

## Appeal Decision

Site visit made on 4 May 2016

**by Jason Whitfield BA (Hons) DipTP MRTPI**

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

**Decision date: 22 June 2016**

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**Appeal Ref: APP/X1925/W/16/3145309**

**Rose Farm, Codicote Road, Whitwell, Hertfordshire SG4 8AB**

- 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 Marcus Powell against the decision of North Hertfordshire District Council.
  - The application Ref 15/02666/1, dated 15 October 2015, was refused by notice dated 22 January 2016.
  - The development proposed is six semi-detached houses.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Marcus Powell against North Hertfordshire District Council. The application is the subject of a separate Decision.

### Main Issues

3. The main issues are:
  - The effect of the proposal on the character and appearance of the open countryside.
  - The effect on the significance of heritage assets.
  - The effect on biodiversity.
  - Whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework (the Framework).

### Reasons

#### *Planning Policy Context*

4. The appeal site lies outside the settlement boundary of Whitwell. The appellant indicates that an extension to the settlement boundary of Whitwell is currently being considered by the Council as part of its preparation of a new development plan. However, I have little evidence to support this and, in any case, the plan is still emerging and has yet to reach adoption. I can therefore afford the emerging policy no more than little weight.
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5. Saved Policy 6 of the LP<sup>1</sup> states that development within rural areas will only be allowed if it meets one of several criteria. Housing is only included where it is for rural workers or meets an identified rural need. The appeal proposal seeks consent for the erection of 6 new dwellings on land within the rural area which is open and currently in use a part of Rose Farm. Consequently, the proposal would not accord with Policy 6 of the LP.
6. Paragraph 14 of the National Planning Policy Framework (the Framework), however, states that where Councils cannot demonstrate a five year supply of deliverable housing land, relevant policies for the supply of housing should not be considered up-to-date. Policy 6 of the LP is a criteria based policy which seeks to limit housing within the countryside outside of the settlement boundaries. Settlement boundaries would have been fixed, having regard to the need to accommodate development planned over the, now expired, LP period. Defined settlement boundaries have the effect of constraining development, including housing, within settlements. On that basis, with reference to paragraph 215 of the Framework, the settlement boundaries are out of date.
7. The underlying purpose of the policy is recognition of the countryside as a being a highly valued resource which should be protected for its own sake, safeguarding it from the increasing pressures of development. On the face of it, the appeal proposal would be contrary to this aim, with development being restricted to within settlement boundaries, not extending development into the countryside.
8. Nevertheless the overall objective of the policy is to protect the character and amenity of the countryside outside the defined settlement boundaries from indiscriminate development. This policy approach does reflect the spirit of the terms of one of the relevant core planning principles of the Framework, that being to recognise the intrinsic character and beauty of the countryside<sup>2</sup>. To this extent Policy 6 of the LP is consistent with the aims set out in the Framework and is relevant.
9. However, it is inextricably linked with the constraining effect of the settlement boundaries on the housing requirement. Therefore, I consider Policy 6 of the LP is a relevant policy for the supply of housing within the meaning of paragraph 49 of the Framework.
10. The Council is clear that it cannot demonstrate a five year supply. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development as where the development plan is absent, silent, or, as in this case, relevant policies are out of date, decision-makers should grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. Whilst this does not change the statutory function of the development plan, the Framework is an important consideration. In this context, I must consider the proposal in the context of the presumption and whether or not any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits.

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<sup>1</sup> North Hertfordshire District Local Plan No. 2 with Alterations 1996

<sup>2</sup> National Planning Policy Framework – Paragraph 17, Bullet Point 5

### *Character and Appearance*

11. The appeal site forms part of Rose Farm and lies isolated within the rural area to the east of the village boundary. It is a relatively open and expansive grassed paddock and is located adjacent to a main approach road into the village. Forming part of the Whitwell rural fringe, the appeal site makes a positive contribution to the open and spacious character of the countryside beyond the village.
12. The appeal proposal would result in the erection of 6 semi-detached dwellings. The properties would be two-storey, with rear gardens backing onto the River Mimram and with their front elevations facing towards Codicote Road. The appellant considers the site to be particularly secluded and well within the marked village boundary of Whitwell. However, the appeal site lies around 180m from the edge of the built up area of the village and outside of the settlement boundary.
13. Moreover, the site lies within an area of open countryside devoid of any significant presence of built form, other than the historic buildings of Rose Farm. Indeed, there is a significant expanse of open fields between the village and the appeal site. I note the presence of houses opposite but they lie on the south side of Codicote Road and appear clearly divisible from the open character of the area around the appeal site.
14. In addition, I consider that the existing level of vegetation around the site would not significantly screen views of the proposal. I agree with the Council that further landscaping to screen the proposal would only serve to reduce the open nature of the site. As a result, I consider the proposal would appear as a functionally isolated and incongruous form of development.
15. I conclude, therefore, that the proposal would have a harmful effect on the character and appearance of the open countryside. The proposal would, as a result, conflict with Policy 57 of the LP which seeks to ensure new development relates to the character of its surroundings. It would also conflict with paragraphs 17, 64 and Section 7 of the Framework which seek to resist poor design.

