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# Appeal Decision

Site visit made on 9 May 2016

by **S D Harley BSc(Hons) MPhil MRTPI ARICS**

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

Decision date: 3 June 2016

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**Appeal Ref: APP/L3245/W/16/3144703**

**Car park at the Penny Black, Hope Bagot Lane, Collybrook, Knowbury, Shropshire SY8 3LL**

- 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 Ian Lewis against the decision of Shropshire Council.
  - The application Ref 14/01245/FUL, dated 18 March 2014, was refused by notice dated 9 October 2015.
  - The development proposed as set out on the planning application form is dwelling and garage.
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## Procedural Matters

1. The Site Allocations and Management of Development, Development Plan Document (the SAMDev) was adopted in December 2015. The Council has confirmed that as a result Policies SD3 and SD4 of the South Shropshire Local Plan no longer apply. I have considered the appeal on this basis.
2. The Council has added "installation of package treatment plant" to the description of development set out above and this is how the development is described on the appellant's Response to the Council's Appeal Statement, March 2016. I have considered the appeal on this basis.

## Decision

3. The appeal is allowed and planning permission is granted for a dwelling and garage; installation of package treatment plant at the car park at the Penny Black, Hope Bagot Lane, Collybrook, Knowbury, Shropshire SY8 3LL in accordance with terms of the application Ref 14/01245/FUL, dated 16 March 2014 and subject to the conditions set out in the attached Schedule.

## Main Issue

4. The main issue is whether the site is suitable for residential development having regard to the Development Plan and the principles of sustainable development.

## Reasons

5. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission is determined in accordance with the Development Plan (DP) unless material considerations indicate otherwise. The DP for the area now consists of the Shropshire Local Development Framework: Adopted Core Strategy March 2011 (the CS) and the SAMDev. The National
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Planning Policy Framework (the Framework) is a material consideration. The evidence before me indicates that the Council can demonstrate a five year supply of deliverable housing sites and I have no reason to suppose the DP is out of date. The evidence suggests there is a substantial degree of reliance on windfall sites to enable the delivery of housing in accordance with the CS and the SAMDev.

6. The Framework seeks to significantly boost the supply of housing and both the Framework and Policy MD3 of the SAMDev contain a presumption in favour of sustainable development. This is defined in the Framework as satisfying environmental, social and economic dimensions. The environmental dimension includes protecting our natural, built and historic environment. The site is in the countryside. Paragraph 17 of the Framework recognises the intrinsic character and beauty of the countryside as a core planning.

*Environmental dimension*

7. Planning permission was granted for the conversion of the Penny Black into a house in 2009. The appeal site is the car park that served the Penny Black Public House and its tarmac surface is deteriorating. It falls within the definition of previously developed (brownfield) land as set out in Annex 2 of the Framework.
8. The site is in the Shropshire Area of Outstanding Natural Beauty (the AONB). Paragraph 115 of the Framework says that great weight should be given to conserving the landscape and scenic beauty of AONBs and these aims are reflected in Policy CS17 of the CS and Policy MD12 of the SAMDev. The Council raises no objection to the appearance of the proposed dwelling or garage and considers that the design is of an appropriately high standard as required in the AONB and I see no reason to reach a different conclusion.
9. To the north and west the site is bounded by a mature wooded area. To the south are the buildings of Penny Black and Bennetts End public house and across Hope Bagot Lane is Bennetts End Cottage. The proposed development would restore the land to beneficial use and improve the appearance of the site and the area. It would not encroach onto cultivated agricultural land or appear unduly prominent in the landscape.
10. There would be some harm to the openness of the countryside by the introduction of buildings but the site is physically and visually well contained. Although outside the areas preferred for development under Policies CS1, CS4 and CS5 of the CS and MD1 and MD7a of the SAMDev which seek to direct rural development to Community Clusters/Hubs and the proposal is not for a countryside worker or affordable housing, I conclude that the proposed development would help regenerate and improve the site and therefore the character of the local countryside. Accordingly I conclude that the proposal does not conflict with the strategic approach set out Policies CS1, CS4, CS5 and CS17 of the CS, Policies MD1, MD7a and MD12 of the SAMDev or those principles of the Framework that seek to protect the countryside.
11. The site is close to the functioning Bennetts End Public House with its bowling green. It is about 950m from the village hall at Knowbury, where there is a bus stop with a limited bus service, and about 1.5km from the church. Clee Hill with its range of services is about 3km away. Although I acknowledge that future occupiers of the proposed dwelling would rely to some degree on the

private vehicle for day to day services and facilities the site is not completely isolated from facilities.

12. Moreover, the proposal would also have a reasonable degree of consistency with Policy MD3 of the SAMDev as windfall development on brownfield land. It would also be in accordance with those aspects of Policies CS6 and CS10 of the CS and a core principle of Paragraph 17 of the Framework that seek to make the most effective use of land and to reuse previously developed land.
13. Taking all the above strands together on balance I conclude that the proposal meets the environmental dimension for sustainable development.

#### *Social and economic dimensions*

14. The appeal was originally accompanied by a signed Unilateral Undertaking under s106 of the Town and Country Planning Act 1990 which provides for a contribution towards affordable housing to meet the requirements of Policy CS11 of the CS. This was withdrawn following a decision by the Court of Appeal which upheld the appeal of the Secretary of State against a previous High Court judgement of 31 July 2015<sup>1</sup> in relation to planning obligations and affordable housing and tariff style contributions<sup>2</sup>. The more recent decision supports national policy as set out in the Written Ministerial Statement of 28 November 2014 which exempts sites of 10 or less dwellings from affordable housing obligations. This is a material consideration of substantial weight warranting a decision other than in accordance with Policy CS11, and the Council now considers there is no significant material planning reason to justify continuing to seek an affordable housing contribution in this case. Accordingly I give the absence of an obligation providing for affordable housing no weight in this appeal.
15. To the extent of future occupiers using local facilities the proposal would assist to a small degree in maintaining the local public house, the church and the bus service and services and facilities in Clee Hill. The proposal would make a limited contribution to the local economy during construction; could be a self build project; and as a windfall site would fulfil the social role of providing a very modest contribution to housing supply. Even though these benefits would also apply to similar sites not in the countryside, in these aspects the proposals would meet the social and economic dimensions of sustainable development.

#### **Other matters**

16. Although not part of the reason for refusal, the Council has expressed concern that allowing the proposal might set a precedent for development elsewhere that would affect the open character of the countryside. I have not been given specific examples of similar sites nearby where such a precedent might apply. Each application and appeal should be determined on its own merits and I do not consider the concern expressed would be sufficient reason to dismiss the appeal before me.

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<sup>1</sup> West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government CO/76/2015 [2015] EWHC 2222 (Admin)

<sup>2</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

17. There is a public footpath crossing the site that may require diversion. However, there are other means for addressing this and it would not be a reason for refusing an otherwise acceptable proposal.

**Final conclusion and conditions**

18. As set out above there are some consistencies and some conflicts with some of the Policies in the DP. Future occupiers would rely to some extent on the private vehicle for many services and facilities; the location is not one where development is specifically encouraged under the strategic approach set out in Policy CS1 of the CS and there would be some harm to the openness of the countryside. However, I have concluded the proposal would bring previously developed land into beneficial use; would have a beneficial effect on the character and appearance of the site, the countryside and the AONB, would have some limited social and economic benefits and future occupiers would not be totally isolated from facilities.
19. Taking all the above matters into account I conclude that the proposed development accords with the DP taken as a whole. Accordingly I conclude that the site is suitable for residential development having regard to the DP and the principles of sustainable development.
20. I have assessed the conditions proposed by the Council against the tests in paragraph 206 of the Framework and against the national Planning Practice Guidance. In the interests of visual amenity it is necessary and reasonable to require the development to be carried out in accordance with the submitted plans, that external materials are agreed and that the proposed landscaping is provided. In the interests of public health it is necessary to ensure satisfactory drainage is provided. In the interests of protecting bats conditions for bat boxes and the control of lighting are necessary.
21. For the reasons set out above and taking into account all relevant matters raised I conclude the appeal should succeed.

*SDHarley*

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development shall be carried out strictly in accordance with the approved plans and drawings Ref 1411/1, 1411/2 and 1411/3.
3. No development shall take place until a scheme of foul drainage and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed before the development is occupied.
4. No development shall commence until there has been submitted to and approved in writing by the Local Planning Authority a scheme of

landscaping, which shall include:

- Details/schedules of proposed planting
  - Details of the type/construction, height and alignment of all new and retained walls, fences, retaining structures and other boundary treatments/means of enclosure
  - Details/samples of hard surfacing materials
  - Timetables for implementation.
5. The landscaping works shall be completed in accordance with the approved details. Thereafter, all fences, walls, hardstandings and other hard landscaping features shall be maintained in accordance with the approved details. Any trees or plants which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
  6. No above ground works shall commence until samples/precise details of all external materials and finishes have been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with approved details and thereafter maintained.
  7. A total of 2 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site prior to first use of the building hereby permitted. All boxes must be at an appropriate height above the ground with a clear flight path and thereafter be permanently retained.
  8. Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and Lighting in the UK.