
Appeal Decision

Hearing held on 1 July 2015

Site visits made on 30 June & 1 July 2015

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 16 November 2015

Appeal Ref: APP/L3245/A/14/2227555

7 Steeple Close, Cleobury Mortimer, Shropshire DY14 8PD

- 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 Paul Stokes against Shropshire Council.
 - The application Ref 14/03472/FUL, is dated 01 August 2014.
 - The development proposed is: two, one bedroom, flats on land adjacent to and belonging to No7 Steeple Close, Cleobury Mortimer.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Paul Stokes against Shropshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal was submitted against the failure of the Council to reach a decision on the application. Its initial statement, the Council identified that, had it been in a position to determine the proposal, it would have refused to grant planning permission on grounds of the effect on the character and appearance of the area; the effect on the living conditions of residents of No 7 Steeple Close; the lack of a financial contribution towards affordable housing provision; and on matters of parking and highway safety. Further to a consultation response from the highways' department the Council wrote to the Planning Inspectorate to withdraw its objections on grounds of parking and highway safety.
4. The Hearing was held on 01 July 2015. On 31 July the High Court issued judgement on a joint application by West Berkshire District Council and Reading Borough Council who had challenged the Secretary of State's (SoS) written ministerial statement of 28 November (the WMS) and subsequent changes to the Planning Practice Guidance (PPG) with regard to planning obligations for affordable housing and social infrastructure contributions¹.

¹ West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin).

5. The PPG, and the WMS, set out specific circumstances where affordable housing and tariff style contributions should not be sought for small scale development, including developments of 10-units or less, with a maximum gross floorspace of no more than 1000sqm.
6. The challenge was successful. However, rather than quashing the WMS a declaration order was issued confirming that the policies in the statement must not be treated as a material consideration for planning purposes. Paragraphs 12-23 of the PPG section on Planning Obligations have subsequently been removed. The SoS has been granted leave to appeal the judgement with a hearing listed for 15 March 2016.
7. Further to the Hearing, written submissions have been received from both parties regarding the implications of the High Court judgement. I have taken those comments into account in reaching my decision.

Main Issues

8. In view of the above, the main issues are:
 - i) The effect of the proposal on the character and appearance of the area;
 - ii) The effect of the proposal on the living conditions of residents of No 7 Steeple Close; and
 - iii) Whether the proposal should be required to make a financial contribution towards the provision of affordable housing, taking account of the requirements of the Development Plan and other material considerations.

Reasons

Character and appearance

9. The appeal site relates to the garden area at the side of No 7 Steeple Close, the end dwelling in a row of four, situated at the head of a short cul-de-sac. The dwellings, which would have been constructed as local authority housing stock, are within a wider area of twentieth century housing on the northern side of Cleobury Mortimer. In common with many local authority developments there is a high degree of uniformity in terms of the layout within the cul-de-sac, with dwellings on the northern side of the carriageway being mirrored by those on the southern side in terms of the block size, spacing and the size of front gardens. The block of four properties at the head of the cul-de-sac, including No 7, adds to the balance with its symmetrical proportions, including the projecting front gables at each end.
10. In terms of individual appearance, a number of dwellings have been altered, including the addition of a facing skin over the original cast concrete panels. Nonetheless, this does not disturb the pleasing symmetry and regularity of the established layout.
11. The position of the proposed building, to the side and rear of No 7, would not reflect the established symmetry, the consistency of plot size or the regular spacing between dwellings and would appear incongruous as a result. Moreover, when set against the comparatively generous plot size of adjacent

dwellings, the proposed flats would appear cramped and shoe-horned into the garden area to the side of the existing dwelling. The building would front onto the narrow footpath link which passes to the north and, as a consequence, a blank and relatively unattractive gable end would face towards Steeple Close. The orientation would be in stark contrast to the established layout where dwellings front directly onto the street, set behind short front gardens.

