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# Appeal Decision

Site visit made on 21 December 2015

**by Geoffrey Hill BSc DipTP MRTPI**

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

**Decision date: 10 February 2016**

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**Appeal Ref: APP/L3245/W/15/3129922**

**Church Street, Ellesmere, Shropshire SY12 0HD**

- 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 Christopher and Mrs Rosemary Horton against Shropshire Council.
  - The application Ref 14/03934/FUL, is dated 26 August 2014.
  - The development proposed is described as "residential development of land off Church Street and Talbot Lane to create 10 new dwellings of various sizes. The proposals also include the improvement of the town's link to the Mere by creating a wider public route from the Church Street pelican crossing to the entrance of Cremorne Gardens, enlarging the opening in the brick wall to 7 to 8 metres. Drainage alterations to Rosemary Cottage will also form part of the application".
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## Decision

1. The appeal is dismissed and planning permission refused.

## Planning Policy Context

2. The appellants make the point that the planning application was made in July 2014<sup>1</sup>, before the Shropshire Sites Allocation and Management of Development (SAMDev) Plan had been adopted. The appellants argue that the appeal should be considered in the context only of the Shropshire Core Strategy, which was the operative development plan document at the time the application was made.
3. I understand the appellants' frustrations that the processing of the application and the administration of the appeal have incurred lengthy delays – all of which were beyond the control of the appellant – but with the consequence that a new development plan context (ie the SAMDev Plan) is now in place. I note the appellant's argument that the appeal should be determined against the policies which were in force at the time the application was made. However, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, it is my duty to consider the appeal in the light of the current development policies. Also relevant in the determination of this appeal is government planning policy, as set out in the National Planning Policy Framework (NPPF).

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<sup>1</sup> The planning application form is actually dated 26 August 2014

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## **Main Issues**

4. The appeal was made in respect of the Council's failure to issue a decision within the prescribed period. Consequently, the Council has been precluded from making a decision on the application. Although the Council has submitted a statement of case to explain its views on the proposed scheme, this does not present the Council's objections in the form of resolved or putative reasons for refusal. Consequently, there is no clearly stated focus of the Council's rationale for objecting to the proposed scheme, nor are the relevant development plan policies specifically referenced in its Statement. However, from the representations I discern that there are three main issues in this appeal:
  - i) the effect of the proposed development on the character and appearance of the area;
  - ii) the effect on the setting of nearby listed buildings.
  - iii) the effect on highway safety of traffic and safety of pedestrians.

## **Reasons**

### ***Character and appearance***

5. The appeal site lies outside the development boundary for Ellesmere defined in the recently adopted SAMDev Plan. Accordingly, the proposed development has to be regarded as falling to be considered under the Countryside policies in the SAMDev (Policies MD7a MD7b).
6. Policy MD7a seeks to restrict new residential development in the countryside other than for essential rural workers. Exceptions may be allowed where there is proven local housing need, but the scheme under consideration in this appeal is not being put forward to meet such a need. Policy MB7d explains that part – at least – of the rationale for resisting new development in the countryside is to minimise the impact of new development and to conserve the historic landscape. These policies are consistent with and supported by Shropshire Local Development Framework Core Strategy Policy CS5.
7. The Council contends that the scheme would not be sensitive to the setting of Cremorne Gardens and the Mere. The site is within the Ellesmere Conservation Area. SAMDev Policy MD13 seeks to conserve the significance and setting of heritage assets. Section 72 of the Planning (Listed Buildings and Conservation Areas) 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The Conservation Area includes not only the historic core of built development in the town, but also the land running down to the Mere from the town. The Mere is clearly an important open area within the Conservation area, which is appreciated for its visual amenity and leisure value.
8. The appeal site is not in truly open countryside: it is land largely behind existing frontage development, lying between Church Street and Cremorne Gardens. That is, the impact on the wider or rural historic landscape would be negligible. However, having regard to the adopted policy, it has to be regarded as part of the 'countryside'. The appeal scheme clearly would introduce development where none exists at present, and where there is no need in terms of providing accommodation for essential rural workers.

