

Appeal Decision

Site visit made on 13 June 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 14 July 2017

Appeal Ref: APP/R0660/W/17/3170279

Rectory Farm, Old Knutsford Road, Church Lawton, ST7 3EQ

- 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 North West Heritage Ltd against the decision of Cheshire East Council.
 - The application Ref 16/5562C, dated 15 November 2017, was refused by notice dated 1 February 2017.
 - The development proposed is erection of up to 5 residential dwellings, with primary access defined up to 20 metres, ancillary facilities and associated infrastructure.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 5 residential dwellings, with primary access defined up to 20 metres, ancillary facilities and associated infrastructure at Rectory Farm, Old Knutsford Road, Church Lawton, ST7 3EQ in accordance with the terms of the application, Ref 16/5562C, dated 15 November 2017, subject to the conditions set out in the Schedule attached to this Decision.

Procedural Matter

2. The application to which this appeal relates was submitted in outline with all matters except access reserved for determination at a later date. I have dealt with the proposal on that basis.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to any relevant development plan policies and the National Planning Policy Framework; and
 - If the proposal would be inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.
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Reasons

Whether inappropriate development

4. The appeal site is formed by fields on the edge of Church Lawton. My attention has been drawn to the planning history for the site, including a planning appeal for residential development that was previously dismissed¹.
5. The site is next to but outside of the settlement boundary for Church Lawton as defined by the Congleton Borough Local Plan First Review (Adopted 27 January 2005) (LP). The settlement is washed over by the Green Belt. Policy PS6 of the LP refers to a defined infill boundary line within which limited development in the settlement will be permitted, subject to matters including those relating to design and appearance. Policy PS7 restricts the type of new development that will be permitted in the Green Belt and is permissive of controlled infilling within those settlements identified in policy PS6.
6. Paragraph 89 of the National Planning Policy Framework (Framework) states that the construction of new buildings in the Green Belt should be regarded as inappropriate. The paragraph goes on to list exceptions to this including limited infilling in villages and the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
7. The Framework exception does not therefore make specific reference to settlement boundaries or infill boundary lines in relation to limited infilling in villages in the Green Belt. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Policies PS6 and PS7 of the LP are therefore not consistent with the Framework in restricting infill development in villages in the Green Belt to sites only within an infill boundary line.
8. Case law² has also established that it is necessary to consider whether, as a matter of fact on the ground, a site appears to be within a village and whether or not a site lies outside a village boundary as designated in the development plan is not determinative of the point. I note that an Inspector followed a similar approach in a recent appeal³ relating to a site that is also within Church Lawton.
9. I shall therefore now go on to consider whether the appeal site can be considered to be within a village taking account of the Framework's paragraph 89 exception and the relevant case law.
10. The appeal site is adjacent to a large established housing estate that forms part of the main developed area of Church Lawton. These houses line the boundary of the site along two sides. The rear gardens and rear elevations of the houses are visible across the site when viewed at close quarters and from more distant viewpoints such as from the nearby elevated canal towpath.

¹ APP/R0660/A/13/2201056 Decision date: 14 July 2014

² Wood v Secretary of State for Communities and Local Government [2014] EWHC 683 (Admin)

³ APP/R0660/W/16/3156493 Decision date: 14 November 2016

11. The development proposed would see the construction of a small group of up to five houses on a small site. The site is adjacent to the established housing that forms part of Church Lawton and would be viewed within this visual context.
12. There has also been a recent planning permission granted on the neighbouring site between the appeal site and Old Knutsford Road. This permission allows for the construction of a small group of dwellings. The scheme has been implemented with the access having been laid out and the site cleared. The appeal scheme before me would take its access from that provided for the neighbouring development.
13. As a consequence of this scheme, the appeal site will be surrounded by houses that are within the village on three sides. The proposed development would also not extend to the north beyond the defined built extent of the settlement. It would therefore be contained within the envelope of existing development within the village. I am therefore satisfied that the appeal site relates well both physically and visually to the existing settlement.
14. As to whether or not Church Lawton can be considered a village for the purposes of the Framework, the supporting text to policy PS6 of the LP identifies the settlements listed as containing established dwellings that may provide limited community services or other facilities for the population living within them or within the surrounding parishes. During the site visit I was able to observe a Public House, petrol station and horticultural nursery selling plants to the public. These would all be within walking distance of the development proposed. There are also bus stops nearby on Knutsford Road that provide a regular service to nearby towns including Alsager and Congleton where a wider range of services and shops are available. Whilst the settlement may not have a defined core in terms of its lay out, that is often the case for many villages and it is not necessarily a decisive factor. I am therefore satisfied that Church Lawton can be considered a village for the purposes of paragraph 89 of the Framework.
15. For these reasons, I consider that the proposal comprises limited infilling in a village for the purposes of paragraph 89 of the Framework. The proposal would not therefore be inappropriate development in the Green Belt.
16. I note that in the previous appeal at the site, the Inspector referred to the appellant acknowledging that the proposal would be inappropriate development in the Green Belt. However, the Inspector did not undertake a detailed assessment in this regard, rather observing that he saw no reason to disagree. My attention has also been drawn to the Inspector's comments that it was not for him to redraw the settlement boundary and that the process rests with the local planning authority and the residents of Church Lawton. However, circumstances have materially altered since the previous appeal was determined some three years ago. Specifically, the case law I have referred to, the more recent 2016 appeal in Church Lawton that had regard to this case law and the grant of planning permission on the neighbouring site for residential development. I have determined this appeal with regard to the up to date circumstances.
17. Whilst the proposal would result in a very limited scale of development on a small site being situated slightly closer to the canal than the existing situation, a margin of open fields and woodland would be retained as a form of visual

