
Appeal Decision

Site visit made on 7 December 2015

by G D Grindey MSc MRTPI. Tech.Cert.Arb.

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

Decision date: 06/01/2016

Appeal Ref: APP/T3725/W/15/3134611

Land opposite the Leopard Inn, Oakley Wood Road, Bishop's Tachbrook, Warwickshire, CV33 9RL.

- 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 Mrs Margaret Glenn against the decision of Warwick District Council.
 - The application Ref W/14/1049, dated 8 December 2014, was refused by notice dated 17 March 2015.
 - The development proposed is described as 'current redundant grassland to be developed as a farmstead style small housing development of 10 houses, to include 4 affordable houses. Single entrance access with turning and parking area at terminal'.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The application is an outline one with all matters reserved for later consideration. An 'indicative site layout' plan was submitted and this gives a helpful demonstration of one way in which the site could be developed. Bancroft Consulting Ltd (Transport Consultancy) have been involved in various discussions concerning this and an earlier application on the site and there is a plan ref no F12123/01 rev B showing a possible site access layout, although the position of the access shown differs markedly from that on the indicative plan. I have considered these in the determination of this appeal.

Main Issues

3. From my inspection of the site and surroundings and the representations made I consider that the decision on this appeal turns on 4 main issues. These are (i) the effect of the proposal on the character and appearance of the locality, including the Bishop's Tachbrook Conservation Area (CA) which abuts the site on the east side of Oakley Wood Road and Leopard Inn and Eden Cottage, listed buildings, opposite, (ii) whether it has been demonstrated that a safe access could be provided to Oakley Wood Road; (iii) the effect of the scheme on biodiversity particularly any protected species and (iv) whether the proposal has properly assessed any possible archaeological impact.
 4. S66 of the Act states that, in considering whether to grant planning permission for development which affects a listed building or its setting, the decision
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maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. S72 refers to the special attention to be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area (CA). I deal with the appeal with these important considerations in mind. Warwick District Local Plan policies DAP4, DAP8 and DP3 broadly repeat these statutory requirements.

Reasons

Issue (i) the effect of the proposal on the character and appearance of the locality, including the Bishop's Tachbrook CA which abuts the site on the east side of Oakley Wood Road and Leopard Inn and Eden Cottage, listed buildings

5. The CA is drawn around the nucleus of an old settlement, traditionally grouped around the church, built on a slight prominence in the centre. The CA boundary is widely drawn and weaves in un-built areas such as the open land to the north of the Leopard Inn, and the leafy and narrow part of Oakley Wood Road south of Savages Close and adjacent un-built areas. The CA boundary abuts the appeal site since it includes the highway and the eastern highway verge, where I note some recent tree planting has been carried out.
6. The appeal site is pleasing, if unremarkable, open grassland with scattered trees and a grown-out hedgerow crossing it. The open site borders the highway, and is clearly a critical part of the setting of this nucleated rural village, the CA and the listed buildings opposite; it is a prominent site. As an open area it performs the function of creating an obvious pastoral character, appearance and setting to the village, the CA and its buildings.
7. Approaching from the north from Tach Brook, the open appeal-site-field facilitates a view across to a treed horizon, with minor glimpses of the Savages Close properties to the east. It is an absolutely essential and intrinsic part of the entrance to the village and the transition from rural open countryside to built-up area. The west side also has a similar defined edge to the built up area, with trees and the attractive Leopard Inn and Eden Cottage beyond marking the beginning of the settlement. Thus, there is no sense of arrival in the village until well south of the appeal site where the view culminates in the significant building of the Old School with its striking window which marks the junction of Oakley Wood Road and Church Hill.
8. The proposed development of the field would be highly prominent and would have a detrimental effect on the character and appearance here. This would not be a natural extension of the settlement into, for example, a site within surrounding development but, rather, an obvious extension of new-build development out into open countryside. Clearly this would fundamentally change public views from the highway, the pub opposite and for those entering and leaving the village. Given that the appeal site slopes up from the road, the most obvious views are from the highway at the foot of the site, and these are from close-by.
9. The consultation response from the Highway Authority details the need for a wide bell-mouth junction with footways and swept paths suitable to accommodate a large refuse vehicle, a feature that can only further urbanise the setting, cumulatively with the residential development. Viewers would lose any sense of a rural setting to the CA and the village. The Warwickshire

Landscapes Project Guidelines¹ highlighted a particular problem with the suburbanising of nucleated rural villages by developments which do not reinforce the existing settlement patterns; this would be the result here.

