The Planning Inspectorate

Appeal Decision

Site visit made on 8 January 2019

by J Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2019

Appeal Ref: APP/A2525/W/18/3206225
9 Church Lane, Tydd St Mary, Spalding PE13 5QJ.

- 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 L Connolly against the decision of South Holland District Council.
- The application Ref H21-0102-18, dated 29 January 2018, was refused by notice dated 16 April 2018.
- The development proposed is erection of a dwelling.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area, including the listed building at St Mary's Church, the Horse Chestnut tree within St Mary's churchyard, and the Tydd St Mary Conservation Area.

Reasons

3. Church Lane is a relatively short, narrow road which runs past Grade I listed St Mary's Church and terminates at the southern extent of Tydd St Mary. Church Lane's southern and eastern side is made up of semi-detached 20th century brick houses set in large gardens. The Tydd St Mary Conservation Area (CA) includes the church and its churchyard, and some houses on Church Lane's southern side, but terminates adjacent to the appeal site's northern boundary.

4. The appeal site forms part of a garden and parking area serving 9 Church Lane. It fronts the road and is located between the semi-detached two-storey house at No 9 and St Mary's churchyard. An existing Horse Chestnut tree is situated within the churchyard close to the appeal site. At the time of my site visit, the boundary was defined by construction fencing, though there are iron railings around much of the churchyard.

5. The majority of the existing residential development on Church Lane is semi-detached in its form. Although some properties have been extended over time, reducing their unity and rhythm, they remain a coherent group of buildings of similar design. Although the proposed development would have similarly simple architectural detailing to the existing semi-detached houses, it would be a very small detached two-storey brick house of a modest scale and cottage-like appearance which would be viewed from public vantage points when in the

churchyard and along Church Lane. The appellant's heritage statement indicates that the proposed development would be lower than the houses at 9 and 10 Church Lane. Given its size and house type relative to the surrounding houses, it would appear incongruous in its location and not in keeping with the wider streetscene and character and appearance of the area.

6. The appellant considers that the Council has behaved unreasonably in raising a reason for refusal on the character and appearance of the area following a previous application and pre-application advice. I am aware that the proposed development represents a considerably reduced form of development compared to the previously proposed house (H21-0305-17). Furthermore, pre-application advice is normally provided on a without prejudice basis. While I note the appellant's frustrations, I concur with the Council's concerns about the proposed development's effect on the character and appearance of the area. While it may improve a currently untidy site, there is nothing preventing the site from being maintained and used as a garden and driveway for No 9.

7. With regard to the existing Horse Chestnut tree, the tree's location in the CA affords it protection under Section 211 of the Town and Country Planning Act 1990. The appellant has carried out an arboricultural report which sets out protection measures for the tree during construction. Furthermore, the proposed development would be clear of the tree canopy and root protection zone. However, while the appellant considers tree cover would be a matter for the market, the Council is concerned that the tree's position and potential dominance of the proposed back garden would give rise to future requests for the tree to be pruned, with associated effects on the tree's long-term future.

8. The tree makes a positive contribution to the character and appearance of the area, including the CA, and forms part of the setting of St Mary's Church. Given its proximity to the proposed development, the extent of its current canopy, and its potential to live another 40 plus years, I consider that future occupiers would be likely to request the tree be pruned to enhance their living conditions. As a result, the proposed development would compromise the tree's continued existence, with a resulting negative effect on the character and appearance of the area, including the CA and St Mary's Church.

9. In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Section 66(1) of the same Act requires that special regard must be had to the desirability of preserving the setting of listed buildings. Moreover, paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

10. The CA is focussed on St Mary's Church and the village's historic centre along Common Way. It consists of buildings of different architectural styles and ages interspersed with spaces between buildings which contribute to the character and aesthetic qualities of the CA. Dating from the 12th century, the listed building at St Mary's Church is large, with a substantial and imposing 15th century tower topped by an octagonal spire. The church is surrounded by an extensive churchyard with a number of trees and gravestones. Though altered and restored, the listed building's significance is informed by its architectural

and historic interest as a building dating back several centuries with the survival of key features. The setting of the listed building within its churchyard also contributes to its significance. The CA and the church are of considerable significance due to their historic, aesthetic and communal values.