12. Whilst I note that there are parts of Cleobury Mortimer where dwellings are constructed at a higher density, those arrangements are not reflected within the vicinity of the appeal site which has a regulated character. In view of the above, I consider that the proposal would appear as a cramped and unsympathetic addition that would be harmful to the established character and appearance of the surrounding area.
13. As such, it would be contrary to the aims of policy CS6 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (the CS) which, amongst other things, requires that development protects and enhances the built environment being appropriate in scale, density, pattern and design, taking into account the local context and character. For the same reasons, the proposal would be contrary to the requirement for good design as set out at paragraph 56 of the National Planning Policy Framework (the Framework).

Effect on the living Conditions of the occupants of No 7 Steeple Close

14. The proposal would project significantly beyond the rear elevation of No 7, extending close up to the shared boundary with No 6 Langland Road. The topography is such that the ground level would sit above the ground level to the rear of No 7. As a consequence of that change in level, the degree of projection beyond the rear elevation, and the scale of the proposed building, I consider that the proposal would restrict the outlook from the rear windows of No 7 and have an overbearing and oppressive impact when viewed from those windows and the garden to the rear of the house. The resulting impact upon the living conditions of existing and future residents of No 7 Steeple Close would be significant and harmful. The fact that No 7 is in the ownership of the appellant does not alter my conclusions in that regard; that situation could change in future and I must consider the likely effects, regardless of current ownership arrangements.
15. It would be possible to attach an appropriately worded condition to ensure that rear facing windows would be fixed shut and fitted with obscured glazing to prevent undue levels of overlooking and loss of privacy for adjacent residents. Nonetheless, that would not overcome my concerns relating to the scale and proximity of the proposal, as described above. For those reasons, the proposal would be contrary to the aims of policy CS6 of the CS which, amongst other things, requires that development should safeguard residential amenity.
16. Similarly, it would contravene one of the core principles of the Framework, set out at paragraph 17, which is that development should seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Whether the proposal should be required to make a financial contribution towards the provision of affordable housing, taking account of the requirements of the Development Plan and other material considerations

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. That statutory requirement is acknowledged at paragraphs 2 and 210 of the Framework.
18. In this case, policy CS11 of the CS requires that all new market housing developments make appropriate contributions to the provision of local needs affordable housing, having regard to the overall target rate for affordable housing and the viability of development. For developments of 5 dwellings and above the policy expects affordable housing to be provided on site. Below that threshold, the Council seeks to secure a financial contribution towards off-site provision. Policy CS11 is supported by guidance within the Type and Affordability of Housing Supplementary Planning Document (2012) (the Affordable Housing SPD).
19. Shropshire is a predominantly rural district and it is clear, from the information presented, that a large proportion of planning applications relate to schemes of 10 dwellings or less. Of the 1001 residential applications that were submitted between January 2012 and December 2014, 928 (92.2%) were for 10 dwellings or less. Of those, 851 were for 5 dwellings or less. In the context of a high proportion of applications for smaller sites, the Council explained that the rationale for policy CS11 was to spread the financial burden of affordable housing delivery across all market housing, hence a requirement that all developments would contribute, from a single dwelling upwards. That approach is therefore embedded within the development plan.
20. I am satisfied that there is no inherent inconsistency between the approach to the provision of affordable housing in policy CS11 and the requirements of the Framework, including paragraphs 47, 50 and 54 with regard to the need to plan for the full objectively assessed needs for affordable housing; the need to provide a wide choice of high quality homes of a size type and tenure that is required in particular locations; the need for policies to set out how affordable housing will be delivered; and the potential use of exceptions sites in rural areas.
21. There was debate at the Hearing regarding the implications of policy CS11 on the viability and delivery of small and medium scale housing developments. However, no compelling evidence was presented by the appellant to show that the policy has had substantial effects in that regard. Therefore, on the evidence presented, policy CS11 is consistent with the aims of the Framework and considerable weight can be attached to it as a policy within an adopted development plan.
22. In essence, the evidence presented to the Hearing did not question whether policy CS11 was consistent with the Framework but whether the contents of the WMS and the PPG represented material considerations that would outweigh the development plan with regard to the need for off-site affordable housing contributions. The High Court judgement in relation to the 'West Berkshire'

challenge explicitly made clear that the WMS and PPG should not be considered as a material consideration in the determination of planning applications.

