
Appeal Decision

Site visit made on 31 March 2015

by C Sproule BSc MSc MSc MRTPI MIEnvSc CEnv

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

Decision date: 30 April 2015

Appeal Ref: APP/L3245/W/14/3001315

The Parkes, The Knowle, Clee Hill, Ludlow SY8 3NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Anthony Gardener against Shropshire Council.
 - The application Ref 14/03645/FUL, is dated 11 August 2014.
 - The development proposed is demolition of existing farm building and erection of a two bedroom detached affordable home.
-

Decision

1. The appeal is dismissed and planning permission for demolition of existing farm building and erection of a two bedroom detached affordable home is refused.

Main Issues

2. These reflect matters raised in representations in regard to the application and are: a) whether the proposed development would conserve the landscape and scenic beauty of the Shropshire Hills Area of Outstanding Natural Beauty (AONB); b) whether the proposed development would be an affordable home to meet a local need; c) the effect of the development proposed on protected species; and, d) the effect of the development proposed on the living conditions of residents of dwellings on Lion Lane in relation to overlooking and loss of privacy.

Reasons

Area of Outstanding Natural Beauty (AONB)

3. The appeal site lies within the AONB. Paragraph 14 of the National Planning Policy Framework ('the Framework') confirms the presumption in favour of sustainable development to be at the heart of the guidance. For decision-taking, the paragraph notes the presumption to mean: approving development proposals that accord with the development plan without delay; and, where the development plan is absent silent or out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies of the Framework indicate that development should be restricted. Footnote 9 of the Framework confirms the 'specific' policies to include those relating to AONBs.

4. Framework paragraph 115 states that great weight should be attached to conserving landscape and scenic beauty in AONBs, which along with National Parks have the highest status of protection in relation to landscape scenic beauty. It also confirms that the conservation of wildlife and cultural heritage are important considerations in an AONB.
5. Policy CS17 of the Shropshire Local Development Framework: Adopted Core Strategy – March 2011 (CS) requires development to identify, protect, enhance, expand and connect Shropshire’s environmental assets to create a multifunctional network of natural and historic resources. It seeks all development to contribute to local distinctiveness, having regard to matters that include landscape, biodiversity and heritage assets.
6. CS policy CS5 states that new development will be strictly controlled in accordance with national planning policies protecting the countryside (and Green Belt). On appropriate sites that maintain and enhance countryside vitality and character, the policy is permissive of development that includes dwellings to house essential countryside workers and other affordable housing / accommodation to meet a local need in accordance with CS policy 11 (and CS12).
7. Clee Hill provides panoramic views of and from the hills around it and across the landscape to the south. The AONB landscape around Clee Hill clearly communicates the intrinsic character and beauty of this countryside, which includes occasional dispersed dwellings and pockets of development, along with views toward distant larger settlements.
8. The Knowle is in the near mid-distance when views are taken southward from Clee Hill. Close views across the appeal site can be taken from locations within The Knowle, which is an area with development that is somewhat scattered, and principally to the east of the B4214. The B4214 runs southwards from Clee Hill. The Parkes is accessed from Lion Lane, and forms part of the cluster of development around its junction with the B4214.
9. The appeal site is part of a field that is next to The Parkes. Unlike the set back position of The Parkes, the appeal proposal would be much closer to Lion Lane. However, it would not have the roadside frontage location of the building that it would replace. That building is of some age and by its materials, form and positioning contributes to the rural character of The Knowle and the wider area.
10. The new dwelling would be within a plot that includes the area of the existing building and adjacent land within the existing field. It would have residential amenity space on all four sides. The scale of the amenity space would be proportionate to the proposed dwelling and nearby residential amenity spaces, and its orientation along the edge of the highway would reduce the depth of field area required to provide it. These factors would reflect the loose-knit character of the settlement that it would lie within.
11. Even so and despite the proposed replacement of an existing roadside building, the development would erode the rural character of the area, its natural beauty and the opportunities to enjoy it in aspects from and to Lion Lane. It would do so by the increased scale of the plot, the location of the dwelling within it and the residential character that reasonably would be expected to develop within the associated amenity space.

12. In these respects the proposal would erode the landscape and scenic beauty of the AONB, and conflicts with CS policy CS17. This is reflected in the lack of support for market housing in this location under CS policy CS5. However, the proposed dwelling is intended to be an affordable home to meet an identified local need.

Affordable Homes

13. CS policy CS11 addresses type and affordability of housing and seeks to meet Shropshire's diverse housing needs to create mixed, balanced and inclusive communities. In the first five years of the plan period, it seeks to provide 33% local needs affordable housing from all sources. It is also permissive, subject to certain criteria being met, of exception schemes in recognisable named settlements. The Council's appeal statement confirms that the proposed dwelling would be within a recognisable named settlement.
14. The explanation to the policy highlights that further detail, especially in regard to affordable housing provision, would be provided within a Supplementary Planning Document. Section 5 of the *Type and Affordability of Housing Supplementary Planning Document (SPD)*, adopted 12 September 2012, addresses *Affordable Homes for local people: exception sites* with paragraphs from 5.10 onward providing guidance in relation to *Local needs for Single Plot exception sites ("Build Your Own" Scheme)*.
15. The applicant lives at The Parkes with his extended family and has medical conditions that require level and wheelchair access. He wishes to remain in this area, where he has spent most of his life. The appeal scheme would also enable Mr Gardener to remain close to his family and receive care from them.
16. Included with the appeal documentation is a letter from the Council's Rural Housing Enabler, dated 28 July 2014. It states that an affordable housing need and strong local connections to the area have been demonstrated, and therefore, the appellant qualifies for the 'build your own' affordable housing scheme.
17. This reflects the associated internal consultation response on the application, which highlights that: the requirements of the Council's SPD on building your own affordable home had been met; the dwelling would have a maximum size of 100m²; and, it would be subject to a section 106 Agreement prescribing local occupancy criteria, limiting size and restricting potential future resale value. In addition: the existing dwelling at The Parkes is occupied by a large family and the proposed dwelling would provide Mr Gardener with his own home in close proximity to the main dwelling; the appellant's doctor has supported the proposal to meet his medical needs; Mr Gardener has lived in the locality for over 5 years; he is employed in the local area; he is over 55 and has a close family member nearby; his family provide a degree of support for him; and, there is a lack of suitable alternative market housing in the locality. There is no evidence in this case that demonstrates otherwise.
18. The design and access statement notes that a section 106 agreement would address the provision of an affordable home, and the letter from the Council's Rural Housing Enabler noted that a draft template for the section 106 agreement was enclosed. SPD paragraphs from 5.32 onward indicate the role