9. The appeal site is an undeveloped area – albeit part has a planning permission for use as a car park – which forms part of the setting for the Mere and the adjacent Cremorne Gardens. Development here would consolidate the present informal pattern of built development and undeveloped areas hereabouts, bringing built development closer to the Mere. This would erode the setting of the Mere and its value as a leisure and visual amenity in this part of the town. There is public access through this area, and development here would degrade the conservation area experience for pedestrians when walking between the town and the Mere.
10. I acknowledge that English Heritage (EH) had indicated that the design of the proposed dwellings could be acceptable subject to careful consideration of details, but EH did raise an objection relating to the visual relationship between houses on plots 2-5 and the boundary with Cremorne Gardens and the Mere. The appellants have suggested that this might be resolved by means of a planning condition. A revision of the site boundary and possible adjustment of land ownerships cannot be a requirement of a planning condition, and it is not clear that such an adjustment would be both acceptable and achievable were it to be set out in a 'Grampian' style condition. That is, I do not consider that this objection has been, or is realistically capable of being, resolved as part of the appeal scheme.
11. Drawing the above points together, the proposed scheme would introduce built development into the currently open and generally informal transitional area between the built up area of the town and the Mere. This would harm the character and appearance of the area in terms of it introducing development into an area now categorised as 'countryside', nor would it serve to preserve or enhance either the character or appearance of the Conservation Area, contrary to the objectives of the development plan policies.

### ***Setting of listed buildings***

12. The Council also argues the scheme would not be sensitive to the setting of the nearby listed buildings. Nos. 7, 9, 11 and 13 Church Street are listed buildings. SAMDev Policy MD13 is the relevant policy for this concern.
13. For the most part, the proposed dwellings would be set apart from these listed buildings, but the house proposed on Plot No.1 could be close enough to impact upon the setting of No.9. However, there is no clear discussion on this point in the appeal submissions and hence there is no compelling evidence to regard this as an overriding concern.
14. Concern has been raised by an interested person about the proximity of the garage for the dwelling on Plot 5 and Cremorne Cottage. It is said that Cremorne Cottage is a listed building although I have not been provided with details of its listing and what in particular about its setting needs to be respected. The proposed garage is shown to be sited within 2 metres of the corner of Cremorne Cottage, which may impinge upon the setting of the listed building. Having said that, I accept that there is scope to reposition the garage should the appeal be allowed. It is possible that this point could be covered by a planning condition if the scheme were found to be acceptable on all other grounds.

15. On this second main issue, whereas I recognise the appeal scheme has the potential to affect the setting of listed buildings, the evidence submitted is not detailed nor persuasive about which properties could be affected, how the setting(s) could be harmed, or to what extent. In which case, I conclude on this main issue that, on the evidence before me, the proposed scheme would not unacceptably harm the setting of any nearby listed buildings.

### **Highway safety**

16. The proposed scheme shows two access points onto Church Street / Talbot Road. Church Street/ Talbot Road is a main road through the town (A495), and it carries an appreciable volume of mixed traffic, including heavy goods vehicles. Under these circumstances, it is reasonable to require new development to provide safe access points on to the highway.
17. I have not been provided with any local policies or guidance on highway safety and design of access points. However, the guidance given in Manual for Streets (MfS) is relevant. Church Street is subject to a 30 mph speed limit in the vicinity of the appeal site. Section 7 of MfS indicates that there should be clear visibility at the access in each direction of 43 metres at a point 2.4 metres back from the edge of the carriageway.
18. The main access is to the eastern end of the site, close to the present pedestrian crossing. Here the access is proposed to be 4.8 metres wide, which would be just about wide enough to allow two cars to pass, meaning that it is unlikely that vehicles would have to wait or manoeuvre on Church Street to enter or leave the site. Visibility to the east would be unobstructed, but to the west the control cabinets for the pedestrian crossing interfere with a clear view. Having said that, I accept that this access point is effectively the same as that for the approved car park use of the land. No evidence has been put before me of any accidents having happened at this access, or other safety issues relating to its use. It would therefore seem to be inconsistent to regard the presence of the control cabinets as a major objection.
19. The western access (Talbot Lane) is narrower where it runs between No.21 Talbot Street and Yolande Court, and vehicles would not be able to pass one another on this track. The approach to the access is across a wide verge between the houses and the highway and I accept that this is probably wide and deep enough for vehicles to wait for a clear passage in the event of another vehicle being on the track. However, this verge is thickly planted with shrubs which obstruct visibility to the west. There is a need for clear visibility in this direction because of the curve in Talbot Street, which itself has the potential to obscure traffic travelling towards the site from Sparbridge.
20. I acknowledge that the planting could be cut down to below a level where it would not obstruct visibility, but this is on land outside the ownership or control of the appellants, and the appellant cannot give an assurance that the vegetation will be cut down, either initially to allow the development to go ahead or that it would be subsequently maintained thereafter at an appropriately low height. I do not consider that a satisfactory resolution of this concern can be imposed or assumed through planning conditions, either directly or through a 'Grampian' style condition. Intensification of the use of this access would, therefore, represent an unacceptable risk to highway safety.

