
Appeal Decision

Site visit made on 2 February 2015

by Tom Cannon BA DIP TP MRTPI

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

Decision date: 14 May 2015

Appeal Ref: APP/L3245/A/14/2218662

Vashlyn, Kelsalls Lane, Copthorne, Shrewsbury, Shropshire, SY3 8LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D Parton against the decision of Shropshire Council.
 - The application Ref 13/04608/FUL, dated 13 November 2013, was refused by notice dated 24 February 2014.
 - The development proposed is the erection of five detached dwellings following demolition of existing bungalow to include associated access improvements and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of five detached dwellings following demolition of existing bungalow to include associated access improvements and landscaping at Vashlyn, Kelsalls Lane, Copthorne, Shrewsbury, Shropshire, SY3 8LU in accordance with the terms of the application, Ref 13/04608/FUL, dated 13 November 2013, subject to the conditions set out in the Schedule of Planning Conditions attached hereto and forming part of this decision.

Procedural Matters

2. The description of development set out in the formal decision is not that taken from the application form but the one taken from the decision notice and appeal form. This is preferred as it more accurately describes the development which consists of five dwellings each providing living accommodation over two floors.
3. The submitted drawings show work to part of the footpath on Kelsalls Lane near the junction with Woodfield Road. This lies outside the appellant's control and the red line shown on drawing no SA13315/03. As such, I am not treating this part of the development as part of the scheme before me. In any event the appellant argues that these works are not a necessary part of the development.

Main Issues

4. The main issues in this appeal are the effect of the proposal on:
 - (1) the living conditions of occupiers of properties in Porthill Drive, with particular regard to privacy;
 - (2) whether future occupiers would experience acceptable living conditions in respect of noise and light disturbance;
 - (3) the character and appearance of the area; and

(4) the effect of the proposed access arrangement on the safety of pedestrians, cyclists and vehicular traffic on Kelsalls Lane.

Reasons

Living conditions

5. The appeal site comprises of a large, roughly rectangular plot of land accessed off Kelsalls Lane, a narrow single track road serving several residential properties, a tennis club and two schools. The existing dwelling, Vashlyn occupies a central position within the plot, and is orientated at an oblique angle to houses in Porthill Drive to the rear of the site. The long rear gardens to these properties increase the distance and sense of separation between the rear facing windows of houses in Porthill Drive and the appeal site.
6. It is proposed to demolish the existing bungalow and erect five detached dwellings on the land. Although the appeal site occupies a slightly elevated position in relation to properties in Porthill Drive, separation distances of between 33 metres and 48.5 metres would be retained between rear facing windows in the proposed dwellings and the existing houses. I recognise that there is no specific policy guidance regarding minimum spacing standards between existing and proposed development in either the Shropshire Local Development Framework: Adopted Core Strategy 2011 (CS) or the Shropshire Type and Affordability of Housing SPD 2012 (SPD). I am also mindful that the rear elevation of plot 1, which would include a rear facing first floor bedroom, would be about 7 metres from the boundary with No 47 Porthill Drive. However, a combination of the proposed distance between dwellings and orientation of the new properties on the plot would reduce any potential direct overlooking of houses in Porthill Drive.
7. A row of mature conifer trees defines the rear boundary of the site. If retained, these trees would screen the proposed development from properties in Porthill Drive. Whilst I appreciate that the leylandi trees would need to be replaced at some stage, I observed at my site visit that they appeared to be in good health and were not showing any obvious signs of damage or disease. This would suggest that these trees could continue to provide an effective screen between the proposed new dwellings and houses in Porthill Drive for some time. Their retention for a five year period could also be secured by condition. Nevertheless, even if the conifer trees were removed at the end of this period, I am satisfied that the separation distances to be provided would be sufficient to ensure that the proposed dwellings do not unduly overlook neighbouring properties.
8. For these reasons, I conclude that the appeal development would not harm the living conditions of occupiers of properties in Porthill Drive, with particular regard to privacy. It would therefore comply with Policy CS6 of the CS which seeks to create sustainable communities by safeguarding residential and local amenity. The appeal development would also accord with guidance in the SPD which states that proposals should not have unacceptable consequences for neighbours, including potential loss of privacy. These objectives are broadly consistent with one of the core planning principles of the Framework, to secure a good standard of amenity for all existing and future occupiers of land and buildings.

9. Concerns have also been raised regarding potential noise and light disturbance to future occupiers from vehicular traffic on Kelsalls Lane. However, the proposed dwellings would be set back from the lane with a new hedgerow to be planted along the site frontage. Such factors would limit any potential impact on the proposed occupants. A tennis club is situated to the east of the site. The dwelling on plot 5, which would adjoin this use, would be positioned away from the boundary and would not contain any principal windows in its flank elevation facing the tennis court. The existing flood lighting is also directed into the tennis courts away from the appeal site. Furthermore, I am mindful that other existing dwellings in the locality have a similar relationship to the tennis club which, from the evidence put before me does not appear to present any problems in respect of noise or light disturbance.
10. Consequently, I conclude that the appeal scheme would provide acceptable living conditions for future occupiers in respect of noise and light disturbance. As such, the scheme would accord with Policy CS6 of the CS, guidance in the SPD and the Framework.

Character and appearance

11. The appeal site is situated directly opposite and adjacent to infant and junior schools, and a tennis club. However, the surrounding area is decidedly residential in character. The pattern of development in the locality varies significantly with a mix of detached and semi-detached two storey houses and bungalows. Whilst I recognise that houses in Porthill Drive are situated in large plots with long rear gardens, other properties, including the bungalows immediately to the west of the site and on Woodfield Road have much smaller rear gardens. This adds to the varied structure and pattern of the area.
12. The development would introduce five new dwellings across the width of the site. The principal elevations of the new properties would follow the building line of the existing bungalows on Kelsalls Lane. The depth and width of the rear gardens and the scheme's overall density would also be comparable to other properties in the locality. Therefore, in this respect, the development would preserve the established character and layout of the surrounding area.
13. It has also been put to me that the proposed access arrangements would provide a sense of formality to Kelsalls Lane, through the removal of the existing conifer hedge along the site frontage, and its replacement with a new footway, passing bay and vehicular access. Nevertheless, Kelsalls Lane is currently enclosed on both sides by fencing serving the tennis courts and adjacent schools. Domestic timber fencing to existing houses boarding the lane adds to the enclosed feel. Therefore, the introduction of new sections of footway and a vehicular access, which includes replacement hedgerow planting, would not significantly alter the character of the lane.
14. As such, I conclude that the appeal proposal would not appear out of character with its context or harm the character and appearance of the area. It would therefore comply with Policy CS6 of the CS which requires development to protect, restore, conserve and enhance the natural and built environment, taking into account local context and character. The proposal would also accord with the core planning principles of the Framework to always seek to secure high quality design, and take account of the different roles and character of different areas, objectives with which the relevant policies of the Framework are consistent.

Highway safety

15. Kelsalls Lane is a narrow road providing access to the infant and junior schools, a tennis club and four existing dwellings, including Vashlyn. Due to its restricted width it is not possible for two vehicles travelling in opposite directions to pass, other than by utilising the informal passing point south of the tennis courts. Separate pedestrian accesses are provided for both schools which are open for access at the start and end of the school day. However, I observed that parents and children also used Kelsalls Lane as a pedestrian route, despite the absence of a defined footway to access the schools and activities at the tennis club. I have also had regard to the comments from Shropshire Council Learning and Skills Business Support Team in its capacity as landowner, the Local Education Authority, Town Council, a local Councillor and residents who have raised concerns about such matters and the prospect of the appeal development exacerbating these issues.
16. It is evident that the potential for vehicle and pedestrian conflict on Kelsalls Lane would be greatest at certain peak periods, such as the start and end of the school day. I was able to witness pedestrians taking evasive action to allow several vehicles to pass on the lane during this peak period prior to my formal site visit. I recognise that some staff movements, deliveries to the schools and journeys associated with the tennis club occur at other times of the day. However, by 16.15 the number of both pedestrian and vehicular movements appeared to have reduced significantly with only the occasional journey either by foot, bicycle or motor vehicle occurring on Kelsalls Lane. This suggests that for the majority of the day, outside these two peak periods traffic and pedestrian activity in the lane is fairly light.
17. The appeal development would result in four additional dwellings being accessed off Kelsalls Lane. The appellant anticipates that 6 movements per dwelling would occur in a 24 hour period, taking the lower value in a band width of between 6-9 movements per household, which it is suggested is widely recognised as the trip generation for assessment of residential traffic. Even if I apply the higher value, this would only equate to 36 additional movements over a 24 hour period. Of these trips, it is envisaged that there is only likely to be one movement per household in peak periods or one movement per 15 minutes. This appears to me to be a reasonable assessment of the potential increase and spread of movements associated with the proposed development. No substantive evidence has been provided by the Council or interested parties to challenge these figures.
18. In the context of the total number of vehicle movements during peak times connected with the adjacent school sites, the 4 additional movements per hour associated with the development are unlikely to significantly increase pedestrian and vehicle conflict on Kelsalls Lane. Nor would a further 28 trips per day outside these peak periods place undue pressure on the lane when both pedestrian and vehicular movements are substantially reduced. I also recognise that the appeal scheme may also generate some additional trips on foot and by bicycle. However, these movements are not likely to be significant.
19. In terms of visibility, vehicles entering Kelsalls Lane from the Woodfield Road direction have good forward visibility of on-coming traffic and pedestrians. This enables drivers to proceed cautiously along the initial stretch of the lane or pull over onto the hardstanding immediately prior to the tennis courts to allow