10. Thus I can understand why this site is outside the village settlement boundary as defined in the Local Plan, as shown in the representation from the Parish Council². From this document I understand it was also considered for development at that Local Plan inquiry and rejected by the Inspector as being **"highly prominent" and a "sensitive location"**³. Indeed the Warwick District Council Landscape Sensitivity and Ecological and Geological Study of 2013⁴ also **found this locality has "high sensitivity" to development. Both these** assessments support my own conclusions at my site inspection.
11. Narrowing the focus now to the heritage assets, first the CA; I find that the addition of the residential development here would fail to preserve the rural and open countryside setting to the CA. The proposals would cause substantial harm to the character and appearance of the abutting CA. Paragraph 132 of the National Planning Policy Framework (the Framework) states that significance can be harmed or lost **through.....** development within its setting", as is the case here. The paragraph continues that any harm or loss to a heritage asset, such as a CA, should require clear and convincing justification. Paragraph 133 goes on to say that, where a proposal would lead to substantial harm, consent should be refused unless the proposals would achieve substantial public benefits.
12. Although the scheme would yield 10 dwellings, some potentially affordable⁵ this is not the only possible place that residential development could take place, particularly as the Council has granted permission for the development of a site to the south of the village⁶. Any public benefit arising from the additional dwellings would be outweighed by the harm to the CA. I am mindful of the statutory requirement to preserve or enhance the character or appearance of the CA and find that the scheme would not preserve, much less enhance, the CA.
13. Eden Cottage and the Leopard Inn have some group value together as small and domestic scale Grade II listed buildings, of simple design and typical of rural village vernacular development of a long-gone era. As the Framework makes clear, **significance derives not only from a heritage asset's physical** presence but also from its setting. The open aspect of the appeal site provides a convincing rural, open countryside setting to these buildings and their significance would be diminished by the creation of a modern cul-de-sac type development opposite.
14. **While the application form describes the scheme as "farmstead" style I can find** nothing in the indicative plan that represents this word. I understand **'farmstead' to mean a farmhouse with its subordinate collection of working** buildings - barns and outbuildings for different functions clustered around it. The overarching feature is that it is a **group** of interdependent buildings, each designed to pay its particular part in a single overall unit. The indicative plan

¹ Sent with the questionnaire

² Representation dated 2 November 2015

³ Extract from Local Plan Inspector's report quoted in Parish Council's representation of 2 November 2015

⁴ Referred to in the Officer's delegated report

⁵ If the draft S106 had been executed

⁶ Mentioned in the Officer's delegated report

shows a typical, modern cul-de-sac with separate dwellings ranged along it, not reflective of a traditional farmstead grouping in any way. Such a suburbanising scheme would be damaging to the setting of these listed buildings.

15. **I assess that the degree of harm to the listed buildings' significance would be substantial**, and would arise from this suburbanising development within the setting of these listed buildings. The change from the open countryside setting to a modern cul-de-sac and wide access to the highway would overwhelm the simplicity and small - scale nature of these humble buildings. Paragraph 132 of the Framework requires that any harm or loss to a heritage asset such as a listed building should require clear and convincing justification. Paragraph 133 goes on to say that, where a proposal would lead to substantial harm consent should be refused unless the proposals would achieve substantial public benefits.
16. Pulling all the threads of this issue together, I am mindful of the recent judgements in the Barnwell Manor and Mordue cases⁷ which reaffirmed that the finding of harm is a consideration to which the decision maker should attach 'considerable importance and weight' **as I do. Clearly if the harm to a heritage asset is substantial, then the weight to be attached to this will have to reflect appropriately the desirability of preserving such assets and their settings and the requirement to have special regard to such considerations.** Although the scheme would yield additional dwellings any public benefit arising from them would be outweighed by the harm to the setting of these heritage assets (the CA and the listed buildings) I have described above. In addition, the terms of **the Council's policies would not be met.**

