

Appeal Decision

Site visit made on 8 December 2015

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 25th January 2016

Appeal Ref: APP/L3245/W/15/3132270

Land north east of the cemetery, Swan Hill, Ellesmere, Shropshire, SY12 0LZ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by CMS JAW Ltd. against the decision of Shropshire Council.
 - The application Ref. 15/00291/OUT, dated 21 January 2015, was refused by notice dated 6 August 2015.
 - The development proposed is the construction of up to 9 no. single storey dwellings with rooms in the roof space.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposal is in outline format for the construction of up to 9 single storey dwellings, with accommodation in the roof, and with details of the access to the site to be considered at this stage, but all other detailed matters are reserved for subsequent approval. The proposal included plans of the layout of the 9 houses and a street scene elevation but I have treated these as for illustration only.
3. A Unilateral Undertaking, made under section 106 of the Act, dated 11 December 2015 and signed by the appellant company has been submitted as part of the appeal. In general terms this covenants the landowner to pay a contribution in accordance with the Council's Supplementary Planning Document (SPD) to facilitate the delivery of affordable housing off site and to transfer the 'Community Land' to the Mere Charitable Trust to be used as land for community benefit.

Main Issues

4. The main issues are
 - The accord of the proposal with the development strategy for the area;
 - The effect of the proposal on the character and appearance of the area including the setting of the Ellesmere Conservation Area.

Reasons

Background

5. The appeal site comprises an area of open land of about one hectare in extent which lies on the edge of Ellesmere. It is situated to the east of the chapel and cemetery; to the south of Swan Hill which has housing on the northern side of the road; and to the south lies 'The Mere' itself and the public space of Cremorne Gardens. The land rises slightly from Swan Hill before plateauing out and then falling steeply down to the Gardens. This embankment is wooded with mature trees and the boundary of the Ellesmere Conservation Area lies close to the southern edge of the application site. The individual and groups of trees on the bank are subject to a Tree Preservation Order, however the site itself has no other special designation.
6. It is proposed to develop part of the site for residential purposes and the indicative plan shows a possible layout of 9 houses on about half of the site with a new access from Swan Hill. The other half of the site, about 0.6ha, that is part of the plateau and the bank, is shown to be used for community purposes and the land is to be gifted to The Mere Charitable Trust. A 3m buffer of land adjacent to the cemetery is also proposed.
7. I note that a previous application for 22 dwellings and an extension to the cemetery was refused by the Council and a subsequent appeal was dismissed in January 2014¹. The inspector concluded that the proposal conflicted with policies restricting development outside settlement boundaries and also that the housing then proposed would be harmful to the character and appearance of the surrounding area in terms of its unacceptable impact on the setting of 'The Mere'; the historic designated parkland of Cremorne Gardens; the street scene of Swan Hill; and the setting of the Conservation Area.

Policy context

8. The Council's formal decision notice refers to saved policies in the Oswestry Borough Local Plan; the adopted Shropshire Core Strategy (2011) (CS) and the emerging Site Allocations and Management of Development – Development Plan Document (DPD) (SAMDev). However, the Council advises that the Examining Inspector issued a final report on the SAMDev on the 30 October 2015 where she indicated that with the modifications specified the Plan would be 'sound'. The Council adopted the modified SAMDev on the 17 December 2015 and therefore the plan is now afforded full weight. It also appears to me that in these circumstances the 'old' saved policies in the Oswestry Borough Local Plan (or the North Shropshire Local Plan as advised by the appellant's agent) are no longer applicable. I will consider the appeal on the basis that the development plan comprises the CS and the SAMDev.

Accord with development strategy

9. The Core Strategy (Policy CS1) plans to deliver a minimum of 27,500 new homes in the country by 2026 in a sustainable manner and with a 'rural rebalance' directing about 35% of the grown to the identified rural areas. Within this strategy Policy CS3 indicates that market towns will be *foci* for economic development and regeneration. Housing of an appropriate design that respects each town's distinctive character will take place within the town's boundaries and

¹ APP/L3245/A/13/2204997

on sites allocated for development. In north-west Shropshire the specified markets towns include Ellesmere. Policy CS5 indicates that development in the countryside will be strictly controlled, and outside settlements housing development will be limited to essential agricultural dwellings and conversions of buildings to affordable housing.

10. The parties agree that the appeal site does not lie within the settlement boundary of Ellesmere nor is it allocated for development in the SAMDev in Policy S8. The proposal therefore conflicts with the basic countryside protection policy CS5.
11. Nevertheless, the appellant's agent stresses the modifications (MM14 and MM17) put forward to SAMDev Policy MD3 about managing the delivery of housing development. In this, the examining Inspector felt that greater emphasis should be placed on the position that local housing guidelines are not a maximum figure but a level that is sustainable and appropriate during the plan period. The revised policy makes reference to paragraph 49 of the Framework which effectively allows housing development to take place beyond settlement boundaries if a five year supply of housing land (5YHLS) in Shropshire is not demonstrated.
12. Although the previous inspector recognised in January 2014, that the Council could not then demonstrate a 5YHL supply, it is not the appellant's case that there is still a shortfall. Further, the assessment of an adequate supply of new housing was one of the fundamental aspects of the SAMDev Examination and the Examining Inspector concluded in paragraph 70 of her report that the plan addresses the housing allocations necessary to ensure delivery of the required scale of housing consistent with the CS and the objectively assessed housing need. I am therefore satisfied that at the moment the requirements of paragraph 49 of the Framework are met.
13. Even so the appellant's agent submits that having a 5YHLS is no impediment to planning permission being granted for development outside settlement boundaries for other suitable sustainable housing development subject to the criteria laid out in policy MD3. Examples of how the modified policy MD3 has been interpreted in recent appeal decision have been submitted², and I will take into account this modification to the now adopted policy.