separation between viewpoints along the elevated canal towpath. Existing views across the site are already defined by the established housing estate and the proposal would be seen in this context. Furthermore views from the canal towpath and the footpath link from the towpath to Old Knutsford Road towards the site are limited to those experienced at close quarters. As one walks along the towpath in either direction there is dense woodland that restricts medium to long distance views of the site. It is the countryside on the opposite side of the canal that makes the more significant contribution to the openness and visual amenity of the area as it is undeveloped and comprises rolling agricultural fields. I am therefore satisfied that any impact on the openness of the Green Belt or conflict with the purposes of including land within it would be very limited indeed and this could be further mitigated by suitable design and landscaping at reserved matters stage.

18. The appellant has also referred to the appeal site as comprising previously developed land in reference to the relevant paragraph 89 exception. I did observe a small concrete block building with a corrugated iron roof. However, apart from this any previous activity relating to the horse business including the storage of carriages on the site has now ceased. The appeal site has the visual appearance of greenfield land, albeit somewhat overgrown. There is therefore insufficient evidence before me to come to a firm view on whether or not the appeal site does constitute previously developed land. However, given my finding in the preceding paragraphs this has not been a decisive factor in reaching a conclusion on this main issue.
19. Accordingly, I conclude on this main issue that the development proposed would be limited infilling in a village and it is not therefore inappropriate development in the Green Belt. Whilst there would be some conflict with policies PS6 and PS7 of the LP, the development proposed would not conflict overall with paragraph 89 of the Framework.
20. The Council have also referred to a policy from the emerging plan for Cheshire East. Policy PG3 essentially re-states the two Framework paragraph 89 exceptions listed above whereby limited infilling in villages or previously developed land will be permitted in the Green Belt. Whilst the emerging Local Plan has not yet been formally adopted, it has been examined and the Inspector's Main Modifications have been subject to public consultation. It is therefore at an advanced stage in its preparation and I attach weight to this policy in accordance with paragraph 216 of the Framework. However, policy PG3 does not specifically refer to limited infilling in villages within a defined boundary line. The development proposed would therefore not specifically conflict with this policy.

Other considerations

21. In light of my conclusion on the first main issue above, it is not necessary for me to go on to consider this issue further.

Other Matters

22. I note that several local residents, Councillors and other third parties, along with the main parties to this appeal, have referred to the housing land supply situation in the area and the correct application of paragraph 49 of the Framework in light of recent case law. Whilst I have had regard to the submissions, as I have concluded that the appeal proposal would not be

inappropriate development in the Green Belt the issue of housing land supply has not been a decisive factor in my determination of this appeal.

23. I appreciate that for those local residents living close to the appeal site, the view from their properties will change as a result of the proposal. However, there is little evidence before me to suggest that the proposal would be harmful in terms of its impact on living conditions in relation to outlook or privacy as acceptable separation distances could be achieved. Whether or not the proposal should comprise bungalows in order to reflect the neighbouring housing is a matter to be determined at reserved matters stage.
24. I note concerns have also been raised regarding whether trees on the site have been plotted accurately. However, the Council is satisfied that they have been and a condition requiring an Arboricultural Impact Assessment will ensure the effect of the proposal on existing trees is taken account of at reserved matters stage.
25. Several letters of objection have also referred to concerns relating to flooding and surface water drainage. The Council have provided a copy of an updated Committee report which states that the Council's Flood Risk Team originally objected to the proposal based on a lack of information relating to drainage calculations. However, further information on this matter was provided and therefore the Flood Risk Team no longer object to the proposal, subject to conditions. I also note that neither the Environment Agency nor United Utilities objected to the proposal on this basis, subject to conditions. I am therefore satisfied that the proposal would be acceptable in this regard.
26. The proposal would use an existing access with appropriate visibility splays as per the approved development on the adjacent site. Taking this into account and the small scale of the development proposed, I am satisfied that there would be no harm to highway safety.
27. I note the Council's appeal statement refers to paragraph 55 of the Framework and an appeal Decision on this issue. However, given that this does not form part of the appellant's substantive grounds of appeal it is not clear to me in what way this is directly relevant to the appeal before me.