Highways

17. Local Plan DP6 states that permission will only be given for proposals which provide a safe and convenient access for all users. There appears to have been considerable correspondence between the appellant and the Highway Control Engineer for the Highway Authority. His consultation reply to the Council of 22 January 2015 objected on 6 possible points, numbered 1 and a-e. Later, in an email to the agent dated 4 February, he stated that the drawing F12123/01 rev **B was "agreed" but that a stage 1 / 2 Road Safety Audit should be carried out as there appears "to be a lot of conflict areas being created by the proposed access which may pose highway safety issues".** In these circumstances, **therefore, it is difficult to understand what, exactly, was "agreed"** and whether the revised drawing satisfied all, or indeed any, of the objection points he listed earlier – this communication could have been clearer. The appellant appears to **have interpreted the consultation reply as indicating "no objection" but that is hard to conclude from a reply which does, after all, say that the proposed access "may pose highway safety issues".**
18. For example, the Highway Control Engineer comments that the speed survey **(a) was "short" (and thus may not give a true indication of speeds) and (b) the speeds recorded in that survey indicated that vehicles pass the proposed site entrance at consistently high speeds such that Design Manual for Roads and Bridges standards could be more appropriate than Manual for Streets figures.** This indicates visibility splays of 120m would be required. The Rev B plan does not show this. There are other matters which might also lead to unsafe

⁷ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG 2014; Jones V Mordue, SSCLG & South Northamptonshire Council 2015

conditions on Oakley Wood Road in conjunction with an access from the site. The proposed position, just off-set from the public house access, would be such that drivers leaving both and turning right would potentially be turning towards each other; the bus-stop adjacent, and the islands or refuges in the centre of the road might all lead to potential conflict between road users.

19. I am aware this is an outline application and changes could well be made as part of a later reserved matters application. However, given the lack of details above but, in particular, that 120m visibility splays have not been demonstrated to be achievable, I am not convinced that a safe highway access could be created. This is not to say it is impossible, simply that I do not have the evidence before me at present. It may be that street furniture, bus stops and speed zones could need to be re-located to achieve a safe access⁸, all of which could be straightforward, but I do not have the necessary evidence of a potential safe access before me as part of this application. Thus I conclude that the scheme would fail to meet the **Council's policy**.

Biodiversity and protected species

20. Local Plan policy DAP3 seeks to resist proposals that would destroy or adversely affect protected species while DP3 states that schemes will be expected to demonstrate that they protect and/or enhance local ecology. A Phase 1 Habitat Survey Report⁹ was submitted with the application. However, it was already out of date at the time the appeal application was made in December 2014 as it was completed in April 2013 and states at 1.2(1) that it is only valid for 12 months from date of issue and an update would be required following this period. As the appellant has made it clear that the site has not been used for a few years, and thus has not been subject to much disturbance, it seems to me highly likely that circumstances may well have changed on site.
21. The Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment. One way of doing this is by a Biodiversity Offsetting Calculation, as referred to in the consultation response from the County **Council's Ecologist** and in Planning Practice Guidance¹⁰ (PPG). Such a calculation can compensate for a loss of biodiversity flowing from proposals by means of habitat creation, ideally on-site. It may be that **the various "green space" areas shown on the indicative plan attempt to do this, but there is no suggestion of this in the 2013 Report and no indication that an up-to-date calculation has been made.**
22. Of further concern is the lack of any survey to establish the presence or otherwise of protected species such as great crested newts (GCNs) and/or reptiles. Reports of surveys and mitigation plans are required for development projects that could affect protected species. Typically surveys would highlight whether protected species are present and how they use the site. Links from **PPG provide access to Natural England's standing advice for protected species** and this makes clear that surveys for GCNs should be carried out if there is a suitable pond within 500m (The County Ecologist states there is one around **268m away and that it is "highly likely" that GCN are present**). The Standing

⁸ As set out in the appellant's final comments of 14 December 2015, second page

⁹ The Focus Ecology Ltd report

¹⁰ PPG paragraph ID: 8-020-20140306

advice also suggests that suitable refuges include grassland and hedgerows, both of which are present on the application site. I note the route of the Tach Brook close to the north of the site, which as a relatively secluded waterway, may well act as a wildlife corridor.

23. Thus, while the habitat creation suggested on the indicative plan is to be welcomed, until it is known what could be lost in terms of species and habitat, no informed judgement can be made and the terms of local and national policy cannot be met for all the above reasons.

