
Appeal Decision

Site visit made on 5 August 2015

by **David Murray BA (Hons) DMS MRTPI**

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

Decision date: 4 September 2015

Appeal Ref: APP/L3245/W/15/3031289

Land opposite Top Farm, Kinton, Nesscliffe, Shrewsbury, SY4 1AZ.

- 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 W Warner against the decision of Shropshire Council.
 - The application Ref. 14/02767/OUT, dated 19 June 2014, was refused by notice dated 27 April 2015.
 - The development proposed is the erection of three detached dwellings and new access and driveway.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural matters

3. The application is made in outline format with details of the access to be considered at this stage but the other aspects of the 'appearance', 'landscaping', 'layout' and 'scale' of the development are reserved for subsequent approval.
4. The application was originally submitted for the erection of four detached dwellings and the formation of a new access and driveway although it appears that the application was revised during its consideration by the Council to be for the erection of three dwelling and the 'indicative' layout was also amended. I have considered the appeal on this basis.
5. A Unilateral Undertaking (UU) dated 15 July 2015, signed by the appellant and his bank, and made under the provisions of Section 106 of the Act, has been submitted with the appeal. In general terms the UU covenants the mortgagee and landowner to provide a contribution towards the provision of off-site affordable housing in accordance with a Supplementary Planning Document within one year of the commencement of the development. I have had regard to the UU as a material consideration subject to my assessment under the CIL Regulations as set out in paragraph 27 below.

Main Issues

6. The main issues are:

- Whether the new dwelling proposed would accord with the development strategy for the area;
- The effect on the character and appearance of the area;
- Whether the proposal would constitute sustainable development.

Reasons

Background

7. The appeal site forms part of a larger field on the edge of the village of Kinton. To the south of the site lie some detached houses in a mixture of designs while to the west on the opposite side of the lane lies Top Farm and its farmstead. There is a public footpath to the south of the site running along the edge of the field.
8. It is proposed in outline to build three detached houses off a new shared access and driveway to the front of the properties.
9. I note from the appellant's statement that initially a planning officer assessment of the development was favourable and approval was recommended subject to the completion of a formal 106 Agreement to make provision for affordable housing. However, it is evident that there was a change of mind and thereafter the Council took the formal decision to refuse planning permission.

Accord with the development strategy

10. The development plan for this area comprises the Council's Core Strategy adopted in 2011 (CS) and the emerging Shropshire Site Allocations and Management of Development Plan (SAMDev) Development Plan Document. In this case the Council has not made reference to saved policies in the Shrewsbury and Atcham Local Plan (2001) (Local Plan) which have arisen in other local cases before me at the moment.
11. The Core Strategy sets out a spatial vision for the county until 2026 and makes provision for the development of 27,500 new homes. As part of the strategy the CS allows for development in rural areas through 'Community Hubs' and 'Community Clusters' as defined in Policy CS4. The policy sets down criteria for development within these hubs and clusters. Outside of these defined places, Policy CS5 indicates that development will be strictly controlled in the countryside and the Green Belt.
12. The SAMDev DPD was submitted to the Secretary of State in August 2014 and following examination the Council has published Main Modifications which are intended to make the DPD sound. The Council has consulted on these modifications in the period until 13 June of this year. Therefore, although the SAMDev has not been formally modified and adopted, some weight can be given to the policies not identified as requiring modification in accordance with the guidance in paragraph 216 of the Framework.
13. Turning now to the detail of the Policies, within the SAMDev Kinton is being put forward as part of a 'Community cluster' with Nesscliffe as the 'Community Hub'. The Council says that the Cluster can accommodate between 10-15 dwellings in the period up to 2026. This means that, in principle, some development is appropriate in Kinton subject to meeting the criteria set out in Policies CS4 and

CS6, the latter of which sets out 'Sustainable Design and Development Principles'.

14. In relation to locational criteria, Policy CS4 requires focusing investment and development in Community Clusters and "not allowing development outside of these settlements" unless a proposal is for one of the exceptional categories for development in the countryside as specified in Policy CS5. In essence, the appeal turns on whether the site of the three houses proposed lies inside or outside the settlement of Kinton and the scale of the development.
15. It is clear that the initial planning officer assessment in his Development Management Report (undated but said by the appellant to have been made in October 2014) was that while the proposal was a departure from the countryside policies advanced in CS5 ahead of the adoption of the SAMDev plan, it was judged that the site lay "on the edge of the hamlet" and had a close physical relationship with "Top Barn". At that stage it was concluded that the site was "within the natural hamlet edge" and the three houses would make up part of the main built-up area of Kinton. It was also concluded that the development would contribute to the promotion of the community Cluster and be an appropriate location for an infill plot. As such the proposal was judged to be an acceptable form of sustainable development subject to the completion of a legal agreement to secure the provision of off-site affordable housing.
16. The Council does not explain why there was a change of heart but the formal decision of the Council refers to the site being outside the settlement and in the countryside and the Council's statement refers to the harmful effect on the character and appearance of the area. Moreover, the Council has not provided evidence to suggest that the 10-15 dwellings total put forward for the 'cluster' would be materially exceeded if the appeal proposals were allowed.
17. I will consider this local impact under a subsequent issue on the effect on character and appearance of the area, but I conclude on the first issue that the proposal for three houses would generally accord with the adopted and emerging development strategy for the area if the development was within the settlement and that it had an appropriate impact in its local context.

