
Appeal Decision

Site visit made on 6 December 2016

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 19 January 2017

Appeal Ref: APP/L3245/W/16/3157138

The Hollies, Dovaston, Kinnerley, Oswestry, Shropshire SY10 8DS

- 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 Edward Jones against the decision of Shropshire Council.
 - The application Ref 12/03866/FUL, dated 12 September 2012, was refused by notice dated 25 February 2016.
 - The development proposed is reposition previously approved replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted to reposition previously approved replacement dwelling at The Hollies, Dovaston, Kinnerley, Oswestry, Shropshire SY10 8DS in accordance with the terms of planning application, Ref 12/03866/FUL, dated 12 September 2012, subject to the attached schedule of conditions

Procedural Matters

2. I have used the site address on the Council's Decision Notice and the appeal form as it more accurately identifies the location of the appeal site compared with the address on the planning application form.
3. The proposal is to, in effect, reposition a replacement dwelling previously approved under planning permission Ref 06/14437/FUL. The Council advises that the existing consent was commenced and remains a valid planning permission which could be implemented. I have considered the appeal on that basis.
4. The appellant has provided a Unilateral Undertaking to the Council not to proceed with that previous consent, Ref 06/14437/FUL, should planning permission be given for the appeal proposal. That would address the theoretical possibility of two dwellings being constructed on the plot under separate permissions. The Council has confirmed that it is satisfied with the Unilateral Undertaking.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

6. The appeal site is located just east of the United Reformed Church and its associated school building on Kinnerley Road in the small rural settlement of

- Dovaston. There is sporadic existing residential development along the road and a line of houses opposite the Church. Agricultural fields lie to the rear and opposite the site.
7. The Council advise that, apart from the siting of the dwelling, the proposal is essentially the same as the extant planning permission to replace the original dwelling given in 2006, Ref 06/14437/FUL. The scale and footprint would be identical to the previously approved dwelling and consist of a two-storey, two-bedroom house. Traditional materials, including natural slate and dressed sandstone, would be used which are sympathetic to the area. Kinnerley Parish Council has no objection to the 2006 permission but does not agree with the proposed re-siting.
 8. The site lies outside the settlement boundary and is, therefore, defined as open countryside. The policy context has changed since the granting of the previous permission in 2006 but the Council Officer's report states that policies CS5 of the Council's Core Strategy (CS)¹ and MD2 and MD7a of the Shropshire Council Site Allocations and Management Development (SAMDev) Plan² include exceptions to the general presumption against development in the countryside.
 9. In any case, the principle of development on the site has already been established by the existence of a previous dwelling and an extant planning permission to replace it which could be implemented. Therefore, it is the proposed siting of the dwelling and its effect on the character and appearance of the area that is at issue.
 10. The Council's Decision Notice suggests that replacing the original dwelling, which has already been demolished, on a different footprint would be contrary to Policy MD7a of the SAMDev and the Shropshire Local Development Framework Type and Affordability of Housing Supplementary Planning Document (SPD).³ Policy MD7a advises that replacement dwellings should not be materially larger than the original dwelling and must occupy the same footprint unless it can be demonstrated why that should not be the case. Similarly, the SPD states that a replacement dwelling should ordinarily be sited in the same position as the original dwelling.
 11. The appellant advises that the re-siting of the dwelling to the centre of the plot rather than perpendicular and close to the road is proposed for a number of reasons. First, it would allow for a private garden at the rear of the dwelling to be screened by the house from the road. That would provide privacy for future occupants when using their outdoor living space.
 12. In addition, it would also ensure that the normal domestic paraphernalia associated with gardens such as washing lines, barbecues, children's play equipment and the like would be out of public view. Furthermore, it would physically separate the drive and car parking area from the garden with attendant safety benefits for future occupants of the property. That could not easily be achieved under the extant permission because of the nature of the layout associated with it.

¹ Adopted February 2011

² Adopted Plan 17th December 2015

³ Adopted 12th September 2012

13. The appellant also submits that re-siting the dwelling would retain the currently unobstructed views, looking north west along the road, towards the Church and its school house.
14. I share the view expressed in the original Council Officer's report, which recommended approval of the application, that the reasons given by the appellant are sufficient justification for re-siting the replacement dwelling.
15. The Council's Planning Committee decided, as they are perfectly entitled to, not follow the Council Officer's recommendation. The Council's Decision Notice also refers to conflict with Guideline G3 of the Kinnerley Parish Design Statement and Landscape Character Assessment (KPDS). It is said the proposal would be out of character with the local area taking into account the local vernacular and built form.
16. It has been suggested by some third parties, though not explicitly in Council's reason for refusal or in the minutes of the relevant Planning Committee meeting, that dwellings with gable end perpendicular orientations close to the road are keynote aspects of the local vernacular. Whilst the KPDS is a useful document in identifying the character of buildings in the general area, the extracts before me make no particular reference to that as being a predominant characteristic of the area.
17. There are dwellings with their gable end orientated towards and close to the road to the south east of the appeal site and at other locations. However, as I observed on my site visit and as confirmed in the Council Officer's Report, the village consists of many other detached dwellings which have their main elevation facing the road and are set back from it. Those dwellings also contribute to the character and appearance of the area.
18. The Council Officer's report includes an extract from the KPDS relating to an area adjoining the site. It refers to the dwellings opposite the Church, which are to varying extents set back from and facing the road. It describes two detached red brick houses, the Manse and a Victorian house, and Dovaston Bank Farm and Maple Cottage as being set back from the road.
19. I note the concerns expressed by Kinnerley Parish Council. The proposal would alter the street scene in that a house would be constructed where, at present, there is no development. It would also not recreate the street scene exactly as it existed before the previous dwelling was demolished. However, change, in itself, does not necessarily amount to harm. I do not consider that the construction of a similar sized dwelling in a different position set back from the road would have an adverse effect. Nor would it be out of character with a local area that includes numerous properties with similar orientations and setbacks.
20. Whilst the Kinnerley Parish Neighbourhood Plan and the associated KPDS are relevant considerations, I note that the Council advise that they are not part of the development plan for the area and can, therefore, only be given more limited weight in comparison with CS and the SAMDev. Whilst re-siting the dwelling would 'affect' or change the setting of the original building, since demolished, in terms of Guideline G3 of the KPDS, for the reasons given above, I do not consider that it would have a detrimental effect on the character of the street or village scene. In any event, Policy MD7a of the SAMDev, as already discussed, allows such re-siting providing there is justification.

