
Appeal Decision

Site visit made on 4 January 2017

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/W1850/W/16/3158832
Lustonbury, Luston, Herefordshire, HR6 0AP

- 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 Malcom Morgan against the decision of Herefordshire Council.
 - The application ref: 151325, dated 29 April 2015, was refused by notice dated 16 March 2016.
 - The development proposed is the erection of three dwellings with associated landscaping and infrastructure.
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Decision

1. *The appeal is allowed and planning permission is granted* for the erection of three dwellings with associated landscaping and infrastructure at Lustonbury, Luston, Herefordshire HR6 0AP, in accordance with the terms of the application, ref: 151325, dated 29 April 2015, *subject to the conditions listed at the end of this decision.*

Reasons

Background & main issues

2. A previous scheme for this site was refused and then dismissed on appeal in 2001. Some elements of the 2001 decision remain relevant but it is readily apparent from the layout plan and the Inspector's decision¹ that the siting and style of the three detached dwellings proposed in that case differed significantly from the current appeal scheme. Moreover there have been significant changes in development plan and national planning policy since 2001.
3. The current development plan, in the form of the Herefordshire Local Plan Core Strategy 2011-2031 (CS) (2015), is the starting point for assessing this appeal scheme. However, as acknowledged by the Council and noted in the appellant's statement of case, the Council is not currently able to demonstrate a five-year supply of deliverable housing sites. In these circumstances paragraphs 49 and 14 of the *National Planning Policy Framework* (2012) are engaged. Thus relevant policies for the supply of housing should not be considered up-to-date and planning permission should be granted unless either any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in the *Framework* indicate development should be restricted. Examples of 'specific policies' in this context include those relating to designated heritage assets.

¹ At Appendix 2 to the Council's appeal statement; appeal ref: APP/W1850/A/01/1060414

4. The appeal site, together with several nearby Grade II listed buildings, is within the Luston Conservation Area (CA). The listed buildings and the CA are designated heritage assets. Thus the **first main issue** in this appeal is the effect of the proposals on the special interest, significance and settings of the listed buildings and on the character, appearance and significance of the CA. The **second main issue** is their effect on neighbouring occupiers' living conditions, mainly in terms of privacy.
5. Given the Council's refusal reasons, the **third main issue** is whether or not the appeal site is an appropriate location for the new dwellings in terms of access to the village, facilities and services. It is also relevant to note here that, since the Council refused this appeal application, the emerging Luston Group Parish Neighbourhood Development Plan (NDP) has progressed: a consultation exercise on the 'Submission Version' has recently taken place. This is a material change in circumstances to be taken into account, and I refer to the NP again in relation to this issue. After addressing the three main issues I shall consider any other matters before returning to the implications of the lack of a five-year housing land supply.

Listed buildings and conservation area

6. The appeal site is at the southernmost end of the CA which is roughly linear in shape and encompasses almost all built development in the village, including both listed buildings and several relatively modern housing developments. In the absence of any published appraisal of its key features and characteristics it would seem the CA is significant in heritage terms mainly because of its historic buildings and other developments which help to illustrate the historic evolution of the village.
7. The four Grade II listed buildings² around the southern and western sides of the appeal site are notable individually and as the remaining built forms of the farm building complex once known as Bury Farm. Responses to the proposals indicate that Bury Farm was formerly a grange associated with Leominster Priory. Thus the heritage significance of these buildings, on a sensitive historic site, stems not just from their age³, traditional appearance and architectural features but also, to some extent, from their historic functions and associations. That is so even though the three former agricultural buildings have been converted and are now in residential use.
8. It is apparent from the historic maps in the appellant's Heritage Assessment⁴ that there has been considerable change in the number and arrangement of farm buildings since the map dated 1886. However the maps and the current situation on site suggest an area of more or less the same shape and size has remained in front of the farmhouse since the 19th century. That area, together with trees and vegetation to its north-east side and the listed Burycroft to the south-west side, are key elements of the farmhouse's setting.
9. Similarly the farmhouse and its frontage area are important elements in the setting of Burycroft. These settings and the inter-relationship of the two

² Identified in the list entries as Lustonbury (formerly listed as Bury Farmhouse); Barn at Bury Farmhouse (now known as Upper Court); Cart Shed and Granary at Bury Farm (now known as The Granary); Hop Kiln and rooms about 10 metres west of Lustonbury (now known as Burycroft)

³ The list entries include 'possibly 15th century' for the farmhouse, with 17th and/or 18th century origins for the other three buildings

⁴ Submitted with the appeal

buildings contribute to their heritage significance, with their siting slightly apart from the complex of farmyard buildings indicating the farmhouse in particular as a building of some status at the former Bury Farm. However I have found nothing of substance to indicate that the appeal site area to the north, whilst open, makes any especially notable contribution to the setting of these two buildings or their heritage significance.

10. Assessing the importance of setting to the special interest and heritage significance of the other two listed buildings (Upper Court and The Granary) is less straightforward. These have always been part of the main farm complex to the north-west of the farmhouse but the historic maps indicate several changes over time in the pattern of buildings around them. The loss of some old buildings and conversion of these two to residential use has created a different character and also some further separation from the farmhouse.
11. Moreover the Upper Court dwellings turn their backs to the farmhouse. On their rear (eastern) side the small outdoor amenity areas, outbuildings and boundary treatments together create a domestic character. This reduces to some extent the ability to appreciate the historic function of Upper Court and The Granary as part of the former Bury Farm. In this context therefore the appeal site to the east and at a lower level contributes little to the special interest and heritage significance of Upper Court and The Granary.
12. Thus I find that the three proposed dwellings would not directly affect or intrude into any of the key elements of the settings of Lustonbury and Burycroft. The long, narrow pair of semi-detached dwellings would sit slightly closer to the farmhouse and further from The Granary than a building of similar footprint size which appears to have formed part of the farm complex for many years⁵. However, the proposed pair would reflect the historic pattern of farm buildings and the proportions of both the former building and Upper Court to the west. Also, due to the appeal site's lower ground level and especially in relation to Upper Court, the proposed dwellings would appear subservient to the listed buildings.
13. In addition I have borne in mind that the proposed building style and design, using traditional materials such as stone, slate and timber, would reflect that of the former agricultural buildings. As the rear gardens would be more generous in size and less prominently sited than those at Upper Court, a more domestic character within them would have limited visual impact beyond their boundaries. Moreover the scope to retain existing trees and plant new ones of appropriate species⁶, including in the gardens, and to restrict permitted development rights for garden buildings and structures would further reduce any such impacts. Taking account of all these matters I find that the pair of semi-detached dwellings would not harm the special interest or setting of any of the listed buildings. Nor would this pair diminish the listed buildings' heritage significance or the ability to understand and appreciate it.
14. The proposed single dwelling would be similar to the pair of semis in design and proportions. It would be sited further away from all the listed buildings and would form a coherent grouping with the pair of semi-detached dwellings.

⁵ I refer here to the long, narrow building which appears on all the maps from 1886 to 1972, and not the more recent portal framed agricultural building once sited on an area of hardstanding within the appeal site

⁶ As illustrated on the layout plan (drawing no. P 004 Rev D) which incorporates various biodiversity enhancement features

Such a grouping would largely enclose their rear garden areas, further reducing any potential for adverse impacts due to their domestic character. Thus this building would not harm the special interest, settings or significance of any of the nearby listed buildings. Nor, for similar reasons, would the appeal scheme as a whole harm the CA's character, appearance or significance. Rather it would adequately respect and contribute to local character and distinctiveness.

15. I note some local concern about the site's potential archaeological interest, due mainly to the historic association with Leominster Priory, but there is nothing of substance before me to indicate it benefits from any special protection in this respect. Moreover the Council's Archaeological Advisor is satisfied a planning condition would adequately secure appropriate investigation and recording.
16. On this issue therefore I find no material conflict with the Herefordshire Local Plan - Core Strategy 2011-2031⁷ (CS) (2015) in any of these respects. In addition, as there would be no harm to designated heritage assets, the appeal proposals would not fall within the category of development which specific policies in the *Framework* indicate should be restricted.

Living conditions

17. The most significant concerns in this respect relate to existing dwellings in Upper Court and an existing dwelling to the north (Walnut Tree Cottage). However the separation distances between existing and proposed dwellings would be sufficient to prevent undue overlooking and loss of privacy, even though living rooms are proposed at first floor level. Additional factors which would further minimise the development's impacts include the differences in ground levels (especially in relation to Upper Court) and the slightly offset position of the single dwelling (in relation to Walnut Tree Cottage).
18. Therefore, subject to confirmation of finished floor levels (which could be required by condition) I conclude the appeal scheme would not cause material harm to living conditions at existing dwellings. It would not conflict in this respect with CS Policy SD1 or the *Framework*.

Whether or not an appropriate location

19. The Council's second refusal reason asserts the appeal scheme is "not representative of sustainable development" solely on the basis that occupiers would rely on private transport due to the site's location at the southernmost end of the village, with no pedestrian friendly route to village facilities. However location and accessibility to services and facilities is only one aspect of the three inter-linked dimensions of sustainable development (economic, social and environmental). Various other factors are relevant in assessing whether or not a proposal would constitute 'sustainable development'.
20. In this instance, as set out in the officers' report at the application stage, Luston is one of the rural settlements in the Leominster Housing Market Area where, as established in CS Policy RA2, some new housing will be permitted. Any such housing should be proportionate to the size of the community and its needs and should also meet the policy's four criteria. It follows that Luston is acknowledged to be a reasonably sustainable location for some additional housing. Moreover it is not the Council's case that the appeal development would conflict with any aspect of this policy.

⁷ Most notably Policies SS1, SS6, LD1, LD4 and SD1

21. CS Policy RA2 also advises that identifying, allocating and managing new housing sites in villages like Luston will be achieved through Neighbourhood Development Plans (NDPs), taking account of indicative minimum growth targets in the CS. In the Luston Parish Group the target is 55 dwellings for the period 2011 -2031, and there is not yet any adopted plan allocating sites for the 40+ dwellings still required. However the 'Submission Version' of the emerging Luston Group Parish NDP proposes both a settlement boundary for the village and six potential development sites within it, including the appeal site. As already noted, a consultation exercise on this version of the NDP has recently taken place, but the NDP is not yet at a stage where it can be given significant weight.
22. Even so, it is relevant that sites for a substantial number of dwellings need to be allocated in and around the village. Within the proposed settlement boundary five of the six sites currently put forward (including the appeal site) are on the northern and southern peripheries of the village, in locations where continuous footway links into the village do not always exist. Moreover small villages such as Luston often include some residential areas without defined footways, and the existing dwellings at the former Bury Farm are already one such area. I note also that the Highway Authority raises no objection on safety grounds, notwithstanding the absence of street lighting on the adjacent section of the B4361 and the nearby bend in the road.
23. I have had regard to CS Policies SS4 and MT1 and to policy guidance in the *Framework* relating to sustainable transport in rural areas. However these CS policies reflect the *Framework* in seeking to promote and/or facilitate development that would be accessible by a genuine choice of modes of travel "where practicable" (Policy SS4) or "where possible" (Policy MT1). It is notable that neither development plan nor national policy explicitly precludes housing in locations where there may be reliance on private motor transport for short journeys (such as those into the village or to nearby Leominster).
24. I therefore find the absence of a pedestrian friendly route to village facilities insufficient reason to render the appeal development unacceptable on sustainability grounds. I find no material conflict with the development plan or the *Framework* in this respect. On this issue, taking account of all the above matters, I therefore conclude the appeal site would be an appropriate location for the proposed dwellings.

Other matters and overall conclusions

25. I have taken account of all other matters raised in local responses to the proposals. I note some concerns about safety at the access onto the highway, including a reference to a recent accident. However I can find no sufficiently compelling grounds to conclude that increased use of this existing access as a result of just three more dwellings would compromise highway safety. The various proposals relating to tree protection, new landscaping and measures to safeguard any protected species and improve biodiversity, which could all be secured by condition, would adequately address the appeal scheme's impacts in these respects. Similarly, whilst I note concerns about various drainage matters, these too could be addressed by condition. In short, I have not found any other matters of such significance as to alter or outweigh my conclusions on the three main issues.

26. Returning now to the matters set out in paragraph 3 of this decision, the acknowledged lack of a five-year housing land supply means relevant policies for the supply of housing should not be considered up-to-date. However, as I have not found any material conflicts with the development plan, including in relation to heritage assets, I conclude that the appeal scheme would accord with the development plan and with the *Framework*. Thus there is no need to assess the weight attributable to CS policies relevant to the supply of housing. I have not found any adverse impacts which would outweigh the benefits of granting permission, assessed against policies in the *Framework* taken as a whole. Moreover the creation of three new dwellings would have some social and economic benefits. Overall therefore I conclude the scheme would constitute sustainable development, the appeal should succeed and permission should be granted subject to conditions.

