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# Appeal Decision

Hearing held on 23 January 2014

Site visit made on 7 February 2014

**by I Radcliffe BSc(Hons) MCIEH DMS**

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

**Decision date: 11 April 2014**

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**Appeal Ref: APP/L3245/A/13/2204719**

**Land off Mill Street, Wem, Shropshire SY4 5EX**

- 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 The Millhouse Group against the decision of Shropshire Council.
  - The application Ref 12/05051/FUL, dated 3 December 2012, was refused by notice dated 22 August 2013.
  - The development proposed is Wem Gateway – erection of three storey terraced block comprising 9 town houses and 13 apartments with associated external works including formation of vehicular access, estate road and car parking.
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## Decision

1. The appeal is dismissed.

## Procedural matters

2. It was agreed at the hearing that other than in relation to two errors the appeal concerned the plans listed in section 4.1 of the appellant's appeal statement. The errors related to plans 1188 D32 and 1188 D39. It is common ground that the Council determined the application on the basis of revision C versions of both plans. My consideration of the case and my decision is therefore based on the list of plans in the appellant's statement subject to the two amendments described. A planning obligation has also been submitted which I have taken into account.
3. Planning Practice Guidance was issued on 6 March 2014. The content of the guidance has been considered, but in light of the facts in this case it does not alter my conclusions in relation to this appeal.

## Application for costs

4. At the Hearing an application for costs was made by The Millhouse Group against Shropshire Council. This application is the subject of a separate Decision.

## Main Issues

5. The main issues in this appeal are;
  - the effect of the proposed development on the character and appearance of the Wem Conservation Area and the setting of Wem Mill, a grade II listed building;

- whether the proposal would comply with the spatial strategy of the National Planning Policy Framework (the Framework) and the Core Strategy in terms of minimising flood risk;
- the effect of the proposal on the living conditions of the occupiers of Wem Mill, with regard to outlook, natural light and privacy; and,
- the effect of the proposed development on biodiversity.

## **Reasons**

### *Development Plan*

6. The development plan includes the saved policies of the North Shropshire Local Plan 2000 to 2011 and the Shropshire Core Strategy 2011. The appeal site is located within the settlement boundary of Wem. Saved policy H5 of the Local Plan and policy CS1 of the Core Strategy in principle supports new housing development in the settlement.

### *Character and appearance*

7. In the exercise of planning functions, the statutory test in relation to Conservation Areas is that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The objectives of policy CS6 of the Core Strategy are consistent with this test.
8. The Framework is a more recent document than the Core Strategy. Paragraph 126 of the Framework advises, amongst other matters, that the conservation of the historic environment can bring wide social, cultural, economic and environmental benefits. It also identifies that heritage assets are irreplaceable resources. Paragraph 132 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, such as a Conservation Area, great weight should be given to the asset's conservation.
9. The Wem Conservation Area Appraisal is a useful document. However, as it is in draft form I can only attach some weight to it. I have therefore carried out my own assessment in order to identify the special character of the Conservation Area. This assessment has been informed by the Appraisal, hearing, site visit and the documents and written submission received.
10. The Conservation Area is focused on the linear development of buildings along the main roads that pass through the centre of the town and includes some development in depth. Development closest to the town centre is predominantly characterised by two and three storey buildings set on the back edge of pavements occupying the full width of narrow plots. As a result, the central part of the Conservation Area has a fine urban grain.
11. In contrast, the appeal site is located at the southern end of the Conservation Area where buildings are typically set back from the pavement and are generally more spaciouly set. Wem Mill, a Grade II listed building on the opposite side of the road to the appeal site, and Mill House are exceptions as respectively their main and flank elevations are positioned against the highway. As a result, these buildings partially enclose Mill Street in the vicinity of the appeal site.

