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# Appeal Decision

Site visit made on 17 March 2015

**by Victoria Lucas-Gosnold LLB MCD MRTPI**

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

**Decision date: 16 April 2015**

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**Appeal Ref: APP/L3245/W/14/3000886**

**Jessamine Cottage, Kenley, Shrewsbury, SY5 6NS**

- 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 & Mrs P & L Wheeler against the decision of Shropshire Council.
  - The application Ref 14/03111/OUT, dated 8 July 2014, was refused by notice dated 22 September 2014.
  - The development proposed is 'erection of 1 detached bungalow to replace the existing café/shop'.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Mr & Mrs P & L Wheeler against Shropshire Council. This application will be the subject of a separate Decision.

## Procedural Matters

3. The original application to which this appeal relates was submitted in outline with all other matters except access reserved for consideration at a later date. I have determined this appeal on that basis.
4. I am aware of the appellants request for this appeal to be determined via a Hearing procedure. However, I consider that the issues raised in this appeal are straightforward and I have been able to deal with them on the basis of the information submitted by the parties. I am therefore satisfied that determining this appeal via the written representation procedure was appropriate in this case.

## Main Issues

5. The main issues are:
  - Whether the development proposed would be acceptable with regard to the principle of sustainable development; and the effect of the development proposed on protected species.

## Reasons

6. The appeal site forms part of the garden associated with Jessamine Cottage. The existing dwelling on the site is a large, detached cottage style dwelling and

it set within extensive grounds which the appellants have cultivated over time to form an attractive garden which is open to the public to view between May and August. There is a small, wooden clad detached café/shop on the site which the appellants use to sell refreshments and produce grown in the garden to visitors and is also available to pre-booked small parties. The café/shop building has tables and seating for 26 people.

7. The appeal proposal would see the construction of a detached bungalow in the approximate position of the existing café building, which would be removed were the appeal to succeed.

### *The Policy Framework*

8. For the purposes of the development plan, the appeal site is within the open countryside. Policy CS5 of the Shropshire Core Strategy (Adopted March 2011) (the 'CS') states that new development will be strictly controlled in accordance with national planning policies protecting the countryside. The policy goes on to state that development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic and community benefits. Policy CS6 of the CS sets out some general sustainable design and development principles to create sustainable places.
9. Both parties have also referred to emerging policies within the Council's emerging Site Allocations and Management of Development (SAMDev) Plan. I understand that the area in which the appeal site is located has not been identified as a community hub or cluster settlement and as such, the policies within the document would not support housing proposals in this location. Whilst that may be so, the SAMDev has not yet been subject to an independent Examination and, based on the information before me, there are significant and outstanding unresolved objections to the policies within it, particularly those relating to housing. I therefore attach limited weight to the policies referred to.
10. The National Planning Policy Framework (the 'Framework') is clear that the purpose of the planning system is to contribute to sustainable development<sup>1</sup> and that housing applications should be considered in this context<sup>2</sup>. Paragraph 55 of the Framework also states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. The paragraph then goes on to state that new isolated homes in the countryside should be avoided unless there are special circumstances. None of the circumstances listed within the paragraph are directly relevant to the appeal proposal before me.
11. The Council's general approach in seeking to ensure that new development in the countryside is delivered on appropriate sites where it would improve the sustainability of rural communities is therefore, when read as a whole, consistent with the Framework. There are three dimensions to sustainable development, namely economic, social and environmental factors, which I shall now go on to consider as part of my consideration of the main issue that I have

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<sup>1</sup> Paragraph 6

<sup>2</sup> Paragraph 49

identified. A statement of common ground between the main parties was also submitted with the appeal and I have taken this into account in coming to a view on the proposal.

#### *Whether an Isolated Dwelling*

12. There is some dispute between the parties as to whether or not the appeal site is isolated for the purposes of paragraph 55 of the Framework. There is no definition of 'isolated' within the Framework. I have therefore assessed this issue in relation to how the proposal would relate to other built development close to the site.
13. The appeal site is within the parish of Kenley. Although not within a defined settlement, the site is between the villages of Kenley, Church Preen and Hughley. It is approximately 5 miles from the market town of Much Wenlock. Kenley itself has no clearly defined village centre and consists of farmhouses, converted barns and detached dwellings which are scattered along a network of narrow country lanes. Individual or small groups of buildings are separated from other dwellings by several fields and often hidden from view from one another due to the narrow lanes, hedgerows and rolling topography of the area.
14. Whilst there are a small number of buildings close to the appeal site, including Jessamine Cottage itself and neighbouring dwellings further along the lane, the character of the area is that of a dispersed rural settlement which is defined by the rural landscape which surrounds it. Therefore even though these dwellings may be within a few hundred metres of one another, due to the intervening spacing and winding lanes between them, the appeal site does have an isolated feel in that there is little evidence of other built development visible.

