



Appeal Decision

Site visit made on 19 September 2017

by Amanda Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1st November 2017

Appeal Ref: APP/J1915/W/17/3171106

Land at Nine Ashes, Hunsdonbury

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Simon Ewin, of Ewin Developments Ltd, against East Hertfordshire District Council.
 - The application Ref 3/16/1742/FUL, is dated 29 July 2016.
 - The development proposed is development of 12 dwellings and associated access and landscaping, including improvements to the public footpath.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the Council failed to determine the application, it has suggested two putative reasons for refusal which set out their areas of concern. I have taken these into account when framing the main issues. In addition, third parties have raised concerns that the development would have limited accessibility to local services and facilities. Having reviewed the evidence I agree that accessibility is an important consideration and this shall be my third main issue.
3. The appellant has highlighted that the officer's report does not raise a concern in relation to heritage issues. However, an interested party submitted a heritage assessment which supports the Council's second reason for refusal. I appreciate that the appellant did not have sight of all of this evidence during the application period, but I am satisfied that the appellant has had an opportunity to review these documents during the appeal.

Main Issues

4. The main issues are the effect of the development on:
 - The setting of nearby listed buildings;
 - The character and appearance of the area; and
 - Whether the development would be accessible, in the context of local and national policies.

Reasons

Policy background

5. There is no dispute between the main parties that the Council cannot demonstrate a five year housing land supply. In this situation, Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing are to be considered out of date and Paragraph 14 of the Framework is engaged. This states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole, unless material considerations indicate otherwise.
6. However, case law¹ has indicated that where policies for the supply of housing are out of date, as in this appeal, restrictive policies in respect of housing cannot be judged to carry less weight or be disregarded. The weight to be given to conflict with the development plan remains a matter of planning judgement. Accordingly, I will firstly assess the development against the Council's Local Plan² (LP).
7. The development plan includes the saved policies of the LP and reference has been made to the emerging DP. However, although the DP has been submitted for examination it is still at an early stage and its policies may be subject to change. I therefore afford the DP limited weight.

Existing Site

8. The appeal site is a large meadow on low lying land abutting Acorn Street to the west, a woodland belt and arable land to the north, parkland associated with Hunsdon House to the east and south-west, and a cluster of former agricultural buildings, Nine Ashes, to the south-west.
9. The site is about 500 metres south of the small village of Hunsdon, which has a church, shop, public house, primary school and village hall. It is not a matter of dispute that the site lies outside the settlement boundary and within the Council's designation of Rural Area beyond The Green Belt.
10. The development would comprise twelve dwellings, comprising a terrace of three dwellings along the road frontage, with nine larger detached dwellings on generous plots to the rear.

Setting of nearby listed buildings

11. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker, in considering whether to grant listed building consent or planning permission for any works or development affecting a listed building, or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
12. In terms of the development plan, LP Policy BH12 seeks to secure the continued preservation and enhancement of the setting of listed buildings. This is reinforced by emerging DP Policies HA1 and HA7, which taken together state that development should preserve and enhance the district's historic

¹ Crane v Secretary of State DCLG (2015) EWHC 425 (Admin)

² East Hertfordshire District Council, Local Plan Second Review April 2007

environment and the setting of listed buildings. LP Policy ENV1 states all development will be expected to demonstrate compatibility with the structure and layout of the surrounding area and reflect local distinctiveness, amongst other parameters.

13. These policies follow the approach set out in the Framework, two of the core principles of which are to seek high-quality design and conserve heritage assets in a manner appropriate to their significance. Paragraph 132 states 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. It goes on to say that significance can be harmed or lost through alteration or destruction of the heritage asset, or by development within its setting.
14. As advised in the Government's *Planning Practice Guidance*, the extent and importance of setting is not confined merely to visual considerations and views. Although views play an important part, the way in which we experience an asset in its setting is influenced by spatial association and by an understanding of the historic relationship between places. The PPG makes it clear that setting is also influenced by our understanding of the historic relationship between places. For example, buildings that are in close proximity but not necessarily visible from each other may have a historic connection that amplifies the experience of the significance of each. Nor does the contribution that setting makes to the significance of a heritage asset depend on public accessibility to experience that setting, as this will vary over time and according to circumstances. I consider these factors to be a particularly important consideration in this case.
15. The main heritage assets affected by the development are: the Grade I listed former Tudor palace of Hunsdon House, about 1 mile to the south of the site; a tight knit cluster of nine Grade II listed structures comprising a farmhouse and associated buildings at Nine Ashes; and Spellers, a Grade II listed detached dwelling with ancillary buildings. The site is located within the former confines of Hunsdon House's deer park, and has latterly formed agricultural land adjacent to the Nine Ashes farmstead. Nine Ashes, along with Spellers, remained within the Hunsdon estate in the post-Tudor era.
16. I noted at my visit that the landscape to the immediate east of the site has a distinct parkland character with specimen and ornamental trees, and the evidence before me indicates that the eastern end of the site is visible from land behind Hunsdon House. This visual reference to the former deer park and consequently the historic association with the Hunsdon Estate, is reinforced by the distinctive vernacular architecture and proximity of Nine Ashes and Spellers, to the immediate south and west of the site.
17. Although the woodland belt along the site's northern boundary restricts inter-visibility with adjacent arable land, this enhances the appreciation of the site's relationship to the parkland and Nine Ashes in particular, as there are no competing views or intrusive elements. Although the design and access statement sets out that important local views are a key constraint for development on this site, none is identified on the accompanying constraints plan³.