23. Whilst I note that the SoS has been granted leave to challenge the decision, the scheduled hearing is some time away and I cannot predict the outcome of that process. I must make my decision on the basis of the policy position as it stands at the time of writing. As such, I can give no weight to the Government's intentions with regard to planning obligations, as set out in the WMS and the subsequently removed sections of the PPG, and no material considerations have been put forward that would outweigh the presumption in favour of the development plan in that regard.
24. Accordingly, in order to comply with the contents of policy CS11, a financial contribution towards the off-site provision of affordable housing would be required. In the absence of an agreed mechanism to deliver such a contribution, the proposal would fail to comply with the aims of that policy. Whilst the appellant suggested that the contribution would make the scheme unviable I have been presented with no financial information to support those assertions and can therefore attach little weight to them. Those matters do not alter my conclusions with regard to the compliance with policy CS11.
25. Moreover, with regard to paragraph 204 of the Framework, an off-site contribution would be necessary to make the development acceptable in planning terms. A contribution would also be related to the impact of the development because the rationale for policy CS11 is clearly to ensure that small scale developments make a proportionate contribution to the delivery of affordable housing to meet the needs of the wider area. The Affordable Housing SPD explains the way in which contributions are calculated and there is no evidence that would lead me to conclude that the amount sought by the Council is not fairly and reasonably related in scale and kind to the development.
26. I have been referred to a number of appeal decisions with regard to affordable housing contributions. However, all of these pre-date the High Court judgement in relation to the West Berkshire challenge and, consequently, the policy circumstances in which those decisions were taken were not comparable to those prevailing at the current time. Thus, the outcome of those appeals has little bearing on my decision.

Other Matters

27. No dedicated off-street parking would be provided as part of the development. Whilst the development would be of a small scale, it would be likely to result in increased pressure for on-street parking within the cul-de-sac. I noted a high level of on-street parking on my unaccompanied visit to the site on the evening before the Hearing. Nonetheless, parking is available within the cul-de-sac and on the roads immediately surrounding it. Increased competition may lead to a degree of inconvenience in situations where residents cannot park directly outside their own home but I am satisfied that it would not lead to harm in terms of highway safety. Thus, whilst the lack of parking is not a positive factor in favour of the proposal it would not justify the refusal of planning permission, of itself.

Planning Balance and Conclusion

28. The proposal would cause significant harm to the character and appearance of the area and would adversely affect the living conditions of the occupants and future occupants of No 7 Steeple Close. The appellant has suggested that the Council is unable to demonstrate a five-year supply of deliverable housing land. The Council maintains that it can demonstrate a 5.47 year supply of housing but accepts that this figure is yet to be fully tested through the development plan examination. There is insufficient information before me to draw a conclusion on that point.
29. In any event, the Council does not object to the principle of new development within Cleobury Mortimer. Moreover, the benefit to the supply of housing resulting from two flats would be small. Any benefit in that regard would be significantly and demonstrably outweighed by the harm caused to the character and appearance of the area and adjacent living conditions. I am satisfied that a contribution towards the provision of affordable housing would be necessary to make the development acceptable in planning terms and, in the absence of such a contribution, the proposal would be contrary to the requirements of policy CS11 of the CS.
30. In view of the above, and taking all other matters into account, I conclude that the appeal should be dismissed.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Fellows	Land Research & Planning Associates
Mr Stuart Mumford	Architect

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards	of Counsel
Mr Nick Wood	Communities and Housing Policy Team Leader
Miss Heather Bradley	Planning Case Officer
Mr Ian Kilby	Operations Manager for Planning Services

INTERESTED PERSONS:

Mr Howard Thorne	Director, Shropshire Homes
Mr Jake Berriman	Chief Executive, Shropshire Housing Group
Cllr Madge Shingleton	Local councillor
Mr John Lesniak	Local resident