#### *Access to services and facilities*

15. In terms of services and facilities in the local area, there is a primary school at Church Preen. The appellants have also referred to a church, a local community hall, a public house and a post office. There are therefore some basic services in the local area. However, access to them via walking or cycling would be via narrow, unlit country lanes with no pavements. Therefore even if these services are technically within walking distance of the appeal site, I consider that future occupants would not choose to walk or cycle to them as they would be unlikely to perceive the route as safe or convenient. This is particularly so in the case of the primary school, where it is doubtful that parents would choose to walk 900metres down narrow country lanes with children of primary school age. For these reasons, I consider that future occupants would choose to use the private car to access the limited services available in the local area.
16. Based on the information before me, there are no other shops (including grocery stores or banks), GP practices, dentists, secondary schools available in the local area. These are services which future occupants of the proposed dwelling would require access to in order to meet their day to day needs. In addition there is no mention of higher level services, such as leisure facilities (cinemas, restaurants or department stores) which future occupants would also be likely to desire access to.

17. I understand that there are deliveries of newspapers and dairy products in the local area. Although this may be a useful service, in itself it would be unlikely to meet the day to day needs of future occupants of the proposed dwelling. The appellant has also referred to the increased use of internet based services, which may reduce the reliance of future occupants on the private car. I accept that this may have the effect of reducing some car based trips, although it is doubtful whether it would remove the need entirely. For example, residents may choose to use internet banking but if they need to pay in a cheque they would still need to visit a branch. Similarly, whilst food shopping may be ordered and delivered via the internet, this would not entirely remove the need to visit shops entirely. For example, many people still choose to visit a physical shop to purchase clothes or shoes so as to check whether they fit. Additionally, essential services such as needing to visit the GP and dentist cannot be done online.
18. There appellants have also referred to a twice daily bus service which travels past the appeal site, although I have not been advised of the times or route of this service and whether or not it would provide a regular, convenient means of access for services and facilities in the local area. I therefore attach limited weight to this consideration.
19. Paragraph 55 of the Framework does state that where there are groups of smaller settlements, development in one village may support services in a village nearby. However, based on the information before me, there are limited services available in the local area which the proposal would support. Although Much Wenlock and Cressage may be easily accessible to residents in Kenley, this would be via the private car. Much Wenlock and Cressage are also physically separate from Kenley and as a market town and larger village, they perform different roles and functions to that of a small rural village with limited services.
20. For the reasons given above, I consider it likely that future occupants of the appeal proposal would be reliant on the private car in order to access day to day services and facilities in the surrounding area. This is a matter which does not weigh in favour of the proposal.

#### *Economic factors*

21. If the appeal were to succeed, then it may generate some employment opportunities for local builders which would be of economic benefit. The appellant states it would represent circa £100,000 of construction investment, and that every £1 spent on construction is said to generate a total of £2.84 in indirect economic investment, most of which is generated in the local area. However any benefit would be limited to the construction phase only and would therefore, by definition, be of finite duration.
22. The proposed dwelling would accommodate additional residents which may also support local businesses. The appellant states that new households boost an area's economic vitality, with average household expenditure of £4,875 per household on food, £7,575 per household on non-food and £4,040 per household on leisure goods and services. Although, as set out in my reasoning above, as there are very limited services and facilities close to the appeal site, any additional household expenditure would be unlikely to directly benefit the local area.

23. If the appeal were to succeed, the proposal would also be liable for a CIL payment that would provide financial contributions towards infrastructure opportunities.
24. Whilst there would therefore be some economic benefits associated with the appeal proposal, given the small scale of the appeal proposal these benefits would not be significant. The weight that I attached to this consideration is therefore limited.
25. On the other hand, the appeal proposal would result in the removal of the existing café/shop on the site and would also see the closure of the existing garden attraction. This would reduce the number of visitors travelling to the area by car (estimated to be approximately 750 trips per year), particularly during the summer months. It is often the case that rural tourist attractions necessitate visitors to travel there by the private car. However, the social and economic benefits associated with rural tourism often outweigh the environmental impact of visitors travelling to them via the private car.
26. The existing garden is clearly a small visitor attraction in its own right and will therefore generate some benefits for the area. For example, attracting visitors to the area and the sales generated through the café/shop would be of limited economic benefit. There may also be some social benefit for the local community who may use the café as a meeting place.
27. Although the closure of this facility may occur anyway regardless of the outcome of this appeal, this would result in a moderate dis-benefit to the local rural economy and, overall, this consideration does not therefore weigh in favour of the proposal.
28. Whilst the appellant may consider the commercial use of the garden to be out of character with the agricultural and residential uses which predominate in the local area, during the site visit I was able to observe that the grounds are attractively landscaped and the existing café/shop is a relatively low key structure that is not unduly visually obtrusive. Therefore in my view, the existing use is acceptable in terms of its effect on the character and appearance of the area. This is however a neutral consideration which does not weigh in favour of the proposal.