³ Section 2.4, Design and Access Statement

18. As a Grade I listed building Hunsdon House has high significance or value⁴. Map regression evidence shows that the current context of the appeal site and surrounding land, with remnant parkland, irregular woodland stands and field patterns, reflects the evolution of land use and ownership. In this regard I agree with the Worlledge heritage submission⁵ that the lack of built development in the area is evidence of the enduring influence and control of the Hunsdon Estate over a long period and the direct functional relationship, over that time, between the site and Hunsdon House, and more recently, Nine Ashes.
19. It is also apparent from the map evidence that farmsteads on the Hunsdon Estate developed along the Acorn Street frontage, with their land holdings to their rear. This sharp juxtaposition of the tight building pattern of the farmstead to adjacent agricultural land, is particularly evident in the current relationship of the appeal site to Nine Ashes.
20. As such, the site provides a visual, functional and cultural context for both Nine Ashes and Hunsdon House, evident in the views of parkland from the site in the middle distance, and the direct association of the site with Nine Ashes. The site is therefore of significance in the settings of both Nine Ashes and Hunsdon House.
21. The development would encroach into and occupy a significant section of that setting, obstructing views and diminishing appreciation of the buildings. It would also obstruct views of Nine Ashes from the public footpath that runs along the northern boundary of the site. The distinctive contrast between the tight cluster of buildings and the adjacent open meadow would be lost.
22. The form of the detached dwellings behind the Acorn Street frontage would loosely reflect the pitched roof and gables of The Granary, which is located on the eastern perimeter of Nine Ashes. However, their design, style and fenestration would lack the subtlety of proportion still evident at The Granary despite its conversion to residential use. In comparison, these dwellings would appear overly bulky, and their contemporary styling would appear incongruous and suburban in this context. Furthermore, the broadly rectilinear layout behind the Acorn Street frontage would appear at odds with the organic layout of Nine Ashes.
23. The proposed mitigation includes a combination of screening and channelled views between the development and Nine Ashes. However, artificial vistas through a modern housing development with its domestic paraphernalia and amenity landscape would fail to mitigate the development's harmful effect on the setting of Nine Ashes in terms of the loss of important views. Furthermore, sections of screening along the site boundary would block views and be detrimental to the spatial relationship that currently exists between Nine Ashes and the site.
24. Although the listing descriptions for Nine Ashes emphasise that individual buildings make a contribution to a picturesque group, the HS focusses on individual buildings and their immediate settings rather than giving consideration to the effect of the development on the cluster of buildings. The fact that their principal facades face inwards does not diminish the visual effect

⁴ Bidwells, Heritage Statement, August 2016

⁵ Worlledge Associates, November 2016

of the group as whole seen directly in the context of a pastoral landscape to its rear. Consequently, I give the conclusions of the HS limited weight. I acknowledge that modern ancillary buildings are evident in views of Nine Ashes, but these are subservient to the overall impression of the cluster and I am not satisfied that they detract sufficiently from the overall appreciation of Nine Ashes to diminish its heritage value.

25. I appreciate that views from the footpath would be restricted to a section about 200 metres. Nonetheless, Nine Ashes is a prominent feature in views from that path and in any case, the significance of setting of listed buildings is not predicated upon their visibility from the public domain. If the appeal was allowed, the rear of Nine Ashes would be seen in the immediate context of a modern housing estate.
26. As such, I conclude that the development would be substantially intrusive and would adversely impact upon the context of Nine Ashes to an extent that the understanding and appreciation of the asset would be compromised⁶.
27. The HS does not consider Hunsdon House in its assessment of heritage assets affected by the development. However, given the distances involved and the filtering effect of parkland trees, I conclude that the site is of minor significance to the setting of Hunsdon House as the development would not be overly intrusive, or diminish its context. As such, in respect of Hunsdon House, the development would have a minor adverse impact on its setting. This would be of minor significance to its overall context and in the absence of other concerns I am not satisfied that this would be sufficient to warrant dismissal of the appeal.
28. With regard to Spellers, its setting is already compromised by the proximity of Acorn Street and the development of Great Oak Court to its immediate north. On the basis of the evidence before me, I am not satisfied that the appeal site is significant in terms of its setting, or that there would be particular harm to its appreciation if the development was allowed.
29. Accordingly, whilst the development would have an adverse effect on the setting of Nine Ashes, I am satisfied the setting and significance of Hunsdon House and Spellers would not be materially harmed.
30. However, I conclude on this issue that the development would fail to preserve the setting and therefore the significance of Nine Ashes. Paragraph 134 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal. I am satisfied that in this case the degree of harm would be less than substantial and have weighed the harm against public benefits arising from the proposal in the planning balance, towards the end of my reasoning.
31. As such, the development would be contrary to LP Policies BH12 and ENV1, and emerging DP Policies HA1 and HA7, all as outlined above, as well as the provisions of both the Act and the Framework which seek to conserve and enhance the historic environment.