## Other Matters

21. Were the appeal to be allowed and permission granted there would be an expectation that a proportion of the development would be made available as affordable housing. This would usually be secured through a planning obligation made under Section 106 of the Town and Country Planning Act 1990. The appellants have agreed to provide such an obligation were the appeal to be allowed. It is usual for a completed planning obligation to accompany firstly the planning application and subsequently the appeal submissions. I acknowledge that the absence of a completed obligation might have been addressed if the scheme was seen to be acceptable in all other respects, but not having one before me as part of the appeal submissions does add weight to the rationale for dismissing the appeal.
22. Objections have been raised by persons who live close to the site that the proposed houses would overlook neighbouring properties, such that it would interfere with their privacy. The occupants of two properties in particular have raised such concerns: No.9 Church Street and The Old Estate Yard. The house on Plot No.1 would be within 2 metres of the boundary with No.9 Church Street. There would be no windows to habitable rooms on the rear elevation of the proposed house and hence there would be no risk of overlooking or loss of privacy for the occupants of No.9. However, it is likely that the proposed house would appear uncomfortably close and overbearing for persons using the garden of No.9.
23. The House on Plot No.2 would look towards The Old Estate Yard, with some 13 metres between the facing elevations. There is a brick wall across the frontage of The Old Estate Yard which presently screens the ground floor rooms of this property. Some of the first floor rooms do look out over Plot No.2 but the design of the proposed house shows only secondary windows facing towards The Old Estate Yard. These could be required to be obscure glazed, and thereby safeguard the privacy for the occupants of The Old Estate Yard. Having regard to the relationship between buildings in the centre of Ellesmere, 13 metres separation between facing elevations is not unusual or uncharacteristic.
24. The Council's advisor on archaeological matters notes that the site is seen to have a high archaeological potential. Having regard to paragraph 128 of NPPF, and taking into account the advice that the likelihood of there being high value archaeology under this site, it is not unreasonable to require more than just a desk study to be undertaken before coming to a decision on whether to grant planning permission here. I note that a geophysical survey has been carried out and this is amongst the application documents. However, this seemingly is not sufficient to satisfy the concerns of the Council's advisor. In the absence of further information from the advisor, and in view of the fact that the proposed scheme is to be dismissed on other grounds, I do not consider that it is necessary for me to come to a definitive conclusion as to whether sufficient information has, or has not, been submitted on the archaeology of the site to justify dismissing the appeal on this point.
25. Part of the site has planning permission for use as a car park, but the car park is not surfaced and there is no built development on the land. It does not, therefore, fall within the definition of previously developed land given at

Annex 1 to NPPF. Accordingly, the fact that it can be used as a car park does not support the argument that the land should now be considered as a brownfield site, and therefore suitable for built development.

26. I acknowledge that the appeal site had been identified in the Strategic Housing Land Availability Assessment (SHLAA) which suggests that it may once have been considered a suitable candidate site for housing development. However, the SHLAA is not a policy document: it is simply part of the evidence base which contributed towards the identification and selection of preferred sites to be included in the SAMDev Plan. Clearly, it was not carried through from the SHLAA into the adopted policy document. The fact that the site had been identified in the SHLAA does not override the now adopted plan.
27. I also note the appellants' claim that the preferred housing site in Ellesmere may not come forward for development as envisaged in the SAMDev Plan. I have no conclusive evidence on this point. If allocated sites are not coming forward as envisaged in the plan this would be identified in the Annual Monitoring Report (AMR) and, if necessary, the plan can be revised. In view of the fact that the SAMDev Plan was only adopted in December 2015 a year has not yet elapsed to set the context for the AMR. On the basis of the evidence before me in this appeal, it is not appropriate for this appeal to set aside the conclusion of the Examination of the SAMDev Plan so soon after it has been adopted, nor to pre-empt the outcome of the AMR.

### **Overall Conclusion**

28. The proposed scheme would harm the character and appearance of the area, and increased use of the western access would jeopardise conditions of highway safety. No other matters raised in support of the appeal outweigh the harm discussed above, and would not justify coming to a decision other than in accordance with the development plan. Accordingly, the appeal should be dismissed and planning permission refused.

*Geoffrey Hill*

INSPECTOR