#### *Affordable and Local Needs Housing*

29. Policy CS5 of the CS lists certain types of development in the countryside that would improve rural sustainability. These include affordable housing / accommodation to meet a local need in accordance with national planning policies and policies CS11 and CS12. The policy goes on to state that with regard to these two types of development, applicants will be required to demonstrate the need and benefit for the development proposed. Development will be expected to take place primarily in recognisable named settlements or be linked to other development and business activity where this is appropriate.
30. I appreciate that the appellants may consider that a dwelling constructed as an affordable unit or to meet a specific local need may be more restrictive in terms of potential purchasers that would be eligible to buy the dwelling, should the appeal succeed. However, those are among the types of development

- described in the development plan as improving rural sustainability in the countryside.
31. For planning purposes, the terms 'affordable housing' and 'local need housing' have specific meanings. Annex 2 of the Framework defines affordable housing as 'Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market.' There is no mechanism before me to suggest that this type of development is proposed by the appeal scheme before me.
  32. In terms of local needs housing, policy CS5 refers to the requirement to demonstrate the need and the benefit for the development proposed. The appellants have drawn my attention to their personal circumstances. Specifically, that they are committed members of the local community, being active in various parish and community groups, the local village hall committee and the local meals on wheels.
  33. The appellants also wish to construct a future proof bungalow, designed for adaptation for later life needs, in order for them to live in and remain part of the community during their retirement. I understand that they have family living elsewhere and the bungalow would provide sufficient space for live-in carers in later years. The Government's social care policy has also been referred to, which supports long term solutions that enable the elderly to continue to remain in their local community in their own home. The appeal proposal has been designed to meet this aim. Additionally, several letters of support have been submitted from members of the community in favour of the proposal.
  34. The Council officer's report has considered this issue and notes that the appellants, due to their local connections, may well meet the criteria for local need housing. However, local needs housing is not what has been applied for. Rather, this appeal proposal is for a single dwelling which would be for sale on the open market. If the appeal were to succeed, the appellants would therefore be entitled to sell the dwelling proposed and there is no mechanism before me to ensure that the resultant dwelling would remain available to meet a local need in the area.
  35. Therefore, whilst I acknowledge the personal circumstances of the appellants and appreciate their intentions and wishes to be able to remain living within their community, I attach limited weight to this consideration.
  36. In relation to new market housing development, policy CS11 of the Council's Core Strategy requires appropriate contributions to the provision of local needs affordable housing. The Council's 'Type and Affordability of Housing' Supplementary Planning Document (SPD) (Adopted 12 September 2012) sets out the Council's detailed approach in this regard. As this appeal proposal would be for a single, open market dwelling policy CS11 and the SPD therefore apply. The contribution that this appeal proposal would make in increasing the provision of affordable housing in the local area via a financial contribution would therefore be a positive factor that would weigh in favour of the development proposed.
  37. However, National Planning Guidance (the 'NPG') was recently updated relating to this issue. Specifically, the NPG states that National Planning Policy defines specific circumstances where contributions for affordable housing should not be

sought from small scale and self-build development. The NPG goes on to list several criteria which include that contributions should not be sought from developments of 10 units or less<sup>3</sup>.

38. There is therefore a conflict in this regard between the Council's approach, as set out in policy CS11 and the SPD, and national policy. Indeed, the appellant has specifically drawn this matter to my attention. Whilst this issue in isolation has not been determinative in my consideration of this appeal, if the s.106 financial contribution for affordable housing that would be required by the development plan is discounted, then this is no longer a factor which would weigh in favour of the development proposed.