21. The suggestion that the re-siting could facilitate inappropriate extensions is dealt with by the removal of permitted development rights via condition, which would mean that such proposals would themselves require planning permission.
22. It seems to me that the original Council Officer's report comprises a careful and thorough analysis of the proposal, which takes into account the complex planning history and assesses it on the basis of the relevant development plan policies and other material considerations. Having examined the evidence and policy framework, I find that I agree with that assessment.
23. Overall, the above factors lead me to conclude that the proposal would not harm the character and appearance of the area. It follows, therefore, that it would not conflict with the objectives of Policy MD7a of the SAMDev or the SPD which, amongst other things, place controls on replacement dwellings in the countryside to ensure that they respect the proportions of the original building and local character and landscape. Neither would it be contrary to Guideline G3 of the KPDS which has similar aims.

Other Matters

24. The appellant advises that access from the road is to be achieved via a separate planning permission, Ref 07/15182/FUL, previously approved on appeal.⁴ The Council's highways department has not raised any objection to the proposal and the appellant advises that the access has been established.
25. In addition to those already dealt with other concerns have been raised by various parties. The long planning history associated with the site has been referred to and a concern expressed that if the appeal were allowed, there may be subsequent applications for a larger dwelling. That may be, but any future application for a different proposal would have to be considered on its own merits and on the basis of the development plan and any other relevant material considerations.
26. Another matter referred to is alleged breaches of conditions of previous planning permissions related to the site. Such issues are not directly relevant to the appeal before me and would be a matter for the Council.
27. Concerns that cars parked in front of the property would be visible from the road would equally apply to the car parking arrangements pertaining to the extant 2006 planning permission.
28. It has been suggested that the proposal would have an adverse effect on views from neighbouring houses. Planning law does not normally protect private views, unless the proposal is so large and close to adjoining properties that it has an overbearing effect on the outlook of residents. In this case it would be a relatively small two storey dwelling set back from the road some distance from nearby properties. Therefore, I do not consider that there would be an adverse effect in that respect.
29. It is submitted that a small house built in accord with the 2006 permission would provide affordable accommodation within the local community. As the Council advises that the size and extent of the property is no different from the extant permission that aspect should be unaffected.

⁴ APP/X3215/A/08/2061388

30. Whilst I have considered the above matters, I note that they are not included in the Council's reasons for refusal. Overall, they do not lead me to alter my decision.

Conditions

31. I have considered the various planning conditions suggested by the Council, amending them if necessary. A condition setting a time limit for the commencement of the development is a statutory requirement. For the avoidance of doubt and in the interests of proper planning, a condition requiring the development to be carried out in accordance with approved plans is appropriate.
32. A condition relating to access, parking and turning areas is warranted in the interests of highway safety. Conditions regarding materials and drainage are necessary to protect the character and appearance of the area and to ensure adequate drainage arrangements. The condition restricting permitted development rights is appropriate to maintain the scale, appearance and character of the development.
33. The Parish Council has expressed concern about the materials to be used to construct the new dwelling. It also refers to a condition, allegedly attached to the extant 2006 permission, which required materials reclaimed from the original demolished house to be used. I have no knowledge if those materials are still available and consider that, with the passage of time; it would be unnecessary and unreasonable to impose such a condition.
34. In any event the appeal proposal would supersede the previous permission. The materials of natural dressed sandstone and slate appear sympathetic to the area and a condition is included to ensure that external materials are subject to local planning authority approval prior to construction.

Conclusion

35. For the reasons giving above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development shall be carried out strictly in accordance with the following approved plans and drawings: 20506/01MAC, 20506/02MAC; 20506/04MAC; 20506/05MAC; 20506/06MAC; 20506/07MAC.
- 3) The access, parking and turning areas shall be satisfactorily completed and laid out in accordance with the approved block plan drawing prior to the dwelling being occupied. The approved parking and turning areas shall thereafter be maintained at all times for that purpose.

- 4) No development shall commence until samples and/or details of the roofing materials and the materials to be used in the construction of the external walls have been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details.
- 5) 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 fully implemented before the development is occupied/brought into use (whichever is the sooner).
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2 part 1 class A, B, C and D shall be erected, constructed or carried out.