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# Appeal Decision

Site visit made on 27 October 2015

**by Alexander Walker MPlan MRTPI**

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

**Decision date: 02 December 2016**

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**Appeal Ref: APP/L3245/W/15/3069989**

**Land off Red Barn Lane, Shrewsbury, Shropshire**

- 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 Mrs Vanessa Hughes against the decision of Shropshire Council.
  - The application Ref 14/01484/FUL, dated 1 April 2014, was refused by notice dated 5 February 2015.
  - The development proposed is the construction of a single open market dwelling.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. Following the submission of the appeal, the appellant has changed from Mrs Carole Price to Mrs Vanessa Hughes. This is reflected in my banner heading above.

## Preliminary Matters

3. Following the refusal of the planning application, the Council adopted the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan on 17 December 2015. Accordingly, the policies contained within the SAMDev along with the Shropshire Council Adopted Core Strategy (CS) 2011 are afforded full weight.
4. Furthermore, following the Court of Appeal's judgement on the case of *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441*, national policy on contributions for affordable housing and tariff style planning obligations has changed. The parties have had the opportunity to comment on this matter.

## Main Issue

5. The main issue is whether the dwelling would preserve or enhance the character or appearance of the Shrewsbury Conservation Area (the CA), and whether the proposal makes adequate provision for affordable housing.

## Reasons

*The Shrewsbury Conservation Area*

6. The appeal site is a vacant parcel of land which is currently overgrown. It is roughly rectangular in shape and is accessed via Red Barn Lane; a narrow lane
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which serves a small number of properties, varying in their scale and design. However, a new access is proposed that will link with an unmade track accessed directly off Longden Road.

7. The site is located within the Kingsland Special Character Area (KSCA) which forms part of the CA. I note that there is no formal appraisal of the KSCA. Nevertheless, whilst the reasons for its designation as a special character area are not explicitly clear, it still forms part of the overall CA and is therefore apportioned special protection as part of the heritage asset.
8. The site also lies within the Rad Brook Valley, with Rad Brook running adjacent to the north boundary of the site. The Rad Brook Valley forms an important open space corridor that makes a significant contribution to the openness of the CA.
9. The boundaries of the site are clearly defined by hedging and trees to the north, east and west. The southern boundary consists of a post and rail fence. The eastern boundary follows the established rear boundaries of properties on Red Barn Lane, extending no further into the valley. Furthermore, the brook to the north provides a natural boundary.
10. The dwelling would be a natural infill site, rounding off this small cluster of dwellings. Although it would be closer to the Brook than other neighbouring properties I do not find that this would harm the overall openness of the area. Furthermore, whilst it would be of a modern design, the surrounding properties vary considerably in their design, some of which are relatively modern. Therefore the dwelling would not appear incongruous.
11. Notwithstanding the above, the proposed vehicular access would result in the development encroaching into the open land to the east. The openness of this large space makes a significant positive contribution towards the overall openness of the CA. The introduction of such a long stretch of hard surface that encroaches into the open space would introduce an urban form of development that would significantly diminish the openness of the area and as a result would harm the character and appearance of the CA.
12. Furthermore, there are a number of trees on the site. The dwelling has clearly been designed to protect these trees. However, due to the close proximity of the dwelling to the trees, in particular the large trees to the south west and south east, and their positioning, they would significantly restrict light to the dwelling. I appreciate the appellant's argument that the trees would not affect the main amenity area to the rear and they would make a positive contribution to the amenity value of the dwelling. However, as a result of the restricted light entering the property, the trees would likely have an adverse effect on the living conditions of its future occupants. As a result, the Council would find it difficult to resist any pressure from such occupants to remove the trees. Consequently, the loss of these trees would significantly harm the character and appearance of the area. This harm would be further exacerbated due to the dwelling being more exposed as a result of the loss of the trees, which would have a significant adverse impact on the openness of the area.
13. It would be unreasonable to impose a condition seeking the protection of the trees, as suggested by the appellant, whereby in doing so it could significantly harm the living conditions of the future occupants of the dwelling.

14. I have been referred to a planning application<sup>1</sup> that the Council have approved at No 1 Red Barn Lane. I noted during my site visit that there are a large number of trees around the site. However, I have no details of the circumstances that led to the application being approved. I note that the application was for the conversion of existing buildings whereas the appeal proposal is for the erection of a new building. Therefore, it is difficult for me to draw any direct comparison between the two schemes. In any event, I have determined the appeal on its own merits.
15. I note the appellant's case that the development would contribute towards the local economy; the site is accessible to a wide range of services and facilities; and, it would provide an additional family home. Paragraph 134 of the National Planning Policy Framework (the 'Framework') confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use. Whilst the harm to the significance of the Conservation Area would be less than substantial, the public benefit identified would not outweigh this harm.
16. I find therefore, that the development would fail to preserve or enhance the character of the CA, contrary to Policies CS6 and CS17 of the CS and Policies MD2, MD12 and MD13 of the SAMDev which, amongst other matters, seek to ensure that development conserves and enhances the natural, built and historic environment and local character. Furthermore, it would fail to accord with the Framework's objective of protecting heritage assets.

#### *Affordable Housing*

17. Whilst it did not form part of their reasons for refusal, the Council stated that they would be seeking a contribution towards affordable housing provision. However, following the Court of Appeal's judgment of 11 May 2016<sup>2</sup> and the subsequent alterations to the National Planning Policy Guidance (PPG), the Council have confirmed that they no longer automatically seek such contributions from this type of development, although they have not confirmed their position for this proposal.
18. The judgement states that the Secretary of State's Written Ministerial Statement of 28 November 2014 (WMS) defining the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development is once again a material consideration in determining planning applications and appeals. The WMS indicates that affordable housing provision and tariff-style contributions should not be required of development of 10 residential units or less. New and updated paragraphs 013-017, 019-023 and 031 of the PPG have been updated to reflect this.
19. Accordingly, in respect of development of ten residential units or less, the requirements of Policy CS11 of the CS are clearly in conflict with national policy. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst I

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<sup>1</sup> Local Planning Authority Ref 13/00223/FUL

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

have had regard to the relevant policies of the development plan, the WMS and PPG are significant material considerations. As they are the most recent representation of national policy, I attach substantial weight to them. As there is no substantive evidence before me to demonstrate that any special circumstances exist that would justify seeking contributions towards affordable housing provision, I find that the WMS and PPG outweighs Policy CS11 of the CS. Therefore, an affordable housing contribution is not required in this case.

**Conclusion**

20. Whilst I have found that the proposal need not make a contribution towards affordable housing, this does not outweigh the harm I have identified regarding the effect of the development on the character and appearance of the CA.
21. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

*Alexander Walker*

INSPECTOR