#### *Housing Land Supply*

39. There is some dispute between the main parties as to whether or not the Council is able to demonstrate a five year supply of housing land, in line with the requirements of the Framework. However, the Council officer's report acknowledges that having a five year supply of housing land is a minimum requirement and the Framework's aim of significantly boosting housing supply remains a material consideration.
40. The appeal proposal would result in a net increase of one additional dwelling which would boost the supply of housing in the local area. I must therefore have regard to paragraphs 47- 49 of the Framework in my determination of this appeal. In particular, paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. I also accept that there is nothing in the Framework which suggests that a five year supply of housing land, with a 20% buffer should be considered to be a maximum figure. This is a matter which does weigh in favour of the appeal proposal.
41. However, even if were to accept the appellant's case regarding the housing land supply situation, I consider that the contribution this proposal would make towards addressing any undersupply of housing in the area would be limited due to the small scale of the development proposed.

#### *Existing use of the appeal site*

42. The appellant has referred to the history of the site, including that it was used as a small touring caravan site during the 1980s and 90s. It is also stated that the site is used as a commercial garden. Clearly, members of the public do pay to visit the garden during the summer months. Visitors to the garden, along with passers-by outside the summer months, also visit the small café/shop to purchase refreshments or produce grown in the garden. On that basis, the appellant states that the garden together with the café/shop benefit from an established commercial use which has been in continuous use for more than 10 years. During the course of the appeal, the appellant has submitted an application for a Certificate of Lawful Use (CLU) for the appeal site to the Council which is pending consideration.
43. Clearly, in my determination of this appeal, I must have regard to the existing situation which I have described above. The Framework's definition of previously developed land (PDL) (contained within Annex 2) does specifically exclude private residential gardens from the definition. However, whilst I have

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<sup>3</sup> Paragraph: 012 Reference ID: 23b-012-20150326

been provided with a copy of the CLU application, it is not clear from the information before me which parts of the site may be affected by that application. For example, no map has been provided showing the extent of any commercial activities within the site.

44. In any event, even if I were to conclude that elements of the site may comprise pdl, there is nothing in the Framework which specifically excludes the development of greenfield land. Rather, this would be a neutral consideration where a lack of harm does not weigh in favour of the development proposed.
45. Moreover, even if there is an existing commercial use on the site, it is not residential (with the exception of Jessamine Cottage itself). Therefore even if the LDC were to be granted for an established commercial use, planning permission for additional residential development would still be required in any event. Therefore whilst I have had regard to the existing situation, I attach limited weight to this consideration.

#### *Biodiversity and Nature Conservation*

46. The appeal site is part of a large garden and there are no heritage, cultural or ecological designations that apply. The site is also outside of the Shropshire Hills Area of Outstanding Natural Beauty. An ecological survey and report was carried out on 27 November 2014. I note that the report submitted with the appeal states that no evidence of protected species (specifically Great Crested Newts) was found on the appeal site. Therefore the report does indicate that the proposal would not conflict with policy CS17 of the CS which states, among other things, that development will identify, protect, enhance, expand and connect Shropshire's environmental assets.
47. However the survey was undertaken after the date of the Council's formal decision and the report was submitted with the appeal documents. I do have some concerns that this additional technical information was prepared and submitted after the Council had determined the application. The Council may not have had the opportunity to undertake a proper consultation exercise on the ecological document and its findings. This is particularly so given that the effect of the development proposed on the natural environment or protected species was one of the Council's reasons for refusal on the basis that a lack of information had been provided on this matter.

#### *Access and Highways*

48. The proposed dwelling would share the existing access used by Jessamine Cottage which opens out onto the country lane (Hughley Road) that runs along the front of the site. Based on the information before me, I am satisfied that safe and suitable access could be achieved for the dwelling proposed (subject to conditions) and the proposal would therefore be acceptable in highway safety terms.

#### *Flood risk and drainage*

49. Based on the information before me, I am satisfied that the proposal would be acceptable in terms of flood risk and drainage, subject to conditions requiring further details to be provided as part of any reserved matters application (were the appeal to succeed).