Effect on character and appearance

14. At the site visit I considered the surroundings of the site from the site itself, Swan Hill and from Cremorne Gardens. From the centre of the appeal site there are extensive views of surrounding open land from the high elevation of the plateau and views out through the trees over The Mere. These views out are likely to be reciprocated and so the effect of the openness of the site is likely to be appreciated over a wide area. In my judgement, visually and physically the appeal site forms an integral part of the larger area of open land which extends to the south around the chapel. Further, I found that this countryside area contributes significantly to the setting of The Mere and the town and helps form its distinctiveness.
15. Although only a proportion of the site has been put forward for development, and the indicative plans show that the height of the properties could be kept low with

² APP/L3245/W/3001117; APP/L3245/W/15/3029727; APP/L3245/W/15/30003171

the first floor accommodation being in the roofspace, I judge that the visual impact of the houses would be prominent on the skyline from Swan Hill, especially when approaching from the lower end of the lane to the north-east; from around the houses opposite the site in Swan Lane; and from the cemetery land and chapel grounds. The presence of the housing development would be significantly at odds with the present character of openness and I find that it would harm the setting of the town.

16. There would also be a significant local impact caused by the alterations to the existing hedgerow and bank along Swan Hill necessary to make the proposed access and provide visibility splays and footways. These would require the removal of a long length of the existing hedge and some of the bank. While a new hedge could be planted on the inside of the footways this would take some time to mature and some of the enclosing effect of the bank along this side of Swan Hill would be permanently lost. I find that the proposal would have a moderately harmful effect on the present local character of Swan Hill.
17. In terms of the more local view from Cremorne Gardens it appeared to me at the site visit that the topography of the land is such, together with the set back of the house by the extent of 'community land', that the houses proposed would not be too apparent or prominent in this view and there would be some screening effect from the protected trees in between. Given that the local boundary of the Conservation Area lies around the edge of the Gardens I do not consider that the proposed development would have a harmful visual effect from this part of the footpath around The Mere, but there would be a wider impact on the setting of the Conservation Area with the presence of built development and loss of part of the open area from its distinctive character.
18. Overall, I conclude on this issue that although part of the proposal would retain a swath of open land for community use, the presence of the built development would result in the loss of an open area which positively contributes to the setting of The Mere and the town and that it also causes other local harmful visual impacts. On this basis the proposal does not accord with the requirements of policy CS6 in terms of protecting the natural environment and taking into account features which contribute to its local character and distinctiveness.
19. In terms of the statutory test, I find that the proposal would not preserve or enhance the character or the appearance of the heritage asset of the conservation area, although I consider that the proposal would lead to less than substantial harm.

Other matters

20. Representations made on the appeal by local people raise other concerns about the development proposed, including: the site having a poor access and the effect on highway safety; issues of the town's infrastructure being overloaded and essential services not be able to cope with more development and questioning the need for further housing; and concerns about the effect of the housing development on the Mere's eco-system.
21. However, there is no clear evidence before me to demonstrate that the local highway network cannot accommodate the traffic likely to be generated by the proposal nor is their evidence of significant deficiencies in infrastructure and services provision that would be made materially worse by the proposed residential development. In terms of ecological aspects, the appellant's scheme

included a Phase 1 Environmental Survey (May 2013) and this concluded, in essence, that there would be no ecological constraints to the development that could not reasonably be mitigated by conditions or licences required under other legislation. There is no detailed and expert evidence before me to contest the appellant's team's submissions. These factors raised under 'other considerations' do not therefore carry much weight in the planning balance.

Planning Balance

22. This application for housing development needs to be considered in the context of the national Framework in which the government wishes to encourage growth through sustainable development and seeks to boost significantly the supply of new housing. It is also clear that Ellesmere is a sustainable location and the principle of further development being accommodated in this market town has been accepted in the Core Strategy for the county and the very recently adopted SAMDev on the detailed aspects of housing provision.
23. However the conclusions I have reached on the main issues indicate that the proposed development would not accord with the newly adopted development strategy. Further the development would result in the loss of part of the present open area of countryside which makes a positive contribution to the setting of the town and the Mere. The development proposed would be visible on the high ground and the impact on the skyline together with the changes to the character of Swan Lane would be significantly harmful overall to the character and appearance of the area.
24. In terms of development plan policy I conclude that the proposal would not accord with policies CS5, CS6 and CS17 of the CS or policy S8 of the SAMDev. Further, in respect of policy MD3 of the SAMDev I consider that the adverse impacts mean that the proposed housing on the application site would not satisfy the requirements of 2(iv) of the policy even if the need for further housing was demonstrated.
25. These negative aspects have to be balanced with the benefits. I am satisfied that generally the site lies in a sustainable location. The proposal would provide more housing and the formal agreement would ensure that there would be an appropriate element of affordable housing as well as the gift of additional open land to the local community. However, the representations made on the appeal do not indicate to me that there is clear community support for this latter benefit.
26. I conclude that the positive aspects of the scheme and the public benefits put forward are not sufficient to outweigh the conflict with the development plan policies and the harm that I have identified that would be caused to the character and appearance of the area and to the heritage asset of the conservation area.

Conclusions

27. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR