



Appeal Decision

Site visit made on 5 June 2018

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 18th July 2018.

Appeal Ref: APP/H1840/W/18/3196661

Paddock accessed off Low Road, Church Lench, Worcestershire

Easting - 402518; Northing - 251356

- 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 & Mrs P J Nicholls against the decision of Wychavon District Council.
 - The application Ref 17/01122/FUL, dated 23 May 2017, was refused by notice dated 24 August 2017.
 - The development proposed is a five dwelling development with landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has referred to the Council's Strategic Housing Land Availability Assessment (SHLAA). However, I have not been provided with a copy of that document and as such give it little weight. As set out in the Planning Practice Guidance (PPG), the SHLAA process includes a number of factors in assessing suitable sites for development. However, I am mindful that whilst the SHLAA is an important evidence source to inform plan making, it does not in itself determine whether a site should be allocated for development. The role of the SHLAA is to provide information on a range of sites which are available to meet need. Whilst, the appellant considers that the site was incorrectly not allocated within the SWDP for housing that is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990.
3. Reference has been made to an emerging Neighbourhood Plan for Church Lench. However, I have not been provided with a copy of the document and I have little evidence to indicate its stage of preparation. As such, I give it little weight.

Main Issues

4. The main issues are:-
 - Whether the site would be an appropriate location for five dwellings having regard to the development strategy of the South Worcestershire Development Plan (SWDP) and the National Planning Policy Framework (the Framework) in relation to housing in rural areas; and
 - Whether the proposal would preserve; the setting of Church Lench Conservation Area (CLCA); the settings of nearby listed buildings; the settings of nearby non-designated heritage assets (NDHA); the significance

of each of the heritage assets and the effect of the proposal on the character and appearance of the surrounding area.

- The effect on protected species.

Reasons

5. The appeal site comprises a field/paddock that is located to the rear of properties that front onto Main Street and Low Road. There is an existing agricultural building within the site and vehicular access to it can be gained from the existing access that is between Bramley Bank and Flecknoe House on Low Road. The appeal proposal would involve the construction of 5 dwellings with associated garages and parking served from the existing access.

Development strategy

6. The development plan includes the SWDP which was adopted in February 2016. SWDP Policy SWDP 1 sets out the general presumption in favour of sustainable development. Policy SWDP 2 is a key policy of the development plan setting out the development strategy and settlement hierarchy. There is no dispute between the parties that the site is adjacent to but is not within the development boundary of Church Lench.
7. Sites outside the development boundaries are to be considered as open countryside, for the purposes of SWDP Policy SWDP 2, where development will be strictly controlled. This policy aims to focus most development on urban areas, where both housing needs and accessibility to lower-cost public services are greatest. It also sets out a settlement hierarchy by which windfall developments are to be assessed.
8. Both parties have stated that Church Lench is a category 3 village which has a number of services and facilities within it. These include a primary school, parish hall, church, recreation ground, pre-school nursery, mobile shop and access to public transport. Within category 3 villages SWDP Policy SWDP 2 states that infill development within the defined development boundary is acceptable in principle subject to other SWDP policies. I have little evidence before me to indicate whether any sites are allocated for housing within Church Lench. The development would not fall within one of the categories of development allowed by Part C of SWDP Policy SWDP 2 and as such it would be in conflict with this policy.
9. Even though Low Road, in the immediate vicinity of the site access, does not have pavements and is unlit this is not dissimilar to many roads through rural settlements. Moreover, the access road is within an easy walking distance of Main Street and Low Road does have grass verges that can be used as a refuge for pedestrians from passing vehicles. The services and facilities within the settlement would provide some day-to-day needs and the access to public transport would offer an alternative to the private motor car to access services and facilities in the wider area.
10. However, based on the evidence before me, I consider that for some of the time and for convenience reasons, occupiers would still tend to be dependent on travel by the private car to access services and facilities in the wider area. Nonetheless, there would be a choice of transport modes for future residents and paragraph 29 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Consistent

with the Framework SWDP Policy SWDP 4 requires, amongst other matters, that proposals must offer genuinely sustainable transport choices. As such, I consider the proposal would broadly comply with that policy.

11. Nevertheless, the same circumstances would arise in relation to many sites which are close to the development boundaries of this and other villages at the same level within the settlement hierarchy. This factor simply indicates that the proposal would not cause material harm in this respect.
12. Paragraph 55 of the Framework advises that to promote sustainable development in rural areas, housing should be located where it would enhance or maintain the vitality of rural communities and that (with certain identified exceptions) local planning authorities should avoid new isolated homes in the countryside.
13. The judge in the recent judgement¹ has stated that paragraph 55 of the Framework *'cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them'*.
14. She also states that the immediate context is the distinction in paragraph 55 *'between "rural communities", "settlements" and "villages" on the one hand, and "the countryside" on the other. This suggests that "isolated homes in the countryside" are not in communities and settlements and so the distinction between the two is primarily spatial/physical'*. As the site is adjacent to the edge of the settlement I do not consider that it is in an isolated location.
15. It is likely that the future occupiers of the dwellings would utilise and help to maintain the vitality of the services within the village. However, there is little evidence to suggest that the existing services and facilities within Church Lench or the surrounding area are under threat or that the proposal would enable those services and facilities to be enhanced.
16. Taking into account all of the above, even though the proposal would broadly comply with SWDP Policy SWDP 4 and paragraph 55 of the Framework, when judged against SWDP Policy SWDP 2 the proposal would not be in an appropriate location as the Council's development strategy would be undermined.

Heritage assets and character and appearance

17. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Section 72(1) of the Act requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
18. Paragraph 132 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight

¹ Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)

should be given to the asset's conservation and that the more important the asset, the greater the weight should be. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different elements of that setting may either make a positive, negative or neutral contribution to its significance.

19. The definition of heritage assets, as set out in the Framework, includes designated heritage assets and NDHA identified by the local planning authority. Such assets have a degree of significance due to their heritage interest that merits consideration in the planning process. The buildings identified as NDHA by the Council do not appear to be on a 'local list' and I have not been provided with a Conservation Area Appraisal for CLCA.
20. The appeal site adjoins the northern boundary of CLCA and within the conservation area fronting Main Street there are a number of listed buildings and buildings identified by the Council as NDHA. CLCA covers the historic core of the village and is largely centred along Main Street. I have been provided with little evidence of what constitutes the significance of these heritage assets.
21. However, based on the evidence before me and my observations the character, appearance and significance of CLCA is largely derived from the predominantly rural character and range of traditional buildings including historic farm buildings that it contains together with its use of materials, pattern of development and the relationship of buildings to the spaces around them. I acknowledge that the village has expanded with ribbon development along and fronting many of the roads and that The Croft is a modern cul-de-sac development that adjoins the southern boundary of CLCA. Nevertheless, the rural landscape setting to the north of CLCA, even though it is encroached on, in part, by dwellings and residential gardens, has historic, evidential and aesthetic value as it allows for an appreciation and understanding of the historic evolution of the village and its links to agriculture and farming.
22. The appeal site adjoins part of the CLCA northern boundary and forms part of that rural landscape in close proximity to CLCA. There are views in and out of CLCA across the appeal site. The views out of CLCA are predominantly from the gardens and dwellings that front Main Street. Nevertheless, the PPG states that *'the contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting'*². When walking along the public footpath, which runs to the north of the site from Low Road to a point close to All Saints churchyard, CLCA is experienced and viewed in part across the appeal site. Consequently, the site is within the setting of CLCA. I am in no doubt that the open undeveloped nature of the appeal site has a positive role in the significance of CLCA, contributing to the appreciation and understanding of the historic evolution of Church Lench.
23. The dwellings would be 'set-down' within the site but they would be clearly discernible above the existing hedges. Even with reinforcement and additional hedge/tree planting within the appeal site, the development proposed would create a much stronger presence of built form than is currently the case in those views and would intrude into the experience of CLCA. On completion the

² Paragraph: 013 Reference ID: 18a-013-20140306

- proposal would infill this undeveloped area between the gardens of the dwellings on Main Street and those on Low Road and one of the crucial visual links through to the open countryside adjacent to the boundary of CLCA would be severely eroded.
24. Consequently, the proposal would have a considerable adverse impact on the appreciation of and how the significance of this part of CLCA is experienced and would therefore fail to preserve its setting. There would be corresponding harm to the established character and appearance of the area more generally and I will return to this matter below.
25. All Saint's Church is a grade II* listed building and its significance is mainly drawn from its age, architectural features, form, fabric and use. The church is sited near to the top of a hill and its tower is visible from the surrounding area rising above the rural landscape and it appears to have been a feature of that landscape for many centuries. The church is set within a landscaped churchyard and that churchyard is bounded to the north by agricultural land. The informal rural character of the churchyard and the agricultural land make an important contribution to how the church is experienced and therefore make a positive contribution to its significance. I observed that there is intervisibility between the appeal site and the Church and its churchyard. I consider that the appeal site can be treated as being within the rural landscape setting of this listed building.
26. The upper parts of some of the proposed dwellings would be apparent from the churchyard. However, they would be some distance from the churchyard and would be beyond the residential gardens of Pilgrims Cottage and Rest. Furthermore, views of its tower from the public footpath would not be totally precluded by the development. As a result, although the presence of additional built form would slightly erode the wider rural landscape setting of the church I consider that its overall significance would be preserved.
27. Church Farm is grade II listed, timber framed with a tile roof and is in close proximity to Main Street. To its rear there are a number of what appear to be former farm buildings and these buildings also bound the agricultural land that adjoins the churchyard. I consider that the significance of this listed building is largely drawn from its age, form, architectural features and use. Due to the topography and intervening vegetation there appears to be limited if any intervisibility between the timber framed range of the listed building and the appeal site.
28. There could potentially be some intervisibility between the upper floors of the farm buildings to the rear and the appeal site. The significance of the farm buildings can be experienced from the public footpath. However, the development would have a minimal impact on this experience due to its alignment. Furthermore, I have no evidence to suggest that the appeal site formed part of the land that was historically associated with this building. As such, I do not consider that the appeal site can be treated as part of the setting of this listed building.
29. The appellant's Design and Access Statement indicates that The Steps is also a listed building. The Council have not stated that the proposal would harm the special interest or setting of this building but I have a statutory duty to consider these matters. The building is timber framed in close proximity to Main Street and appears to have very limited garden or grounds associated

with it. As such, its significance is experienced predominantly from Main Street. I have no evidence to indicate that there is any intervisibility with the appeal site or that there was any historical link between it and the appeal site. As such, I do not consider that the appeal site can be treated as part of the setting of this listed building.

30. Church Farmhouse, Pilgrims Cottage and Rest are identified within the Council's reasons for refusal as NDHA. This appears to be based on their historic, evidential and aesthetic value linked to their former uses as a farmhouse and agricultural buildings. These buildings are traditional vernacular farm buildings and a farmhouse and are of some age. Even though they have been altered and the farm buildings have been converted to residential use I consider that that do have a moderate amount of historic and evidential value. The farmhouse is quite large and has an imposing attractive frontage onto Main Street. As such it has a high level of aesthetic value as it makes a positive contribution to the streetscene. Based on my observations, I consider that these buildings are of sufficient historic interest to be treated as NDHA. Their significance derives from their age, form, architectural features and past use.
31. Church Farmhouse and Pilgrims Cottage and Rest are all visible from the appeal site which bounds the gardens of the farmhouse and Pilgrims Cottage. Moreover, they can be seen in views across the appeal site from the public footpath. It is highly likely that the gardens areas to Pilgrims Cottage and Rest and the northern section of the garden to Church Farmhouse were, at some stage in the past, used for agricultural purposes. Whilst, their use as domestic gardens has eroded the historic and evidential value of those spaces they still have aesthetic value as open and undeveloped areas within this rural landscape. The significance of these buildings can be experienced from the public footpath in views across the appeal site. I have no evidence that the appeal site formed part of the land historically associated with the NDHA. However, due to its close proximity to them and the intervisibility between them it can be treated as part of the settings of these buildings.
32. The aesthetic value of Church Farmhouse would not be harmed and the significance of the NDHA may be modest when compared to other heritage assets. However, their significance positively contributes to the significance of CLCA to which they are inextricably linked. Taking into account my findings above in relation to the impact of the proposal on the significance of CLCA I consider that the proposal would have a similar adverse impact on the setting and therefore the significance of the NDHA.
33. Whilst the site has value both in its own right, and as part of the wider landscape, and it is clear that views into and out of CLCA contribute to the significance of the heritage asset, it does not follow that the site constitutes a valued landscape. I therefore find no conflict with paragraph 109 of the Framework.
34. The village is within the Timbered Plateau Farmlands Landscape Type (LT) defined by the Landscape Character Assessment (LCA). The predominant characteristic of this LT is the tree and woodland cover within it and the linkages between the woodlands and hedgerows. The proposal would not remove any trees and woodland and would reinforce the existing hedgerows and plant new trees and hedgerows.

35. Nevertheless, the landscape guidelines for this LT include maintaining the characteristic dispersed settlement pattern, avoiding the formation of pronounced settlement nuclei. In my experience, it is likely that Church Lench was a dispersed settlement given the amount of farms and farm buildings within it. However, the amount of modern development especially to the south of Main Street has appreciably eroded this settlement pattern. Nonetheless, to the north of Main Street and on Low Road there is a clear linear pattern of development with dwellings directly fronting these roads. Where there are buildings to the rear of them, in the main, they appear to be outbuildings or farm buildings. Even when these buildings have been converted to residential use they appear subservient to the frontage buildings.
36. The proposed dwellings would be served off a no-through access road and they would not have a direct frontage onto Low Road or Main Street. Whilst, the architectural style and materials of the dwellings would be sympathetic to the vernacular of CLCA and the surrounding area they would have the appearance of substantial modern dwellings. As such, the proposal would significantly increase the depth of development to the north of the village and it would increase the nucleated character of the settlement. The site is well contained visually from Main Street and Low Road but as stated above the development would be clearly discernible to users of the public footpath. Consequently, the proposal would have an adverse impact on the character and appearance of the area.
37. Taking into account all of the above, whilst I have found that the proposal would preserve the setting and the significance of All Saints Church I consider that it would not preserve the settings and the significance of CLCA and the NDHA. In the language of the Framework and in the context of the significance of the asset as a whole the development would result in less than substantial harm to the significance of CLCA. I have attached considerable importance and weight to the desirability of avoiding any such harmful effect.
38. Paragraph 134 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Paragraph 135 of the Framework requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and that a balanced judgement will be required. I will return to these matters below.
39. The proposal would also result in harm to the character and appearance of the area. It follows that the proposal would conflict with SWDP Policy SWDP 25 which, amongst other things, seeks development that demonstrates that it takes into account the latest LCA and its guidelines and that it is appropriate to, and integrates with, the character of the landscape setting.

Ecology

40. An Ecological Appraisal Report was submitted with the planning application and following submissions from third parties the Council considered that insufficient information had been submitted by the appellant in relation to the potential for Great Crested Newts, a protected species under national and European legislation, to be affected by the proposal. This relates to the existing pond within the appeal site and the presence of ponds within nearby gardens. During the appeal process the appellant has submitted an analysis of

environmental DNA (eDNA) in pond water for the detection of Great Crested Newts. The Council and third parties have been given the chance to comment on this additional evidence.

41. Paragraph 99 of Circular 06/2005³ advises that the presence or otherwise of protected species and the effect new development might have upon them should be established before planning permission is granted and the need for ecological surveys should generally not be left to conditions imposed on planning permissions. However, paragraph 99 goes on to advise that '*... developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development*'.
42. Whilst assumptions have to be made about the date that the samples were taken and that they were only taken from the on-site pond the Council have stated that the result indicates that eDNA for Great Crested Newts was not detected in the pond. It goes on to state that this significantly reduces the risk of great crested newts being present and affected by the development. I consider that the imposition of a condition, if I was minded to allow the appeal, in relation to a construction environmental management plan would minimise any further risks to this protected species.
43. On the available evidence, and having regard to the provisions of paragraph 99 of Circular 06/2005, I conclude that the likelihood of protected species being present on site is small, less than a reasonable likelihood. I conclude that the proposal is unlikely to cause any demonstrable harm to a protected species or its habitat. As such, I am satisfied that the development would accord with SWDP Policy SWDP 22 which, amongst other things, states that development which would compromise the favourable conservation status of European or nationally protected species will not be permitted.