### *Heritage Assets*

16. The appeal site lies to the east of the Whitwell Conservation Area. The Whitwell Conservation Area covers the centre of the village. Its significance is derived from a mix of buildings both old and modern including timber framed and brick built houses of historical value. It is centred on the pre-war village core along High Street.
17. The setting of the Conservation Area is dominated by open countryside. On the north side of Codicote Road, there are no significant built forms between the appeal site and the war memorial at the eastern point of the Conservation Area. There are open fields between the site and main built up area of the village. Opposite are large detached properties set on spacious plots, the last of which is across from the appeal site. The site has an open boundary to the River Mimram and is bordered on its remaining sides by hedging, mature trees and a post and rail fence.
18. The site lies within an expanse of open fields between the village and Rose Farm. The surrounding area is largely devoid of any significant presence of

buildings, other than Rose Farm. The proposal would result in a significant incursion of built form within that open area, introducing a dominant grouping of two-storey dwellings. Moreover, the proposal would reduce the open and spacious character of the countryside to the east of the village. As a result, the proposal would fail to preserve or enhance the setting of the Whitwell Conservation Area and would fail to accord with paragraphs 131 and 132 of the Framework which aim to conserve and enhance the historic environment.

19. Rose Farm House is a Grade II listed, 16<sup>th</sup> Century farm house which forms part of the 'U' shaped complex known as Rose Farm. The building has later additions but retains a part exposed timber frame and represents an attractive example of historical farm houses in this area. Whilst there are hedges and mature trees between the Farmhouse and the appeal site, the listed building's isolation and location within a plateau of open countryside forms a large proportion of its significance as a designated heritage asset.
20. I note that the listed building is located within a courtyard of later additions, which limits the extent to which views of it can be obtained. However, the Framework<sup>3</sup> makes clear that significance derives not only from a heritage asset's physical presence, but also from its setting. Furthermore, Planning Practice Guidance (the Guidance)<sup>4</sup> makes clear that the setting of a heritage asset is the surroundings in which an asset is experienced. In this instance, the setting of Rose Farmhouse is not limited simply to those areas from which it can be seen, but also to those areas which have a functional and historical relationship with the building, including the appeal site.
21. The proposal would result in the erection of six dwellings which would be detached from and poorly related to the historical farmstead. The dwellings would appear distinctly suburban and contain a significant expanse of external hard surfacing, inevitably introducing a level of unfamiliar, domestic paraphernalia. Moreover, the proposal would diminish the extent of the listed building's open surroundings, resulting in a significant and obtrusive incursion of built form within its setting.
22. As a result, the proposal would have a harmful effect on the setting of the Grade II Listed Rose Farmhouse. Consequently, the proposal would conflict with paragraph 131 and 132 of the Framework.
23. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 place a statutory duty upon decision makers to safeguard the significance of heritage assets for future generations. The Act allows for change in the setting of heritage assets, where change does not harm the significance of the listed building or conservation area.
24. I conclude, for the reasons set out above, that the proposal would have a harmful effect on the significance of heritage assets. In finding harm in respect of the significance of heritage assets, paragraph 134 of the Framework sets out that where a view is taken that the harm to the designated heritage asset would be less than substantial, this harm should be weighed against the public benefits of the proposal. In this instance, the degree of harm would be less than substantial in the context of paragraph 134. Such a conclusion of the degree of harm to the setting of the conservation area and the listed building does not

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<sup>3</sup> Annex 2: Glossary

<sup>4</sup> Paragraph: 013 Reference ID: 18a-013-20140306

equate to a less than substantial objection to the grant of planning permission. There is nothing contradictory in such a stance. Nevertheless, a balance must be struck and this will be returned to in the decision.

### *Biodiversity*

25. The appeal site lies adjacent to a Local Wildlife Site and close to the River Mimram, a rare chalk river habitat. Whilst these areas do not carry any statutory status, they nevertheless identify areas where there is the potential for wildlife value.
26. Section 11 of the Framework requires the planning system to contribute to and enhance the natural environment by minimising impacts on biodiversity. Paragraph 109 of the Framework states that the Government's objective is to minimise the impact of development on biodiversity and halt the overall decline in biodiversity.
27. The appellant indicates that significant work has gone into the site to enhance its biodiversity potential, however, I have little evidence to demonstrate that is the case. I note that there would be no fencing within the first 5m of the rear gardens from the river and then a post and rail fence zone for the next 3m. However, I agree with the Council that this is unlikely to deter future occupiers from interacting with the land closest to the river.
28. Moreover, there is the potential for light pollution to affect nocturnal animals and their movements. This would be in addition to physical disturbance from future occupiers and pets, which could result in habitat erosion or even pollution of the watercourse through the use of pesticides or herbicides in day-to-day gardening practices. Consequently, in the absence of any survey of the biodiversity of the site and the effect of the proposal upon it, I am unable to conclude that the proposal would contribute to and enhance the natural environment.
29. I conclude, therefore, that the proposal would likely have a harmful effect on biodiversity, in conflict with Section 11 of the Framework.