⁶ Bidwells, Heritage Statement, August 2016 Table 2: Assessing Magnitude of Impact

Character and appearance

32. The appeal site has limited inter-visibility with adjacent farmland due to the woodland belt on its northern boundary and its location within low lying land. Although it lies within Area 83 of the Council's Landscape Character Assessment (LCA), it is unrepresentative of Area 83 which is described as large scale open arable farmland on a flat upland plateau.
33. However, whilst the site contributes little to the listed characteristics of Area 83, this does not diminish its distinctiveness. Nor does it necessarily follow that as it is uncharacteristic of Area 83 it is capable of accommodating this development. County level landscape character designations are a broad brush tool and not all land within a particular character area will be entirely representative.
34. The LVIA concludes that the site's underlying landscape is of medium sensitivity and *could be adversely affected by a development that does not implement ecological measures such as open spaces, extensive boundary planting and ecological measures*. However, these are the proposed mitigation measures. The LVIA does not appear to conclude on the magnitude of the development's effect⁷ on baseline landscape character or its significance, before moving on to how the mitigation could address any adverse effects.
35. The site's assets are listed as existing hedgerows and boundary trees. There is no mention in the LVIA of the proximity or prominence of the listed buildings in the consideration of landscape character. Nor is there mention of the cultural associations of those views which might contribute to an understanding of how the site is valued locally, or which might add a historic dimension to the site. Furthermore, as the site has residential development on only a small proportion of its boundaries, I disagree with the appellant that the site is experienced within a setting of existing residential development.
36. My observations lead me to agree with DPDS⁸, that given the historic associations with the Hunsdon Estate, the baseline landscape character should be assessed as moderate to high sensitivity. This conclusion is supported by the methodology used in the LVIA⁹. Notwithstanding that heritage issues are addressed elsewhere in the evidence before me, I am not satisfied that their contribution to the site can be omitted from the consideration of baseline landscape character.
37. The native hedgerow proposed for the site's southern boundary would, in principle, make a positive contribution to landscape character. However, it would be an effective screen for one of the site's most important visual relationships. As outlined above, the proximity of heritage assets and underlying cultural associations of the landscape are a determinative factor in my reasoning and one to which I attach weight. Moreover, the evidence before me indicates that Council officers have identified that there is a fundamental conflict between maintaining views of the nearby listed buildings whilst at the same time screening the development. On the basis of the evidence before me, I have reached the same conclusion, as existing views would be fundamentally changed.

⁷ Neil Tully Associates, Appendix 2 - Methodology

⁸ DPDS Consulting July 2017

⁹ Appendix 2 – overall low capacity to tolerate change of a specific type and scale without significant disruption to individual valued features, or the combination of landscape elements that contribute to distinctive character.

38. Turning to the wider locality, the clusters of development associated with Hundsonbury are largely arranged along Acorn Street. The development's layout would be similar to that of Great Oak Court on the opposite side of the road. However, it remains that this development would fill in a section of undeveloped road frontage that currently separates Spellers and Nine Ashes, and would lead to a coalescence of the building pattern and creeping urbanisation along Acorn Street. This would detract from the locality's semi-rural character.
39. I appreciate that the development would retain the eastern end of the site as open space but this would not diminish the development's impact on Acorn Street. The LCA does not refer to gaps between settlement patterns or indeed include guidelines for residential development in Area 83. However, I already noted that the site, although distinctive, is uncharacteristic of its wider LCA area. As such, I give the guidance of the LCA little weight in this regard.
40. The appellant argues that the site does not contain any landscape features. However, I disagree that the site's general tranquillity and the gap it forms between clusters of development should not be relevant for consideration under LP Policy ENV2.
41. In the light of the above, the development would be detrimental to the character and appearance of the area as it would not reflect local distinctiveness or be compatible with the structure and layout of the surrounding area, as set out in LP Policy ENV1. Nor would it retain important or distinctive features as set out in LP Policies ENV2 and GBC14.
42. The development would also be contrary to LP Policy OSV3 which states that development will not be permitted except for that in accordance with LP Policies GBC1 and GBC3, and where affordable housing is proposed to meet identified needs. Even where need is identified, development is not allowed where it would represent an extension of ribbon development or addition to an isolated group of houses.
43. Furthermore, whilst I appreciate that the Council's LCA does not appear to attach any importance to the areas of parkland character falling in Area 83, one of the Framework's core planning principles is that planning should take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside. I appreciate that the site has no local or national designations, but this does not mean it does not have value.