12. Mill House is an attractive large detached dwelling that appears to date from a similar era as the Mill. The appeal site wraps around three sides of the property. The 1874 Ordnance Survey Map shows buildings with a small footprint within the appeal site to the west of the position of Mill House. The last buildings on the site were demolished many years ago and the occasional low outcrops of brickwork that remain have blended into the trees and vegetation on the site. As a consequence, I find that the appeal site no longer constitutes previously developed land.
13. At present when approaching from the south towards the town centre, or from the west along the footpath along the River Roden, Wem Mill, Mill House and the open verdant character of the appeal site onto which these buildings look forms an attractive and important part of the street scene. These features denote the change from the late twentieth century suburban development along Mill Street to the south to the historic part of the town to the north. The Summary Character Appraisal attached to the appellant's Urban Design Study recognises that the Mill together with land to its rear and the appeal site was under utilised and under maintained. However, at the time that the Character Appraisal was written the Mill had not been extended and an access road and car parking created to its rear. In my view, the bringing back into use of Wem Mill with new development confined to its rear represents the sort of sensitive enhancements to this gateway recommended by the Appraisal. In contrast, the proposed development would result in a tall crescent linked to a tall apartment building on open land facing the Mill that would cover almost the whole length of the appeal site in built development.
14. The apartment building would be set close to the back edge of the pavement on Mill Street and would be one storey shorter in height. The setback and slight reduction in scale of this part of the scheme would be insufficient to materially reduce the overall scale of the development. The resulting massing effect of the crescent and apartment building would unduly enclose Mill Street and create a dense urban environment of tall buildings at the southern end of the Conservation Area. Apart from Wem Mill (whose extension is far more compact and confined to the rear) and a discrete new building set well back from the road on its northern side, this part of the Conservation Area is not characterised by such development. Whilst I recognise that in views from the north Mill House would serve to screen the development until close by this would not overcome the detrimental effects in views from the south or from the public footpath along the river to the west. As a result, the proposed development would fail to preserve the character or appearance of the Conservation Area.
15. The architectural detail and external materials proposed would provide visual interest and allow the buildings to complement the appearance of the Mill and other nearby buildings in the Conservation Area. Nevertheless, this would be insufficient to overcome the significant harm to the Conservation Area as a result of the scale, extent and massing effect of the proposed buildings. The proposal in not preserving or enhancing the character or appearance of the Conservation Area would therefore fail the statutory test and would be contrary to policy CS6 of the Core Strategy.

*Listed buildings*

16. In the exercise of planning functions, the statutory test in relation to a listed building is that special regard shall be had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.
17. The proposed development would be on the opposite side of the road to the Wem Mill. However, the open verdant character of the appeal site results in the Mill having a tranquil setting in important public views from the south and west. As I have earlier described the scale of the proposed development of the site would radically alter this and in views from these directions the setting of the Mill would become densely developed and urban. In views from the footpath along the River Roden to the west Wem Mill would also be largely obscured from view by the proposed development. I recognise that the design of the apartment building close to the Mill has evolved to become slightly subservient to it. However, this does not alter my view that the scale and extent of the proposed development as a whole would be insensitive to the Mill and fail to preserve its setting.
18. The bridge to the north of Wem Mill has a single segmental arch and dates from the early nineteenth century. It is also Grade II listed. The proposed development would be sufficiently distant from this bridge for its setting not to be adversely affected by the proposed scheme.
19. Taking these matters into account, I therefore conclude that whilst the setting of Wem Mill would be demonstrably harmed by the proposed development the setting of the Bridge would be preserved. As a result, the proposed development would be contrary to policy CS6 of the Core Strategy and would fail the general statutory duty in the exercise of planning functions with regard to listed buildings.

*Conclusion on the first main issue*

20. The harm that would be caused to the significance of the Conservation Area as a whole and to the setting of Wem Mill, although significant, on balance, would be less than substantial. In such circumstances paragraph 134 of the Framework advises that the harm that would be caused should be weighed against the public benefits of the proposal. In accordance with the statutory duties described I attach considerable importance and weight to the harm that would be caused to Wem Conservation Area and the setting of Wem Mill. On the other side of the balance, the public benefits of providing 22 additional dwellings, including some affordable dwellings, in helping address housing need in a location with good access to services and public transport, are of noteworthy weight.
21. Overall, I conclude that the public benefits of the proposal do not outweigh the harm that would be caused to Wem Conservation Area and the setting of Wem Mill. The proposed development would therefore also be contrary to the Framework.

