereafter, the relevant energy saving measures shall be retained and maintained throughout the life of the development, unless otherwise agreed in writing by the local planning authority.
- 7) The development shall be carried out in full accordance with the methodology and mitigation proposals contained in the approved Habitat Creation and Management Plan, comprising the recommended pre-construction compensation measures (Section 2), construction phase mitigation (Section 3), post-construction mitigation (Section 4), and protected species enhancement measures (section 5).

[END OF SCHEDULE]