of a planning obligation for a home of the type applied for.¹ However, no planning obligation accompanies the appeal to ensure that the dwelling would remain as an affordable home for local needs in perpetuity.²

19. Planning Practice Guidance indicates that a condition requiring that a planning obligation be entered into, should only be used in exceptional circumstances in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.³ That is not the situation here.
20. The appellant may be aware of the likely heads or terms or principal terms for a planning obligation that would be sought to meet adopted planning policy in regard to residential development in this location. Nevertheless, Planning Practice Guidance notes that such a condition is unlikely to pass the test of enforceability.⁴ An agreement or unilateral undertaking are normally entered into voluntarily, and the use of a condition would not be appropriate in this instance. Accordingly, by failing to ensure the proposed development would be an affordable home for local needs within the context of adopted local (and relevant national) planning policy, the appeal scheme conflicts with CS policy CS11 and the SPD.

Protected Species

21. The application is the subject of a consultation response from Shropshire Council's Assistant Biodiversity Officer & Planning Ecologist. It highlights that there are number of ponds within 250m of the development and that great crested newts (GCN) may be affected by the development through loss of habitat. GCN are a species protected through the Wildlife and Countryside Act 1981 (as amended) and Statutory Instrument 2010 No.490 - *The Conservation of Habitats and Species Regulations 2010*.
22. The consultation response indicates that an assessment with reference to Natural England guidance predicts that an offence in relation to the protected species would be likely due to the effects of the proposed development. A survey was sought to confirm broad suitability of the habitat for GCN.
23. It is suggested that a condition be used to address the protected species survey.⁵ However, paragraph 99 of Circular 06/2005 - *Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System* is unambiguous in stating that "...It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision...". Consequently, if planning permission were to granted in this case with such a condition, that decision would not have been properly informed.
24. It would not be appropriate to use a condition to seek the provision of protected species survey information. Accordingly, the appeal scheme conflicts with CS policy CS17 by failing to identify, protect, enhance, expand and

¹ The section of the SPD entitled *Tenure – single plot "Build your own affordable home" scheme*

² As set out in the explanation to CS policy CS11 in CS paragraph 5.22

³ Reference ID: 21a-010-20140306

⁴ Reference ID: 21a-010-20140306

⁵ E-mail from the appellant dated 30-Jan-15

connect Shropshire's environmental assets, and contributing to local distinctiveness by having regard to biodiversity assets.

Living conditions

25. The proposed development would introduce a new dwelling that would be near to existing homes and amenity spaces, and the proposed bungalow would have windows with aspects toward them. A certain degree of overlooking can be expected in this loose-knit settlement. The appeal scheme would cause some increase in overlooking and loss of privacy. However, due to the layout of development in this part of Lion Lane, and the proposed location of the new dwelling, its windows and amenity space in relation to them, any increase in overlooking would be oblique and/or at sufficient distance to ensure that it would not be unacceptably harmful to the living conditions of the occupiers of existing dwellings, or indeed, the proposed bungalow.
26. Accordingly, the appeal scheme would not be unacceptably harmful to local living conditions. In this respect, it would be an appropriate pattern and design of development that has taken into account the local context to comply with the part of CS policy CS6 that is relevant to local living conditions.

Other matters

27. It has been suggested that the proposed development would reduce the value of property across Lion Lane. Planning practice guidance highlights that the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest. Consequently, the protection of purely private interests, such as the effect on the value of neighbouring property, could not be a material planning consideration.⁶

Conclusion

28. CS policy CS6 sets out the Council's objectives for sustainable design and development principles. Amongst other things, it requires housing to adapt to changing lifestyle needs in accordance with CS policy CS11, and all development to protect, restore, conserve and enhance the natural, built and historic environment.
29. There would be some economic benefit from the development of a new home through the economic activity associated with its construction and occupation. It is proposed to provide an affordable home for Mr Gardener, but a planning obligation is not in place to ensure that social benefit would be realised in the longer term, or off-set the erosion of the natural beauty within the AONB. Nor has it been established that the site could be developed without harm to protected species.
30. Therefore, while the appeal scheme would deliver some benefit in relation to the economic dimension of sustainable development, it has not been shown that it would meet the social and environmental dimensions.⁷ Accordingly, it would not be a form of sustainable development.
31. All representations in this case have been taken into account. For the reasons above, the appeal scheme conflicts with CS policies CS5, CS6, CS11 and CS17,

⁶ Reference ID: 21b-007-20140306

⁷ As set out in paragraph 7 of the Framework

and the SPD. No matters, including the scope of possible planning conditions, that weigh in favour of the appeal proposal have been found to outweigh the identified harm, failures and policy conflict. The proposal would not be a form of sustainable development and accordingly, the appeal should be dismissed and planning permission refused.

Clive Sproule

INSPECTOR