other vehicles, pedestrians or cyclists to pass. It also negates the need for a new section of footway adjacent to the main access off Woodfield Road.

20. Due to the alignment of Kelsalls Lane beyond this point, vehicles travelling in either direction would have clear sight of both pedestrians and oncoming traffic using the lane. The provision of a new passing bay and footway/cycleway along the site frontage would further reduce potential vehicular and pedestrian conflict in an area which is situated directly opposite both main entrances to the schools.
21. Therefore, despite the lack of a continuous footway, I conclude that the proposed access arrangement would not have a harmful effect on the safety of pedestrians, cyclists and vehicular traffic on Kelsalls Lane. As such, the development would accord with Policy CS6 of the CS which requires proposals which are likely to generate significant levels of traffic to be located in accessible locations. These objectives are broadly consistent with advice in paragraph 32 of the Framework which seeks to ensure that safe and secure access to the site can be achieved for all people.

Other matters

Housing supply

22. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The appellant disputes that there is a demonstrable 5 year housing land supply and the development would provide an additional 4 dwellings locally which would contribute to supply which whether or not the Council has a 5 year supply, Government policy seeks to boost.
23. However, Policy CS6 of the CS referred to in the Council's reasons for refusal is concerned with the sustainable design of new development rather than the supply of housing and is not therefore a policy relevant to the supply of housing. It is not out-of-date. Paragraph 14 of the Framework states that for decision taking the presumption in favour of sustainable development means approving development proposals which accord with the development plan without delay. As I have found that the proposed scheme would accord with the development plan in respect of the main issues in this appeal it would therefore comply with the overarching aim of the Framework to achieve sustainable development. In any event, this matter does not affect my conclusions on the main issues above.

Affordable housing

24. Policy CS11 of the CS requires all open market dwellings to provide a contribution towards the provision of local needs affordable housing. The Shropshire Local Development Framework Type and Affordability of Housing Supplementary Planning Document 2012 (SPD) sets a robust methodology for calculating this cost, which for small sites with a net dwelling increase of under 5 units will normally take the form of a financial contribution. This follows a set formula based on the prevailing affordable housing target rate for the area, multiplied by both the number of dwellings to be provided and the standardised

construction cost per square metre of an affordable unit. It equates to a financial contribution of £72,000.

25. A signed Unilateral Undertaking (UU) dated 12 May 2014 has been submitted with the appeal which secures a financial contribution towards affordable housing in accordance with the above calculations. However, on the 28 November 2014 the Written Ministerial Statement (WMS) was issued setting out national policy on Section 106, including setting a threshold beneath which affordable housing contributions should not be sought. The Planning Policy Guidance (PPG) reaffirms this, confirming that affordable housing and tariff style planning obligations should not be sought for small scale development such as the appeal scheme. It also makes it clear that these are changes to national policy which should be read alongside the Framework. Therefore, the content of the WMS and PPG are material considerations in the determination of this appeal.
26. The Council has confirmed that following the above approach would seriously undermine their ability to provide much needed rural affordable housing, either directly on site, or indirectly through financial contributions. It is also suggested that this policy would affect housing and community aspirations enshrined within the CS. As such, the Council have confirmed they will continue to apply policy in the CS and SPD despite their clear conflict with national policy in the PPG. The main parties in the appeal have both commented on this matter.
27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The CS was adopted in 2011. Therefore, in this case the WMS provides more up to date national policy and effectively supersedes Policy CS11 of the development plan.
28. Consequently, having regard to the WMS, I consider that the provisions of the signed UU are not necessary to make the development acceptable in planning terms. Nor are they directly related to the development or fairly and reasonably related in scale and kind to the development. Thus, it would fail to accord with the advice in paragraph 204 of the Framework, and with the statutory tests set out in the Community Infrastructure Levy Regulations. Consequently, I have not taken the UU into account when reaching my decision in this case.