*Other schemes referred to*

50. The appellant has drawn my attention to several other schemes for housing which have been allowed by the Council. In particular, several within Kenley itself which I visited during the site visit.
51. Several of the schemes referred to relate specifically to affordable housing proposals<sup>4</sup>. The provision of affordable housing is a specific type of development permitted under policy CS5 of the Council's CS. As set out in my reasoning above, this appeal scheme would be for an open market dwelling, not an affordable housing unit. The appeal proposal before me is therefore quite different to these schemes in that other considerations, including the social benefits of providing additional affordable housing, would have been relevant.
52. Other schemes identified relate to the conversion of agricultural barns to housing either via planning permission or prior approval under permitted development rights<sup>5</sup>. However, all these schemes relate to the re-use of existing rural buildings which is a specific special circumstance to avoiding new isolated homes in the countryside listed both within policy CS5 of the CS and paragraph 55 of the Framework. This appeal proposal would see the construction of a new dwelling and is therefore different to those schemes referred to. Additionally permitted development rights relating to the conversion of agricultural buildings to dwellings are not applicable to the appeal scheme.
53. Other schemes referred to are not within the local area close to the appeal site and therefore different considerations may well have applied. For example, in the case of 14/00629/OUT the appeal site was close to a range of basic services including a village shop and planning permission had also previously been granted for an affordable house and open market barn conversion at that appeal site. In the case of 14/0338/OUT, the Council concluded that the application site was close to the village of Dorrington (1.8 km) where a greater range of services is available. In the case of 14/01951/OUT, the application site was located in Exfords Green which, along with other settlements close by, have been identified a proposed community cluster where certain types of additional development would be acceptable. There are also a range of services and facilities within 1 mile of the site, including a shop. In both these cases, it would therefore seem that the schemes were closer to a range of services and facilities than would be the case with the dwelling proposed in this appeal.
54. I appreciate that the appellant may feel that the Council's approach in assessing the relative sustainability of Kenley may have been applied differently when assessing the merits of some of these other schemes. However, based on the information before me, the relevant Council officer's reports for those schemes refer specifically to the fact that those schemes were either for affordable dwellings or the conversion of existing buildings and that is considered as part of the overall planning balance.
55. Therefore, for the reasons I have set out above, I consider that the schemes referred to are not sufficiently similar to the appeal proposal before me. I

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<sup>4</sup>Including 12/02231/FUL; 12/02231/FUL; 12/02231/FUL

<sup>5</sup> Including 14/02822/PMBPA; 14/03058/PMBPA; 14/02551/PMBPA; 13/04208/FUL; 13/02800/FUL

therefore attach limited weight to this consideration and have assessed this appeal proposal on the basis of its own merits.

56. The appellant has also referred to a High Court decision<sup>6</sup> relating to the interpretation of policy CS6 of the CS. Whilst I note that paragraph 28 does refer to a forceful argument being presented that it relates to the design of infrastructure, I also note that no conclusion was reached on this matter. This is therefore inconclusive and I attach limited weight to this consideration.

### *Overall Balance*

57. In coming to a view on the proposal I am aware that the Framework established a presumption in favour of sustainable development, and the sustainability benefits of the proposal cited by the appellants are recognised in this regard. Specifically, I have found limited weight in favour of the proposal regarding the provision of one additional dwelling and some economic benefits. I have also found that there would be several neutral factors where a lack of harm does not weigh in favour of the appeal proposal, including highways and access and flood risk and drainage. I have also acknowledged the personal circumstances of the appellants and the existing use of the appeal site.
58. However the Framework does not adopt a narrow definition of sustainable development, with paragraph 55 stating that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The proposed dwelling would be in an isolated location with a limited range of services in the local area. As such, I have found that future occupants would be likely to be reliant on the private car in order to access a range of facilities and services necessary to meet their day to day needs. One of the core planning principles of the Framework states, among other things, that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling (paragraph 17).
59. Given the circumstances I have described, the limited benefits in this case do not outweigh the harm that I have found would be a consequence of the development proposed. The harm is not outweighed by other considerations and would therefore be contrary to policies CS5 and CS11 of the CS (as set out in my decision above) and paragraphs 17 and 55 of the Framework.
60. Given the circumstances I have described, in this case, the sustainability benefits do not outweigh the harm that I have found would be a consequence of the development proposed. The harm is not outweighed by other considerations and would therefore be contrary to policies CS5 and CS11 of the CS (as set out in my decision above) and paragraphs 17 and 55 of the Framework.
61. With regard to the effect of the proposal on protected species, although the ecological report does indicate that the proposal would not conflict with policy CS17 of the CS, as the report was prepared and submitted following the Council's formal decision, this is a matter on which I would have sought further information from the parties had the proposal been acceptable in other regards.

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<sup>6</sup> Case Ref (2012) EWHC 3642

### **Other Matters**

62. I note the comments of the appellants regarding the conduct of the Council both during their determination of the original application and the appeal process itself. However, I have determined this appeal only on the basis of the planning merits of the case before me. Issues relevant to the application for costs have been addressed in the separate costs Decision.

### **Conclusion**

63. For the reasons given above, I conclude that the appeal should be dismissed.

*Victoria Lucas-Gosnold*

INSPECTOR