Accessibility

44. The centre of Hundson is about 750 metres from the appeal site but is separated from it by arable land. There is a narrow footpath on one side of the road, but it is unlit. Its elevation and lack of shelter would result in it being particularly exposed for pedestrians and cyclists in bad weather. Although the appellant argues Hundson has good public transport links to nearby towns and rail stations, I am not satisfied that services from either Acorn Street or Hundson are frequent enough to provide realistic alternatives for commuters or secondary school pupils. Consequently, future occupiers would be largely reliant on the private car for all essential amenities and although the development would provide some support for Hundson's businesses, it is likely future occupiers would travel further afield for most services. Whilst I

appreciate there is more recent residential development at Great Oak Court, there is nothing before me to indicate the circumstances under which that development was approved.

45. The appellant has drawn my attention to a previous appeal for development in the area but the background indicates that although the site was outside the settlement boundary, it was directly adjacent to other dwellings and allotments. As such, I am not satisfied that it was as far from Hunsdon as the appeal before me and therefore it is not directly comparable.
46. In the light of the above, the development would be contrary to LP Policy TR1 which states that development generating additional traffic will be required to ensure that alternative transport options to the private motor vehicle are available to the users of the site, and emerging DP Policy TRA1 which states that development should be located in places which enable sustainable journeys to be made to key services and facilities. Although this latter policy carries only limited weight, it reinforces one of the core planning principles of the Framework which states that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling.

Other matters

47. The appellant argues that both the Council and objectors have misused the term *open* in relation to the site. However, I have based my reasoning on my own observations and assessment of the evidence and I am not satisfied that the use or misuse of the term *open* by any party is determinative to my reasoning.
48. Although the appellant argues that Council has not provided definitive objections on landscape grounds, I have found that the application site has a low capacity for this type of development as a consequence of the proximity of heritage assets and its impact on their setting.
49. The site has a high to medium risk of flooding along its northern boundary. However, the Lead Local Flood Authority states that although the development could bring betterment to existing flooding issues they will not be entirely removed. Consequently, this would be a limited benefit.
50. Although the Council cannot demonstrate sufficient housing land supply, there is nothing before me to indicate that there is a particular shortage of four or five bedroom dwellings in the area, and the proposed level of 25 per cent affordable housing would fall short of the 40 per cent recommended by the Council in the emerging DP. As such, although the additional housing weighs in favour of the development, I give this benefit only minor weight.
51. The appellant also argues that the development would improve the footpath but I am not satisfied that this carries particular weight. Users would expect ground conditions to be variable in the countryside.
52. I appreciate that the development has been reduced in scope following discussions with the Council but this does not alter my reasoning, and in any case I have to determine the appeal before me.

Planning Obligation

53. The appellant has submitted a completed Unilateral Undertaking (UU). This sets out the financial contributions to be made to the Council. There is a dispute between the main parties in respect of enforceability. However, as I do not consider the provisions of the UU would outweigh the particular harm I have identified above, nor overcome the planning policy objections to the proposal, it is not necessary for me to consider the UU further.

Planning balance

54. I have concluded that the proposal would harm the setting, and therefore the significance, of nearby Grade II listed Nine Ashes, causing less than substantial harm to the significance of this heritage asset. I have also concluded that the proposal would be detrimental to the character and appearance of the area, and that the location would not represent a suitable and accessible site for new housing, having regard to local and national policies and the principles of sustainable development.

55. Balanced against this harm the development would make a modest contribution to the supply of housing in an area where the Council is unable to demonstrate sufficient housing land supply. The proposal would also contribute to the local economy both in the short term during the construction process and the longer term contribution of future occupiers to local services. The betterment to existing flooding issues, biodiversity and improvements to the footpath, as well as other more marginal benefits such as improved broadband and energy efficiency, also represent benefits that would arise from the proposal.

56. However, whilst there are some public benefits arising from the scheme, these are limited, and insufficient to outweigh the harm that I have identified above in respect of conflict with the LP. Although Paragraph 14 of the Framework is engaged, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed with the policies of the Framework taken as a whole.

Conclusion

57. For the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's Local Plan and there are no material considerations of such weight as to warrant a decision other than in accordance with the aforementioned Local Plan. Consequently, the appeal should be dismissed.

Amanda Blicq

INSPECTOR