Bats

29. Circular 06/2005 states that it is essential that the presence or otherwise of protected species and the extent to which they may be affected by development is established before planning permission is established. The submitted 'interim bat survey' was undertaken in November outside the main bat roosting season. Nevertheless there is nothing to suggest in it or elsewhere in the evidence that the interior of the roof of the bungalow is being used by roosting bats. If bats are present, it is the evidence of the County Ecologist that these are likely to be crevice dwelling species. Mitigation of the loss of such roosts would be possible by the use of bat boxes and lifted tiles on new dwellings

30. The Circular states that additional surveys can only be covered by condition in exceptional circumstances. Given that the survey would be very much a precautionary measure, that mitigation could be provided for by a condition and an agreed position has been reached between the appellant and the County Ecologist, I consider that these are exceptional circumstances which justify conditioning additional survey work in this case.
31. Given that plot one would be sufficiently distant from the existing bungalow not to cause disturbance if bats were present in the bungalow, that dwelling could be built before any additional survey required by a condition.

Other considerations

32. Concerns have been raised by local residents regarding the removal of trees from the site prior to the submission of the original application. However, this is not a matter which is before me. Nor am I aware of any policy or guidance which restricts the number of dwellings that can be accessed off a private road.

Conditions

33. I have considered the conditions suggested by the Council in light of advice in paragraphs 203 and 206 of the Framework and the PPG. In the interests of precision and enforceability, and to accord more closely with advice in the PPG, I have amended the Council's suggested wording where appropriate.
34. In addition to the standard time limit condition it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord. Details of samples of materials, and requirement for the retention and protection of existing trees and hedgerows are required to preserve the character and appearance of the area and to protect the living conditions of residents in Porthill Drive.
35. A construction management plan is also necessary to protect the living conditions of nearby residents and in the interests of highway safety. Also for reasons of highway safety, details of the construction and drainage of the new access road, footway and passing bay directly outside the site entrance, road marking, signs and street lighting shall be submitted for approval prior to commencement of development.
36. It is necessary on a precautionary basis in order to ensure that bats are protected for a further emergence survey to be undertaken prior to the demolition of the bungalow and the construction of dwellings on plots 2-5. Also to minimise the potential disturbance to bats, a scheme detailing external lighting is required.

Conclusion

37. For the reasons set out above, and having regard to all other matters raised I conclude that the appeal should succeed.

T Cannon

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SA13315/03, SA13315/04, SA13315/05, SA13315/06, SA13315/07, SA13315/08, SA13315/09, SA13315/10.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces and hard surfacing areas of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a tree and hedgerow protection scheme has been submitted to and approved in writing by the local planning authority. The scheme should show all existing trees and hedgerows on or adjacent to the site, and shall identify whether each is to be retained or removed, together with details of measures for the protection of the retained trees and hedgerows before and during the course of development. These measures shall include protective fencing, and such fencing shall be erected in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made. No retained tree or hedgerow shall be cut down, uprooted or destroyed, nor be topped, lopped or pruned other than in accordance with the approved details. Any works which may be thus approved shall be carried out in accordance with BS 5837. If any retained tree or hedgerow is removed, uprooted or destroyed or dies, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 5) Prior to the development commencing, including any works of demolition, a construction management plan shall be submitted to and approved in writing by the local planning authority. In particular the plan shall include:-
 - (i) The parking of vehicles of site operatives and visitors;
 - (ii) Loading and unloading of plant and materials;
 - (iii) Storage of plant and materials used in constructing the development;
 - (iv) Wheel washing facilities;
 - (v) Details of the responsible person (e.g. site manager/office) who could be contacted in the event of a complaint;
 - (vi) Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed

- specification of plant and equipment to be used and construction traffic routes;
- (vii) A scheme for the recycling and disposal of waste;
 - (viii) A scheme to minimise dust emissions arising from the demolition/construction activities on site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- 6) Development shall not begin until details, including the surfacing and drainage of the new access road, footway/cycleway, and passing bays along the site frontage, street lighting, carriageway markings and signs have been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the works have been completed in accordance with the approved details.
- 7) The existing bungalow shall not be demolished and no development shall take place on plots 2-5 until a bat survey has been carried out by a suitably qualified person, involving dusk and/or pre-dawn pre-entry surveys following the Bat Conservation Trust Bat Surveys – Good Practice Guidelines (2nd Edition 2012) and the results of the survey along with a schedule and implementation timetable for any mitigation measures has been submitted to and approved in writing by the local planning authority. All recommendations and mitigation measures agreed shall be implemented in accordance with the agreed schedule and timetable.
- 8) Details of all external lighting shall be submitted to and approved in writing by the local planning authority before the dwellings are occupied. Development shall be carried out in accordance with the approved details.