Conditions

27. A condition specifying the approved plans is necessary for the avoidance of doubt and in the interests of proper planning: it should include the site layout plan which also shows the proposed biodiversity enhancement measures (drawing no. P 004 Rev D). Further investigation works are needed in relation to the site's archaeological potential and to re-check for protected species. These are necessary to ensure matters of archaeological and ecological interest are properly investigated, recorded and, if necessary, mitigated.
28. The Council has suggested several conditions relating to landscaping and tree matters, including a requirement for an arboricultural impact assessment and tree protection plan. However as an Arboricultural Implications Assessment including a tree protection plan was submitted during the application process, it is not necessary to require those elements of the suggested conditions. Other elements are important, both in the interests of visual amenity and to ensure the long term health of existing trees which contribute to that amenity.
29. Further details of external materials for the built development and of any external lighting are also necessary in the interests of visual amenity. For similar reasons, and so that the Council has the opportunity to assess whether alterations/extensions to the dwellings or outbuildings in their rear gardens would impact on the setting of nearby listed buildings in the CA, a restriction on permitted development rights is justified.
30. In this particular site context it is reasonable and necessary to require further details of both surface and foul water drainage to ensure adequate drainage provision. As previously mentioned, it is reasonable and necessary to require details of finished floor levels in the interests of residential amenity at existing dwellings. Conditions relating to provision and retention of access, turning and parking facilities are needed in the interests of highway safety. For similar reasons it is appropriate to require a construction management plan (combining two of the Council's suggested conditions, but excluding that relating to incineration which is subject to other legislation).
31. However, with regard to water efficiency, it has not been explained whether CS Policy SD3(6) stems from an assessment demonstrating a clear local need for a tighter standard than that required by the Building Regulations. I shall not therefore impose the Council's suggested condition to this effect. The conditions which follow are based on those suggested by the Council, but with

some amendments and consolidation to reflect points already made and in the interests of precision and clarity.

Planning permission is therefore granted subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, drawing nos: E 001; P 004 Rev.D; P100 Rev B; P101; P200 Rev D; P201 Rev B; E300.
- 3) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation (to accord with a brief prepared by the County Archaeology Service) that has first been submitted to and approved in writing by the local planning authority.
- 4) No development, nor any site clearance or groundworks, shall take place until a site survey for herpetological species has been carried out in the appropriate season and the results together with any necessary mitigation proposals have been submitted to and approved in writing by the local planning authority. Any necessary mitigation measures shall be carried out as approved and the recommendations for species and habitat enhancements set out in the Herpetological Research and Consultancy Report (dated April 2015) and illustrated on the approved plans shall be implemented before any dwellings hereby permitted are occupied, unless otherwise approved in writing by the local planning authority.
- 5) No development, nor any site clearance or groundworks, shall take place until an Arboricultural Method Statement pursuant to the submitted Arboricultural Implications Assessment for the site (prepared by David Gardner BSc (Hons) NDArb) has been submitted to and approved in writing by the local planning authority.

The Arboricultural Method Statement shall include details of all precautions and measures to be put in place during the development period to protect the trees and hedging identified for retention on the 'Tree Constraints Plan' (ref: TCP/OHA/001) at Appendix 1 to the Arboricultural Implications Assessment. The details shall include a tree protection plan, an implementation programme and provision for monitoring by a qualified arboriculturalist.

The tree protection programme and measures shall be implemented and development shall be carried out at all times during the construction period in accordance with the approved Method Statement.

- 6) No development shall take place until a detailed landscaping scheme based on the proposals indicated on the approved layout plan (drawing no. P 004 Rev D) has been submitted to and approved in writing by the local planning authority. The scheme shall include: a planting plan and specification for soft landscaping, to include details of the species, sizes, numbers and locations of new trees, hedging and shrubs; details of hard surfacing materials and means of enclosure; an implementation programme. Hard and soft landscaping shall be provided in accordance with the approved scheme.

Any trees, hedging or shrubs which within a period of 5 years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise approved in writing by the local planning authority.

- 7) Notwithstanding details noted on the approved layout plan (drawing no. P 004 Rev D) no development shall take place until details of provisions for foul and surface water drainage, including a scheme for surface water attenuation, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development, other than site clearance and groundwork, shall take place until details of finished floor levels of the dwellings hereby permitted in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development, other than site clearance and groundwork, shall take place until details or samples of materials to be used externally on walls and roofs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The statement shall include details of hours of works and construction (including deliveries) together with provisions for: the parking of vehicles of site operatives and visitors; loading, unloading and storage of plant and materials. Development shall be carried out at all times in accordance with the approved method statement.
- 11) No dwelling hereby permitted shall be occupied until the access, turning and parking facilities indicated on the approved layout plan (drawing no. P 004 Rev D) have been provided and made available for use, in accordance with details of construction, surfacing and drainage that have first been submitted to and approved in writing by the local planning authority. The access, turning and parking facilities (including parking spaces in the integral garages) shall be retained and kept available for such purposes at all times thereafter.
- 12) No external lighting at the development hereby permitted shall be installed other than in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A-E or H of Schedule 2, Part 1 of the Order shall be carried out.

Jane Miles

INSPECTOR