### *Flood Risk*

30. The appeal site lies within Flood Zone 1. The Guidance<sup>5</sup> identifies Zone 1 as having a low probability of flooding. The River Mimram encloses the appeal site on its northern side. Paragraph 100 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The Guidance indicates those areas are principally land within Flood Zones 2 and 3. Whilst it can also include land within Flood Zone 1 where the Environment Agency has identified critical drainage problems, I have no evidence to suggest that is the case here.
31. I note that the land has on occasion been subject to wet or boggy ground conditions. However, neither the Environment Agency nor the Lead Local Flood Authority has raised any concerns over the proposals. I have no substantive evidence to come to any alternative view. As a result, I am satisfied that the proposal would be located away from areas at highest risk of flooding, in line with paragraph 100 of the Framework.

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<sup>5</sup> Paragraph: 065 Reference ID: 7-065-20140306

32. I conclude, therefore, that the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework.

*Other Matters*

33. The appellant indicates that his disabled son has lived and worked within the local area for his entire life and that the proposal would facilitate providing him a home to continue doing so. I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the proposal would include a dwelling for the appellant's disabled son, he would have a protected characteristic for the purposes of the PSED. This is a matter to which significant weight is to be given.
34. The appellant refers to other sites within the area on which the Council has granted planning permission for new residential development. I have, however, been provided with limited detail of those cases and cannot, therefore, be sure that they represent equitable comparisons with the proposal before me. In any event, I have considered the appeal proposal on its own merits.
35. I have had regard to the concerns of nearby residents regarding the highway safety implications of the proposal. However, the Highway Authority has raised no objection on the grounds that sufficient parking would be provided and that adequate visibility could be achieved. On the evidence before me, I have no reason to conclude otherwise and can therefore afford the concerns no more than limited weight.

**Planning Balance and Conclusions**

36. For the reasons that I have set out earlier, the proposal would be contrary to the development plan as it would not comply with Policy 6 of the LP in so far as it relates to the protection of the character and amenity of the countryside. Nevertheless, the sustainability of the proposed development should be judged by a positively weighted balancing of the benefits and adverse impacts against the policies of both the Framework and development plan as a whole.
37. The appeal proposal would make a modest but, nevertheless, important contribution towards housing delivery within the District. As the Council is unable to demonstrate a five year housing land supply, the relevant policies for the supply of housing should not be considered up-to-date in the context of paragraph 49 of the Framework.
38. The contribution that the proposed development would make to addressing the deficiency in the District's housing supply, coupled with the importance of providing much needed homes, carries significant weight.
39. On the other hand, the proposal would fail to preserve or enhance the setting of the Whitwell Conservation Area and would have a harmful effect upon the setting of the Grade II Listed Rose Farm House. Harm to the significance of heritage assets is a finding to which considerable importance and weight should ordinarily be given, in line with paragraph 132 of the Framework.

40. The identified harm to the significance of heritage assets would be less than substantial in terms of paragraph 134 of the Framework. The public benefit of providing housing is of considerable importance. However, the harm identified to the significance of heritage assets in this instance weighs more heavily than the public benefit of providing a scheme of six homes and its limited contribution towards the overall housing delivery in the District.
41. Consequently, the overall impact on the significance of heritage assets, in combination with the harm to the character and appearance of the open countryside and the likely harmful effect upon ecology and biodiversity, weigh heavily on the negative side of the balance of the assessment of the environmental role of the proposal in sustainability terms.
42. The three identified dimensions to sustainable development set out in paragraph 14 of the Framework should not be considered in isolation as they are mutually dependant. The appeal proposal would have a social and economic role to play in achieving positive growth. In addition, the proposals have been designed to remove the appellant's son from a waiting list for affordable housing within the area, by providing a home which would allow him to remain living and working within the area.
43. The harms relevant to the environmental role do, however, weigh negatively in the balance of the decision. Such impacts are sufficiently weighty to significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework as a whole. The proposal cannot, therefore, be considered as sustainable development to which the presumption in favour set out in the Framework would apply.
44. For the reasons given above I conclude that the appeal should be dismissed.

*Jason Whitfield*

**INSPECTOR**