
Appeal Decision

Site visit made on 8 January 2015

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 9 February 2015

Appeal Ref: APP/L3245/A/14/2227517

Land between Twyford Lane and Holyhead Road, West Felton, Oswestry SY11 4EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr T Humphries & Mr G Davies against the decision of Shropshire Council.
 - The application Ref 14/00734/OUT, dated 18 February 2014, was refused by notice dated 1 October 2014.
 - The development proposed is residential development and access.
-

Procedural Matters

1. The application is in outline with all matters reserved except for access.
2. Although the original application anticipated the construction of 32 dwellings, this figure was subsequently reduced to 12, a matter that was subject to consultation prior to the Council's determination. Accordingly, I determine the appeal on the latter basis.
3. A unilateral undertaking dated 19 December 2014 was submitted with the appeal documentation. By email of 7 January 2015 the Council confirms that "in principle" it is in agreement with the provisions of the undertaking. In essence, these are to provide an element of affordable housing at the "Prevailing Target Rate"¹ and a financial contribution to highways improvements, undefined in the undertaking but understood to be directed towards the provision of improved pedestrian linkage to the village centre.

Decision

4. The appeal is dismissed.

Application for costs

5. An application for costs was made by Mr T Humphries & Mr G Davies against Shropshire Council. This application is the subject of a separate Decision.

Main Issues

6. I consider the main issues to be as follows:-

¹ i.e. the percentage set out in the relevant Supplementary Planning Document

- Whether the proposed development would conflict with and harmfully undermine the intentions of the development plan and emerging policy concerning the location of new housing development and the protection of the countryside;
- The effect of the proposed development on the character and appearance of the area;
- The effect of the proposed development on soil resources
- The effect of the proposed development on community cohesion
- The effect of the proposed development on the setting and significance of listed buildings; and
- Whether the proposed development represents sustainable development for the purposes of the National Planning Policy Framework.

Reasons

7. The appeal site comprises open pasture on the northern fringe of the village of West Felton. The eastern part of the site is notably fringed with, and contains, substantial trees of quality. It is a remnant of the land originally associated with The Nursery, which was home to the pioneering arboriculturalist John Dovaston.² It contains a Grade II listed cider press. A Grade II listed archway, Dovaston Gate, is on the boundary between the site and an adjacent residential garden. The latter is contiguous with the area of the site east of the public footpath which traverses it, indicated by the appellants as being proposed for public open space. The cider press falls within the area indicated to be developed with houses. The western boundary of the site to Holyhead Road is characterised by a low sandstone wall, which would be breached and partially re-positioned to accommodate the proposed vehicular access to the site.

Development Plan and emerging policy

8. The development plan includes the Shropshire Core Strategy (CS), adopted in February 2011, and saved policies of the Oswestry Borough Local Plan ('the local plan'). Policy CS6 of the former sets out the Council's approach to creating sustainable places and policy CS5 effectively defers to national policy on the control of development in the countryside as it stood at the time of adoption. Policy H5 of the local plan classifies West Felton as a "larger settlement" (within the context of the former Oswestry Borough) to which new development should be directed, but the appeal site lies outside the development boundary defined for the purposes of applying the policy.
9. The Council's emerging Site Allocations and Management of Development Plan (SAMDev) excludes West Felton from the list of settlements within which new housing development will be supported under policy MD1 and is therefore to be classified as countryside if the plan, which is currently the subject of independent examination (hearings having taken place at the end of last year) is adopted in the form submitted. I note from representations that this is a classification enjoying widespread support within the local community but, pending the formal adoption of the SAMDev, the weight that can be accorded to it cannot be equivalent to that of an adopted plan.