Housing land supply

18. Coupled with the development strategy is the issue of housing land supply (HLS). The appellant's agent submits that the Council has failed to demonstrate a five years supply of land for new housing development in accordance with paragraph 47 of the Framework and implies that therefore paragraph 49 of the Framework is engaged. In evidence of this, he refers to two appeal decisions¹ where the Inspector held in May and June of this year that the Council did not have a five year supply. I refer to these below.
19. The Council indicates that its HLS position statement published in August 2014 concluded that the Council could demonstrate 5.47 years supply of deliverable housing land for Shropshire. Further, in other local appeals before me the Council also refers to an update on HLS published in June 2015 which continues to assert that this supply is maintained. The update also refers to recent appeal decisions² where the issue was explored at hearings and the Inspectors concluded that a five years supply was demonstrated.

¹ APP/L3245/W/14/3001829 and APP/L3245/W/14/3001799

² APP/L3245/W/14/2228345 and APP/L3245/W/14/3000672

20. It appears to me that the position regarding HLS has been fluid as indicated in the range of appeal decisions put to me, however in the two presented by the appellant HLS did not form a significant part of the Inspectors decision. Whereas, in 2228345 and 3000672, although of earlier dates, the Inspector concluded that a five years supply was demonstrated at that time on the basis of a detailed analysis of housing requirements and of housing supply. I therefore attach more weight to these decisions.
21. Overall, I conclude that the evidence submitted in support of this case does not indicate that the Council are not able to demonstrate a five year supply of deliverable sites for new housing at the moment. I therefore find that paragraph 49 of the Framework is not engaged in this case.

Effect on character and appearance of the area

22. At my site visit I considered the appeal site from the adjoining public highway and the public footpath along the southern boundary of the site, and also noted the wider pattern and character of the village. Kinton is mostly linear in form with the main part of the village comprising a variety of houses of different ages and architecture. High red sandstone walls along the frontage are a prominent feature in the street scene of the village. To the east of the village lie extensive commercial premises which have a separate access. In the western part of the village the main lane sweeps round in a northerly direction and to the west of the lane lie Middle Farmhouse and the Top Farm complex. The appeal site lies to the east of the lane at this point.
23. The existing pattern of the hamlet is such that the appeal site would only co-join the established built-up part by being opposite Top Farm and this immediate relationship is visually separated by the existing hedge along the road frontage. The dwelling to the south of the appeal site "Holly Cottage" faces the east-west element of the village and there is an open field /paddock between the garden of this house and the appeal site. To the north of appeal site there is the remaining part of the larger open field which is partly enclosed by a field hedge and then productive farmland to the north.
24. In my view the present character of the site is of open agricultural/grazing land and the site itself does not display the characteristics of a village setting. I consider that the site is visually and physically separate from the village and consequently the development proposed would appear isolated in the countryside away from the existing fabric of the village and in an area where Policy CS5 applies. The proposal does not meet any of the criteria for exceptional development as set out in this policy.
25. Although there is an existing hedge along the road frontage, which could be retained and/or replaced, in my view the development would be very prominent and exposed beyond the edge of the village and I consider that the presence of the three new houses would significantly harm the present character and appearance of this area of countryside. As such, I find that the proposal does not protect, restore or conserve the natural or built environment of this area of countryside and would be contrary to Policy CS6.
26. Overall, I agree with the judgement set out in the formal decision notice that the proposed three new houses would not be located within Kinton. Further the development would have a visual and physical impact which would significantly harm the character and appearance of the rural setting of the village. I therefore

find that the proposal would not accord with the criteria set out in Policies CS5 and CS6 of the Council's Core Strategy.

Whether sustainable development

27. The Framework sets out in paragraph 7 the three dimensions to sustainable development. The proposal would contribute to the social role by adding to the supply of houses in the village. There is also likely to be some limited economic benefit through the building of the new house. However, because of the significant adverse impacts that I have identified that the proposal would cause to the character and appearance of the area, I conclude that the proposal would not protect or enhance the natural or built environment and so the environmental dimension is not met. Accordingly, the proposal does not constitute 'sustainable development' when the Framework is read as a whole.

Other matters

28. The UU described in paragraph 5 above covenants for a contribution to be made towards the provision of affordable housing off-site, in accordance with the Council's Supplementary Planning Document. I am satisfied that this mechanism for the provision of affordable housing is put forward to meet the terms of development plan policy and supplementary guidance and is necessary to make the development acceptable in planning terms. The amount of contribution would be directly related to the development and is fairly and reasonably related to the development in scale and kind. I therefore find that the tests of the Community Infrastructure Levy Regulations 2010 and the requirements set out in paragraph 204 of the Framework (2012) are met. The Contribution would only be payable if planning permission is granted for the development proposed and is implemented.

Planning balance

29. Bringing together my conclusions on the main issues, I have found that the proposal would not accord with policies CS5 and CS6 of the development plan, because, while the principle of limited development in Kinton can now be acceptable, the location of the three houses proposed would not constitute an acceptable form of infilling but would harm significantly the character and appearance of an area of countryside outside the village. As such, the proposal would also not constitute sustainable development when the Framework is read as a whole.

30. I find that this conflict with the development plan and national guidance is not outweighed by any other consideration including an alleged lack of adequate housing land supply at the time when the planning application was submitted and a contribution towards the provision of affordable housing off-site. The adverse effects of the proposal are not outweighed by any benefits in the context of paragraph 14 of the Framework and therefore the appeal should not be allowed.

Conclusion

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

David Murray

INSPECTOR