### *Flooding*

22. The main source of flood risk to the site comes from the River Roden and the Back Brook. These water courses respectively enclose the northern and southern sides of the proposed housing development.
23. Policy CS18 of the Core Strategy states that, amongst other matters, planning applications should be in accordance with the tests contained within PPS25 and should have regard to the Strategic Flood Risk Assessment (SFRA) for the county. Whilst PPS25 was replaced by the Framework in 2012 its tests were incorporated into the new document. Policy CS18 is therefore consistent with the Framework.
24. The Framework is an important material consideration. Paragraph 101 of the Framework states that development should not be permitted if the Sequential Test demonstrates that there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Sequential Test should therefore be applied to proposals for new development.
25. The starting point for applying the Sequential Test is the Strategic Flood Risk Assessment (SFRA). The SFRA for the area places the appeal site in Flood Zone 3. This is the zone with a high probability (1 in 100 or greater annual probability of river flooding). In terms of defining the area to which the Sequential Test should apply I consider that this should be the area of the District rather than individual settlements. This is because this is the area over which housing land supply is normally considered. It was agreed at the hearing that there are housing sites currently available for more than the twenty two dwellings proposed in Flood Zones 1 and 2 within the area of the local authority. As a consequence, the housing proposed could be located in a zone with a lower probability of flooding. Development of the appeal site for housing therefore would be contrary to the strategy of the Framework which directs development away from areas at highest flood risk.
26. If it had not been possible for the housing proposed to be located in a zone with a lower probability of flooding the Exception Test defined in paragraph 102 of the Framework would have been relevant. Subject to consideration of, amongst other matters, the wider sustainability benefits to the community of the development, flood risk and safety the Exception Test can support housing within Flood Zone 3. To inform the Exception Test a site specific flood risk assessment is required.
27. The appellant has carried out a site specific flood risk assessment for the site. Based upon this work the Environment Agency consider that other than in relation to the car park the site would be safe from flooding. Nevertheless, as the Agency state in their letter of 27 February 2013 the Sequential Test should be applied to the site to determine if there are other available sites with a lower probability of flooding. As it is agreed that such sites do exist the proposed development would be contrary to the Framework.
28. For all of these reasons the proposed development would fail to minimise flood risk by locating new housing development in an area of higher flood risk contrary to the Sequential Test. As a consequence, it would be contrary to policy CS18 of the Core Strategy and the Framework.

### *Living conditions*

29. The proposed apartment building and Wem Mill would directly face each other across Mill Street. Within the western elevation of Wem Mill are full height windows to living rooms that provide the primary outlook to these rooms and the sole windows to bedrooms. At present these rooms enjoy an open outlook across the appeal site. At 7m in height to eaves level the apartment building would be tall and in comparison the horizontal separation distance between Wem Mill and the building of 11m to 12m would be small. The disparity between height and separation would be most acute within the ground floor apartments of the Mill. As a result, the proposed apartment building would have an overbearing and enclosing affect on the outlook experienced by occupiers within the two ground floor apartments. On the upper floors of the Mill the proposed building would not appear as tall and so the outlook experienced would not be materially harmed.
30. Reference has been made to similar separation distances between the main elevations of houses being found elsewhere. However, in my assessment whilst such a gap would be acceptable if the buildings are no taller than two storeys, if the buildings are three storeys tall, as with the proposed apartment building, the affect on outlook would be unacceptable.
31. In terms of sunlight, it is likely that the proposed development would overshadow the western elevation of Wem Mill so that in the latter part of the day sunlight would be prevent from entering all of the windows in this elevation. In contrast, in terms of daylight, the apartment building would be set sufficiently far away for levels within the Mill not to be adversely affected.
32. In relation to privacy, the elevations of the buildings would be sufficiently close for overlooking to occur between habitable rooms on each level. However, with the steps that occupiers of the Mill could take to protect their privacy, such as the use of net curtains, I find that acceptable levels of privacy would be provided.
33. Notwithstanding my favourable findings in relation to the affect of the proposed development on daylight and privacy within Wem Mill this does not overcome the demonstrable harm that would be caused to outlook and sunlight levels. The proposed development would therefore be contrary to policy CS6 of the Core Strategy which, amongst other matters, requires that residential amenity is safeguarded. It would also be contrary to a core planning principle of the Framework which requires a good standard of amenity for all existing occupants of buildings.

### *Biodiversity*

34. The appeal site falls within part of the Shropshire Environmental Network (SEN). It forms part of the corridor linking the core areas of the SEN to the east and west of Wem. Such corridors allow species to move between the core areas to feed, disperse and migrate. Paragraphs 109, 114 and 117 of the Framework encourage the establishment of such networks and promote their protection and preservation. Policy CS17 of the Core Strategy only allows development that does not have a significant adverse impact on the SEN and does not create barriers or severs links between dependant sites. As a result, policy CS17 is consistent with the Framework.