² Introduction to submitted heritage statement

10. Equally, saved policy H5 of the local plan relates to an expired plan period (to 2006) and those of the CS were adopted prior to the publication of the Framework and must be viewed in the context of that document as an important material consideration. Pending adoption of the SAMDev as a sound development plan document, the policies within it are subject to the principles set out in paragraph 126 of the Framework.
11. Against that background relevant emerging policies of the SAMDev include MD1, which directs development primarily to Shrewsbury and a hierarchy of categorised settlements. West Felton is not part of that hierarchy and is therefore considered to be within the countryside.
12. Policy MD2 promotes sustainable design, including local aspirations in that regard, and appropriate consideration of heritage assets.
13. Policy MD3 addresses the management of housing development in circumstances where the relevant guideline for the settlement is, or is anticipated to be, exceeded. The Council asserts that, because West Felton is a settlement in the countryside without any additional housing proposed, the policy is engaged.
14. MD7a strictly controls housing development in the countryside save for specified categories such as housing for essential rural workers.
15. The intentions of these emerging policies do not strike me as fundamentally at odds with those of the Framework albeit examination of the SAMDev will doubtless address the point in detail, whilst MD3 in any event acknowledges the presumption in favour of sustainable development engaged in circumstances where a five-year deliverable supply of housing land is not available.
16. Save for that principle and attendant possibility, to which I return, it is a consistent theme of existing and emerging development plan policies that open market housing development on the appeal site is contrary to what is intended, whether by virtue of being outside a defined settlement limit, as previously, or by virtue of exclusion from the list of settlements intended to accommodate planned growth.
17. On that basis, I conclude that the proposed development would conflict with and harmfully undermine the overall thrust of development plan intentions and emerging policy concerning the location of new housing development and the protection of the countryside.

Effect on character and appearance of the area

18. The appeal site comprises pastureland of pleasant appearance and ambience on the fringe of the village. The application now seeks to establish the principle of developing the land at a density broadly comparable with Dovaston Court, an adjacent development of detached houses developed some years ago at a relatively low density. The proposed development would, in principle, it is suggested, also include a substantial public open space at the eastern end of the site, linked by an existing footpath to Orchard Drive.
19. However, the appearance, landscaping, layout and scale of the proposed development remain unresolved in the submitted material which is an indication simply of how the site could, as opposed to how it would, be

developed. Nevertheless, provided the number of dwellings is appropriately limited, it is clear that a spacious layout capable of physically avoiding many of the valued natural and man-made features of the site, including trees and heritage assets, would be achievable. In terms of the overall perception of the character and appearance of this part of the village, where relatively modern housing development gives way to open countryside, I consider that, in principle, a successful design would be capable of being achieved, thereby limiting harm to the character and appearance of the area through the introduction of further and carefully controlled change. For that reason, I do not accept the Council's proposition that development of the site would, of itself, necessarily harm unacceptably the character and appearance of the area.

Soil resources

20. Paragraph 112 makes it clear that the economic and other benefits of the best and most versatile agricultural land (defined as grades 1, 2 and 3a) and that, where significant development of agricultural land is necessary, the preference should be to use land of a lower quality. Land quality is therefore a material consideration and conservation of soil resources is a facet of sustainability, albeit impliedly the loss of insignificant amounts of best and most versatile agricultural land is unlikely to be a decisive consideration of itself. The threshold requiring consultation with Natural England is currently 20 hectares but clearly care has to be taken that multiple smaller applications do not cumulatively give rise to avoidable losses on a scale which becomes undeniably significant.
21. In this case there is no firm evidence of the grade of land involved as the published maps are generalised in nature and the appellant provides no definitive survey evidence, for which in my experience there is no real substitute at the site-specific level. While it seems there may be contextual grounds for believing that the intrinsic quality of the land is good, the fact of the matter is that knowledge is limited. The Council's concerns are by no means immaterial, but in the absence of more definitive information it is not possible to assess whether development of this site would contribute of itself or cumulatively to a material diminution of valuable soil resources.

Community cohesion

22. Given the number of new dwellings permitted at West Felton vis-à-vis its size and recent growth rate, it seems that Council officers prevailed upon the appellants to reduce the number of houses proposed from 32 to the 12 now proposed, concluding that the reduced number would not result in demonstrable harm in social terms. I have no reason to take a different view, albeit the elected members of the Council clearly are concerned that even the small increment now proposed would be harmful in terms of the community's capacity to absorb additional population.
23. The evidence on this matter is clearly limited in a factual sense. Equally, it seems to me to be an area where a degree of informed judgement is required and there is no real evidence of positive engagement with the local community by the appellants in the manner encouraged by the Framework and the associated Planning Practice Guidance. There is little to place on the positive side of the balance in that respect.