Conclusion and Conditions

28. For the reasons given above, I conclude that the appeal should be allowed.
29. I have considered the Council's suggested conditions in line with the advice in the Framework and the Planning Practice Guidance (PPG).
30. I have attached the standard conditions for an outline permission including the definition of the reserved matters. As access is not a reserved matter I have also attached a condition requiring the development to be in accordance with the plans for the avoidance of doubt. Whilst the submitted plans do show an indicative layout and landscaping these are reserved matters and do not form part of the appeal scheme before me.
31. I have also attached conditions requiring details of a water drainage scheme to be submitted to and approved by the local planning authority. This is to ensure that the proposed development can be adequately drained and to ensure that there is no flood risk on or off site resulting from the appeal scheme. The suggested wording of the condition required the scheme to be submitted to and

approved by the Lead Local Flood Authority (LLFA). However, the PPG states that it is not appropriate to require in a condition that a requirement should be carried out to the satisfaction of a third party as this decision rests with the local planning authority. I have therefore altered the wording of this condition accordingly. For the same reasons, and also in the interest of the amenity of neighbouring occupants, I have also attached a condition requiring the submission of a scheme confirming details of existing and proposed land levels.

32. Whilst I note that the appellant requested the form of words as originally suggested by the LLFA, the Council has combined the four conditions suggested into two conditions. As the wording of the condition requiring a water drainage scheme to be submitted is more flexible than that suggested by the LLFA I have adopted the Council's proposed wording (conditions Nos. 5 and 8 for reference).
33. As the development is close to existing residential properties a condition is required should pilling be necessary to ensure there will be no undue harm to the living conditions of neighbouring occupants in relation to noise or disturbance. For the same reason it is reasonable to require a condition for the submission of a scheme to minimise dust during the construction phase of the scheme.
34. A habitat survey of the appeal site did identify a disused badger sett and a method of soft closing was recommended. However, as the status of badgers on a site can change within a short time scale it is reasonable to require that the reserved matters include appropriate badger mitigation measures.
35. A contaminated land condition is also necessary in the event that contaminants are discovered during the construction process, taking account of the previous use of the site.
36. The Council have also suggested a condition relating to Electric Vehicle Infrastructure. Whilst paragraph 35 of the Framework does refer to this, there is no evidence before me to indicate whether this would be practical or viable to provide on the site. The condition is therefore not justified.
37. A condition was also suggested removing the Permitted Development Rights of future occupants in relation to development under Classes A, B, C, D, E and F. The PPG states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. The PPG goes on to state that the blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
38. I note that the Council's reasons for suggesting this condition involve wanting to prevent further additions which could be added which would result in harm to both the character/appearance of the area and the living conditions of adjoining neighbouring properties. However there is little evidence before me to indicate that this reason would amount to exceptional circumstances that would justify the imposition of such a condition in this case.
39. I note that the appellant requested that the conditions be worded so as to be suitable for self-builders. However, no alternative words that would be

considered acceptable were provided. I have therefore referred to the Council's suggested wording.

V Lucas-Gosnold

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping (including replacement hedgerow planting, Arboricultural Impact Assessment and tree protection measures), layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. The reserved matters should also include badger mitigation measures.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1101 101 Rev E; 1109 102 Rev E; 1109 103; and 1109 LO1 Rev A
- 5) The development hereby permitted shall not commence until details of the detailed design, implementation, maintenance and management of a water drainage scheme have been submitted to and approved in writing by the Local Planning Authority.
- 6) Should piling be required as part of the development, prior to the commencement of development the applicant shall submit a method statement, to be approved by the local planning authority. The piling work shall be undertaken in accordance with the approved method statement. The method statement shall include the following details:
 - (a) Details of the method of piling
 - (b) Days / hours of work
 - (c) Duration of the pile driving operations (expected starting date and completion date)
 - (d) Prior notification to the occupiers of potentially affected properties
 - (e) Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
- 7) No development shall take place until a scheme to minimise dust emissions arising from demolition / construction activities on the site has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development. The demolition / construction phase shall be implemented in accordance with the approved scheme, with the approved dust

suppression measures being maintained in a fully functional condition for the duration of the demolition / construction phase.

- 8) Prior to commencement of the development hereby approved details of proposed and existing land levels shall be provided in writing to the Local Planning Authority for approval. The development shall then only be constructed to the approved details.
 - 9) Development shall not commence until:
 - (a) A Phase I Preliminary Risk Assessment has been submitted to, and approved in writing by, the local planning authority (LPA) AND if required:
 - (b) A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the LPA AND:
 - (c) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the LPA.

Prior to the occupation of the development:

 - (d) The remedial scheme in the approved Remediation Strategy shall be carried out.
 - (e) A Verification Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the LPA, prior to the occupation of the development.
 - 10) Any soil or soil forming materials to be brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation to site.

Prior to occupation, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the local planning authority.
 - 11) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the local planning authority.
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