11. The extent of a heritage asset's setting is not fixed and may change as the asset and its surroundings evolve. Despite the presence of domestic paraphernalia and hardstanding north of the house at No 9, the appeal site has inherent value as an established area of undeveloped space within the setting of the listed building at St Mary's Church and adjacent to the CA. A reduced buffer of some 5.5m would not maintain this gap.

12. Historic mapping indicates that the church was surrounded by open fields to the south until the early 20th century. Later residential development along Church Lane eroded the setting of the church to a degree. Despite the effect of the existing residential development along Church Lane on the church's setting and the potential for hard and soft landscaping along the site's boundary, the proposed development would detrimentally reduce the buffer of relatively open space between it and surrounding residential development. Furthermore, the density of development surrounding the church would increase. These matters would have a harmful effect on the CA and the setting of the listed building.

13. While I note Historic England's and the Council's heritage officer's representations, I disagree with the appellant's assertions that the reason for refusal is unsubstantiated. It is clear that Historic England considered that there would be some harm resulting from the proposed development, albeit that this would be at the lower end of less than substantial harm. It is for the decision-maker to weigh the resultant harm against any public benefits of the proposed development.

14. The harm to the significance of the listed building at St Mary's Church and the CA would be less than substantial, but still important given the effect of the proposed development on the setting of the listed building and the CA. Paragraph 196 of the Framework provides for a balancing exercise to be undertaken, between "less than substantial harm" to the designated heritage asset, on the one hand, and the public benefits of the proposal, on the other.

15. The proposed development would be deliverable, would provide additional housing to a good level of security and inclusive design and with various sustainable design measures, and would allow for the appeal site to be tidied up and appropriately landscaped to the benefit of the character and appearance of the area. It would be close to a bus route, would be in walking distance of services and facilities, and would be accessible by emergency services. It would have mains utilities, refuse and recycling provision, and water usage in line with Building Regulations. The appellant has made reference to optimum viable use and the scope to carry out unsympathetic works under permitted development rights. However, I have no lawful development certificate or other evidence to indicate that the appellant intends to carry out such works, or that the proposal would be the optimum viable use. These matters would be insufficient to outweigh the harm identified to the significance of the listed building and the CA. I therefore conclude the proposal would fail to comply with national policy outlined in the Framework and referred to above.

16. In conclusion, the proposed development would have a detrimental effect on the character and appearance of the area, including the listed building at St

Mary's Church, the Horse Chestnut tree within St Mary's churchyard, and the Tydd St Mary Conservation Area. It would therefore be contrary to policies SG14 and SG18 of the South Holland Local Plan 2006. Policy SG14 indicates, amongst other things, that new development should contribute positively to the architectural and visual quality of its surroundings and should not adversely affect the character and appearance of the area. Policy SG18, amongst other things, states that proposals for new development should protect existing trees.

17. The proposed development would also conflict with paragraphs 127 and 130 and Section 16 of the Framework in terms of being sympathetic to local character and history, avoiding poor design which fails to take opportunities available for improving the character and quality of an area, and conserving and enhancing the historic environment. In addition, for the reasons set out above, the statutory duties within Section 66(1) and 72 (1) of the aforementioned Act would not be met.

Planning Balance

18. Both main parties agree that the Council cannot currently demonstrate a 5 year housing land supply (HLS). While neither party has quantified the shortfall, I have no reason to disagree that the Council cannot demonstrate HLS.

19. In discussing HLS, the appellant has also drawn my attention to the Hopkins Homes Supreme Court judgment[1] in respect of triggering the then second part of paragraph 14 of the 2012 National Planning Policy Framework and another appeal decision in Tydd St Mary[2], which was neither in a conservation area nor within the setting of a listed building.

20. However, footnote 6 to paragraph 11(d) of the Framework sets out specific policies in the Framework which indicate that development should be restricted, including designated heritage assets. Given that I have found above that the revised Framework's policies relating to heritage assets indicate that development should be restricted, the presumption in favour of sustainable development does not apply to this appeal.

Other Matters

21. While the Council has not raised concerns about the principle of development, flooding, or living conditions of neighbouring occupiers or future occupiers of the proposed development, these matters do not outweigh my concerns.

22. Local residents have raised concerns about the road's width and condition, risks to pedestrian safety, and bats and protected bird species. I have not addressed these matters as I am dismissing this appeal for other reasons.

Conclusion

23. For the reasons set out above, this appeal is dismissed.

J Gilbert

INSPECTOR

[1] Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37
[2] APP/A2525/W/16/3159330, decision issued 2 February 2017.