Heritage assets

24. The Council does not raise objection to the proposal on the grounds of potential harm to heritage assets, but a number of third parties do. In any event, s.66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 obliges me in respect of the cider press to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The same statutory obligation applies in respect of Dovaston Gate. Recent case law³ clarifies that, in fulfilling that obligation, I am obliged to accord considerable importance and weight to the desirability of preserving the setting of these listed buildings.
25. The glossary to the Framework defines the setting of a heritage asset and I am in no doubt that in both cases the setting of the heritage asset would be affected by the proposed development.
26. Aside from the statutory obligation, the Framework as a matter of national policy seeks to avoid harm to the significance of heritage assets. Paragraph 128 sets out the minimum level of information required of applicants in respect of proposals affecting heritage assets or their setting, which is to be proportionate to their importance. Heritage assets may be designated or non-designated but buildings qualifying for the statutory list are self-evidently important in this context.
27. The applicants in this case do provide, through the submitted heritage statement, detailed historical information concerning the Dovaston estate and the two listed buildings, but I do not accept that the "main" relevant paragraph of the Framework is 128. Section 12 of the Framework must be taken as a whole and in my view the heritage statement stops short of clarifying the manner in which the setting of the listed buildings contributes to their significance, a requirement which paragraph 128 sets out in any event, as is recognised by the statement. This also recognises that "the proposals could have some impact on its setting". Given the history of the estate and the activities of its original owner, it seems to me that the "large field" (i.e. the appeal site) in which the cider press ("the only fully intact surviving building in the grounds of The Nursery") is situated not only comprises, essentially, the surroundings in which this listed building is experienced, but that it must also affect in important respects the ability to appreciate its significance. That is not to say that evolution of the asset and its setting may not be acceptable but the Framework requires a more rigorous approach (as set out in paragraphs 131–134) than is allowed for by the content of the application in this case.
28. I am of course conscious that the Council's conservation officer raises no objection, but this is contingent, inter alia, on its setting being respected and enhanced by "any development that may be found acceptable on the site" and that any scheme "should be designed in line with the requirements of NPPF paras 131 and 132". Especially in view of the considerable importance and weight which must be accorded to the desirability of preserving the setting of the cider press, I am not persuaded that sufficient information or surety as to how the building or the essential elements of its setting contributing to its significance are to be secured for the long term is embodied in the current proposals to satisfy the relevant legal and policy requirements to which I have referred. The Planning Practice Guidance adds further weight to my concerns.

³ Barnwell v East Northamptonshire DC [2014] EWCA Civ 137

29. I also note that the supporting statement to the application opines that “the details of the future use can be more easily addressed at the reserved matters stage when a comprehensive layout will be produced”. However, given; the above analysis, the legal obligation that applies through s.66 (1) when considering whether to grant planning permission and the physical and historical circumstances of the cider press, I remain unconvinced that this conjecture is an appropriate basis upon which to proceed in this instance.
30. It seems to me that, although there is no firm commitment to the indicative layout presented, the application is predicated on the apparent intention that the cider press could be incorporated as part of a domestic curtilage, with all the very real risks that embodies to the contribution to significance made by its setting. “Another option” is said to be donation to the Parish Council (presumably on the basis that it would be set in open space and publicly accessible) but there is no evidence of the practicalities, including financial, having been seriously explored or provided for through any mechanism, or any serious thought having been given to, for example, employment use as mooted. The degree of harm to the setting (and therefore, potentially, the significance of this heritage asset) could be radically different according to eventuality and it is not possible to say which would be the case, the corollary of that being that the application of paragraphs 131-134 of the Framework, in the manner intended, is seriously impaired for the purposes of decision-taking.
31. I am in no doubt that there would be harm to the significance of the cider press as a consequence of development within its essentially rural setting and whilst arguably this is likely, but not necessarily, to be less than substantial, there is insufficient information, analysis or commitment at this juncture to assess the degree of potential harm or indeed the public benefits, including securing the optimum viable use of the building itself. There is no firm suggestion that the proposed housing development would be “enabling development”, as explained in paragraph 140 of the Framework, or an identified mechanism to bring that into effect in any event, bar a vague indication of potential re-roofing and renovation as part of the overall development activity proposed.
32. For all the above reasons, the failure to clearly articulate and provide for the future of the cider press and its setting weighs heavily against the current proposal.
33. Whilst identical policy and legal principles govern the approach to the Dovaston Arch, I accept that, because it is simply a remnant structure incorporated into an existing garden boundary with a part of the appeal site likely to be most practically retained as open space to avoid footpath diversion, the lack of clarity as to intentions and mechanisms is substantially less problematic than the difficulty I have outlined in respect of the cider press. The latter difficulty, because of its fundamental influence on the acceptability or otherwise in principle of the proposal as conceived, could not in my view be adequately addressed simply by the use of planning conditions.