Archaeology

24. As PPG states, heritage assets may be affected by direct physical change, and clearly the proposed building works would amount to such a change, so it is important to have sufficient information to make an informed decision. Local Plan policy DP4 requires that **'any remains of archaeological value are properly evaluated' prior to the determination of applications.** While the appellant submitted an "Heritage and Archaeological Impact Statement" it is unsigned, undated and unattributed so whether it is an authoritative document is unclear. **It lists "a selection" of recorded finds from the locality but does not explain the criteria for the "selection" made by the author nor what the source of the information is, or who made that selection.** It concludes that there would be a reasonable possibility of some chance findings of archaeological remains but **that it is not necessary to carry out a full survey "at this point" and that a watching brief is kept during building works.** I note from the Council's delegated report that Warwickshire County Council's Archaeologist objected to the scheme and found the submitted Statement to be inadequate.
25. Thus, while it may be that the unknown author consulted the Historic Environment Record, as is required by paragraph 128 of the Framework, this is not clear. I find that the appellant's Heritage and Archaeological Impact Statement is somewhat generic and lacking in any detail; I do not find it a helpful or convincing document. With the information submitted it is not possible to understand the likely impact of the proposal on any archaeological remains here. I conclude on this issue that the proposal has failed to properly assess the possible archaeological impact and the scheme therefore conflicts with Local Plan policy DP4, the Framework and the government's PPG.

Other matters

26. The appellant, in the grounds of appeal, state that the Council does not have a **5 year supply of deliverable housing land sites.** The Council's delegated report (prepared in March 2015) states that the situation is changing rapidly and that **they will soon "be able to demonstrate a 5 year supply".** The Parish Council's submission of November 2015 gives the most up-to-date picture stating there **is a 5.74 year supply, which confirms the Council's earlier confidence.** I have no evidence that contradicts this figure from either of the main parties, **although in the final comments the appellant disputes the "details and statistics" and argues that they should be given little weight.**
27. At the time of the preparation of the report on this application the Council believed they did not have a 5 year supply. Accordingly, they considered that their Local Plan policy RAP1 was out of date and, in such circumstances, the Framework requires applications to be considered favourably unless the adverse impact of doing so would significantly and demonstrably outweigh the

benefits when assessed against the policies in the Framework as a whole.¹¹ If there is a 5 year housing land supply this may not be the relevant course of action now. Policy RAP1 directs new housing growth to previously developed sites within the defined settlement boundary; the appeal site lies well beyond **the defined settlement of Bishop's Tachbrook and thus the scheme conflicts** with the development plan in this regard. In any event the location of the proposals would conflict with the Framework requirement to recognise the intrinsic character and beauty of the countryside.

28. I am aware of the suspension of the examination of the emerging Local Plan¹² but, even if the Council does not have a 5 year housing land supply, this does **not lead to an automatic 'permission must be granted' situation. Paragraph 49 of the Framework refers to the 'presumption in favour of sustainable development' applying in such circumstances, set out in paragraph 14.** This states that, if relevant policies are out of date then permission should be granted 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. Thus this does not lead to an automatic approval for residential development since adverse impacts of the proposal, such as harm to heritage assets, can still lead to a refusal, as here.
29. **It is submitted that the land is "redundant" grassland and the grounds of appeal state that it is "impractical" to rent out the field for various reasons,** although these are disputed by interested parties. There were horses grazing in adjoining fields to the east at the time of my site inspection and, although the grass is tussocky and weedy, there seemed to me to be no insurmountable problem to resuming a grazing regime or other agricultural use here. In any event the practicalities or otherwise of agricultural use do not provide justification for any development. The proper management of agricultural land should not, in my view, depend upon the outcome of this appeal.
30. I have taken account of all other matters raised including the on-going preparation of the Neighbourhood Plan and the offer of 40% of the dwellings on the proposed development to be affordable, but find nothing that changes my decision on this appeal. In particular, while 40% affordable housing was suggested as part of the application, I have no executed S106 before me to **secure this, only a "draft heads of terms" document** which can carry limited weight.
31. A somewhat dated flood risk assessment was submitted with the scheme; the **Parish Council's representations offer a more recent overview. Given my** conclusions on the main issues this is not determinative in this appeal however further investigation of this matter may be required. I note that the appellant complains of protracted negotiations with the Council and a lack of response to **the appellant's consultations with the Parish Council. These matters are not** within my control and they do not affect my decision.

Gillian D Grindex

Inspector

¹¹ The Framework, paragraph 14

¹² As set out in the appellant's final comments document of 14 December 2015