35. The appeal site occupies almost the full width of the corridor and includes the Back Brook, both its banks and the northern side of the River Roden. The proposed development would clear the existing trees from most of the site and occupy the land in between the two water courses. The majority of this land would be covered by buildings and hard standing.
36. To the east of the appeal site as far as the railway bridge, Wem Mill and suburban housing narrow the SEN corridor to the width of the watercourses and their banks. The rear gardens to the houses along the water courses provide some scope for wildlife migration but their manicured condition limits this potential. As a consequence, whilst the corridor to the east of the appeal site has not been severed it is under pressure.
37. With rear gardens separating the proposed houses from the Back Brook, light and other forms of disturbance would create a less than ideal environment for the movement of wildlife along the water course and land along its northern bank. The loss of vegetation, increased activity and lighting associated with dwellings on an access road along the northern bank of the River Roden would have a similar effect. However, the proposed development would not materially reduce the width of the wildlife corridors further than has happened to the east of the appeal site. Furthermore, although the quality of the environment for the movement of wildlife would be lessened it would not be prevented, especially during the quieter nocturnal hours.
38. Taking all these matters into account, I therefore conclude that whilst the proposed development would result in some adverse effects on the wildlife corridor a barrier to movement would not be created and the corridor would not be severed. The proposed development would therefore comply with the objectives of policy CS17 of the Core Strategy and the Framework.

## **Other matters**

### *Housing land supply and sustainable development*

39. It was agreed at the hearing that the Council had less than 5 years housing land supply. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered to be up to date in such situations and that the presumption in favour of sustainable development should apply. In such circumstances paragraph 14 of the Framework advises that planning permission should be granted unless either of the following circumstances apply. Firstly, the adverse impacts of doing so clearly outweigh the benefits when assessed against the policies in the Framework as a whole. Secondly, specific policies in the Framework indicate development should be restricted.
40. Whilst the policies governing the supply of residential development may be out of date it is common ground that as the site is located within Wem it is suitable in principle for residential redevelopment.
41. In relation to sustainability, the appeal site is located within convenient walking distance of the town centre which has a range of shops, services and facilities. It also has good access to public transport. The housing scheme in helping to address housing need and providing affordable housing also has social benefits. New development also supports economic growth during construction.

Afterwards the increase in population of Wem would boost the spending power of the local economy. However, environmentally the appeal scheme would fail to preserve the character or appearance of the Conservation Area and Wem Mill which are designated heritage assets. It would also fail to minimise flood risk by locating new housing development in an area of higher flood risk, contrary to a specific policy of the Framework. Finally, it would unacceptably harm the living conditions of the occupiers of Wem Mill. As a consequence, the scheme would not constitute sustainable development within the meaning of the Framework.

### **Overall conclusions**

42. Taking all these matters into account, the site is in a sustainable location and the development would have social and economic benefits. There would also be no material harm to biodiversity. However, I consider that any presumption in favour of development is significantly and demonstrably outweighed by the harm that would be caused to designated heritage assets, living conditions and the failure to minimise flood risk.
43. In accordance with the Core Strategy residential developments in the County are required to contribute towards affordable housing. A scheme to mitigate the effects of the development on Great Crested Newts is also sought. At the request of the Council the appellant has submitted a properly completed section 106 agreement to secure compliance with these matters. The tests in paragraph 204 of the Framework and regulation 122 of the Community Infrastructure Levy Regulations 2010 apply to planning obligations. However, in this case as the appeal is to be dismissed on its substantive merits, and the terms of the obligation are not in dispute, it is not necessary to assess the agreement against the requirements of regulation 122 or paragraph 204.
44. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

*Ian Radcliffe*

Inspector



## **APPEARANCES**

### FOR THE APPELLANT:

Mr Collinge	Jake Collinge Planning Consultancy
Mr Wright	Bleazard & Galletta LLP
Mr Haslam	Staffordshire Ecological Services Limited

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Farmer	Shropshire Council
Dr Swales	Shropshire Council

### INTERESTED PERSONS:

Councillor Dee	Shropshire Council and Wem Town Council
Mrs Carson	local resident
Mr Edwards	local resident
Mr Hollinshead	local resident
Mr Rogers	local resident

### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Address list for the letter of notification detailing the time, date and location of the hearing.
- 2 E-mail from English Heritage to the appellant (30 September 2010).
- 3 Listing descriptions for the Grade II Wem Mill and Grade II bridge north of Wem Mill.
- 4 Supplementary Planning Document 'Type and Affordability of Housing'.
- 5 Shropshire Five Year Housing Land Supply Statement.
- 6 Wem Conservation Area Appraisal.
- 7 Draft section 106 agreement.

### PLANS SUBMITTED AT THE HEARING

- A Elevations Plan ref 1188 D32 Rev C.
- B Typical Details ref D39 Rev C.
- C Wem Mill floor plan ref AP06131/10 R.
- D Wem Mill floor plan ref AP06131/410.
- E Strategic Flood Risk Assessment Map of the appeal site.