Other matters and the planning balance

34. The views of the parties differ on the adequacy of the Council’s residential land supply, the Council now claiming that it has the requisite five-year supply, albeit apparently rooted in the emerging SAMDev that has yet to be adopted. While all new houses contribute to boosting housing supply in situations of

housing deficit, the relatively small number that would be developed here limits the significance of its potential contribution to reducing any such deficit as may currently exist and it is not in my view a decisive consideration in this instance. It is not therefore necessary to explore this matter, specifically, further.

35. The presumption in favour of sustainable development articulated in paragraph 14 of the Framework, triggered by its paragraph 49 in circumstances of inadequate housing land supply, requires in any event a planning balance in the context of the Framework as a whole, encompassing economic, social and environmental considerations.
36. There are of course economic gains in prospect of the type adverted to in the supporting statement to the original application but the figures quoted therein related to the 32 dwellings then proposed and hence those, and the potential contribution to the satisfaction of affordable housing needs, must be scaled back accordingly.
37. The latter would also be a social benefit, as would the satisfaction of need in respect of market housing. The prospect of additional open space weighs on the positive side of the balance in this context, as does the potential improvement for pedestrians in the form of the proposed footpath on Council-owned land, but other social benefits to the local community have not been demonstrated. Equally, the alleged harm to social cohesion claimed by the Council, although material, seems to me to be largely a matter judgement on the part of elected members and others in the local community, albeit that perception is seemingly informed by local knowledge and was previously shared by officers when a greater number of houses was proposed.
38. I have concluded that, in principle, the character and appearance of the area generally need not be unacceptably harmed by a carefully executed development of the appeal site. However, I am not satisfied on the basis of the information before me and the nature and apparent intentions of the application in respect of the cider press, to the extent that the latter are apparent at this time, that the proposed development would not inflict unacceptable harm on its setting, specifically, to the detriment of its significance.
39. Whether that harm is substantial or less than substantial would depend on specifics and while I accept that the balance of probability is that a solution could be identified that involves less than substantial harm, it would be harm nonetheless and that is a matter to which I am obliged to accord considerable importance and weight in any event. Given that context, I consider the future of this important heritage asset in its setting to be insufficiently resolved. A more positive and definitive approach is required. The deficiency of the proposal in that respect weighs heavily on the negative side of the balance of considerations in this case.
40. Moreover, I am clear that the proposal conflicts with the intentions of both the existing and emerging development plan concerning the location of new housing development and the protection of the countryside. To depart from such intentions without demonstrably good reason would harmfully undermine them. No sufficient reason has been demonstrated bearing in mind not only the intention of the Framework to boost housing supply, but also its wide-ranging intentions concerning the manner in which delivery should minimise harm including to heritage assets.

41. Insofar as policy MD2 of the emerging SAMDev may be accorded weight, it follows from my conclusions on the paucity of approach in respect of heritage assets, specifically in relation to the cider press, that the proposal would fail to accord with part 2. iii. That conflict weighs, to a degree, on the negative side of the balance, a degree which is enhanced by the consistency of that part of the policy with Framework intentions.
42. In overall conclusion, I am clear, for the reasons I have detailed, that the potentially adverse impact on heritage interests would significantly and demonstrably outweigh the potential benefits of this particular proposal as currently conceived and presented. Moreover, I do not consider in this instance that planning conditions would be adequate to the task of averting the potentially adverse impact, the magnitude of which cannot be sufficiently divined at planning application stage on the basis of what has been presented in the way of analysis, design and practical arrangements to secure the future of the cider press in a setting which retains its significance. The proposal does not therefore represent sustainable development. I have taken all other matters raised into account, but none are sufficient to alter the overall balance of my conclusion in this respect. I therefore conclude that the appeal should be dismissed.

Keith Manning

Inspector