Planning Obligation

44. One of the Council's reasons for refusal relates to the absence of a signed and dated unilateral undertaking or planning obligation in relation to improving accessibility. There is no dispute between the parties that this is required and I note the appellants' comments that they are willing to submit a planning obligation and were not given the chance to submit one by the Council.
45. However, as I am dismissing the appeal based on my findings on the main issues, there is no need for me to consider this matter further as my finding on this issue would not affect the outcome of the appeal. Even if a signed and completed planning obligation was submitted and was found to meet the tests, this factor would be by way of mitigating the impact of the development and would not attract positive weight as a benefit in support of the scheme.

Other matters

46. The appellant has drawn my attention to an appeal decision⁴ and other developments that have been built or approved in the area. There are parallels between the cases in relation to the accessibility of Church Lench and the application of SWDP Policy SWDP 2. However, I do not have the full details of the circumstances that led to these proposals being accepted and so cannot be

³ Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system

⁴ APP/H1840/W/17/3190996 - 08 December 2017

sure that they represent a direct parallel to the appeal proposal. Moreover, since the matter under consideration in this appeal is specific to the site and its immediate surroundings I have given them limited weight. In any case, I am required to determine the appeal on its own merits.

47. I note the appellants' concern regarding the Council's procedures, consistency of decision making and difficulties communicating with it. However, these are not matters for my consideration in the context of this appeal decision.
48. The Council's objectively assessed need (OAN) for dwellings could potentially increase through the methodology set out in the March 2018 consultations relating to the Framework - draft text for consultation and associated draft updates to Planning Practice Guidance. And this with the Housing White Paper⁵ and the Autumn Budget 2017 statement does provide an indication of the Government's intentions to boost significantly the supply of housing including through small sites. Nonetheless, the Council maintain that it can demonstrate a housing land supply well in excess of 5 years and based on the evidence before me I have found no good reason to believe that it is significantly inaccurate. However, the Framework does not suggest that this should be treated as a cap or an upper limit.
49. A number of court judgements have been cited by both parties and I have had regard to these documents. I consider that the judgements support the approach taken in this decision.

The public benefits

50. There would be economic benefits associated with the occupation and construction of the dwellings. The proposal would provide 5 dwellings which would make a modest contribution to housing supply and their occupants would support the facilities and services within Church Lench. The development would therefore have some social benefits. I have found that the site is within a relatively accessible location. The scheme would increase the amount of and restore hedges to the boundaries of and within the site. Given the size of the scheme I consider that these benefits have appreciable weight in favour of the proposal.
51. The appellant has stated that 2 of the dwellings would be 'low cost' housing in the submitted planning statement. It is also stated within the evidence that one rented unit of accommodation and a self-build unit would be provided. In the context of planning, the term 'affordable housing' has a specific meaning, as defined by Annex 2 of the Framework. Although elements of the scheme may be intended to be 'low cost' they would not meet the definition of 'affordable' housing for the purposes of planning policy. Moreover, there is little evidence before me that one of dwellings is for a specific individual or individuals who would be its initial owner and has had primary input into its final design and layout. As such, I do not consider that any of the dwellings can be treated as a self-build home. These are therefore matters which do not weigh significantly in favour of the appeal scheme.

Overall balance

52. Considerable importance and weight is to be given in the planning balance to any harm to the significance of a heritage asset. Even though I have found

⁵ Fixing Our Broken Housing Market, Department of Communities and Local Government, February 2017

that the harm to CLCA is less than substantial it is not to be treated as a less than substantial objection to the proposal. The public benefits attributable to the proposal would be appreciable but in my judgement they would not outweigh the great weight to be given to the harm to the heritage asset. As such the proposal would not comply with paragraph 134 of the Framework. The proposal would also harm the setting of the NDHA and this weighs against the proposal.

53. As such, the proposal would conflict with SWDP Policies SWDP 6 and SWDP 24 which, amongst other things, seek development proposals to conserve and enhance heritage assets and will be considered in accordance with the Framework. The harm that would be caused to the character and appearance of the area and the conflict with the development strategy also leads me to conclude that the proposal would conflict with the development plan. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations of such weight which indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

54. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR