



Appeal Decision

Site visit made on 16 July 2019

by Karen Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2019

Appeal Ref: APP/W1850/W/19/3226752

Land off Veldo Lane, Withington HR1 3QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Ms Rachel Leake against Herefordshire Council.
 - The application Ref 190008, is dated 21 December 2018.
 - The development proposed is outline planning application for the erection of two dwellings with garaging with new vehicular access and associated works.
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Decision

1. The appeal is dismissed and outline planning permission for the erection of two dwellings with garaging with new vehicular access and associated works is refused.

Procedural Matters

2. The application was submitted in outline. The application form indicates that approval was sought only for access and layout, with the matters of appearance and landscaping reserved for future approval. I note that the appellant wrote to the Council on 18 February 2019 to alter the application form that the only matter to be reserved for consideration related to landscaping, the Council dealt with the application on this basis. Details of the landscaping of the proposed dwellings were submitted with the application for illustrative purposes only. I have dealt with the appeal on this basis.
3. The Council have not issued a refusal notice. However, I have had regard to the Council's accompanying statement of case, in so far that it provides clarity in terms of the reasons why the Council would have refused planning permission had it been able to do so.
4. I have taken the description of development from the appellants letter to the Council dated 18 February 2019, authorising an amendment to the description for clarity. The Council dealt with the proposal on this basis and so shall I.
5. The Council during the appeal have provided evidence that the Withington Group Neighbourhood Development Plan (WGNDP) has been examined and will proceed to referendum. On this basis the Council has withdrawn one of its putative reason for refusal, relating to the appeal proposal undermining the plan-making process and the removal of the local designation of a green space, I have therefore not considered this as a main issue. Given the advance stage of the WGNDP, I attribute very significant weight to this in the appeal decision.

Main Issues

6. The main issues in this appeal decision are:

- Whether the principle of development is acceptable, having regard to the National Planning Policy Framework;
- The effect of the proposed development on highway safety;
- The effect upon the protected tree; and
- The effect of the proposed development on the character and appearance of the conservation area and on the setting of nearby listed buildings.

Reasons

The Principle of Development

7. The appeal site is within an agricultural field located outside the settlement boundary of Withington, therefore by definition this would be within the countryside. Although, the WGNDP extends the settlement boundary itself, the appeal site would remain outside this within the open countryside as set out in the WGNDP Policy P2.
8. The Hertfordshire Local Plan Core Strategy 2011-2031 (HLPCS) for housing strategy sets out that residential development should be located within the existing settlement boundaries. Policy RA2 of the HLPCS informs that Neighbourhood Development Plans will be the principal mechanism by which new rural housing will be allocated. The proposed development would result in two dwellings constructed at odds from the settlement pattern and have an isolated relationship with any existing residential built form, encroaching and eroding the countryside, particularly reducing the openness and gap that characterises the rural setting of the field. As such I would disagree with the appellant in so far that the proposal entails housing within or adjoining the main village body and that the development would constitute a rounding off of the settlement.
9. The site is within an area of open countryside and the principle of the development must be assessed against HLPCS Policy RA3, the WGNDP clearly identifies this is the criteria. This policy has exceptions under which circumstances residential development may be permitted within the countryside. When assessed against this criterion the proposed development would not fall within any of those exceptions.
10. Although there is an extant permission for housing on the adjacent site to the east, this does not form a substantial 'fallback' for the appellant as is suggested by the Council. There is a theoretical possibility that the adjoining site would be developed but the two sites are separate entities and no reserved matters have been submitted for consideration. As such it does not form a precedent for allowing the principle of residential development on the appeal site, the circumstances are not the same in terms of planning policy and land designation. The WGNDP is now at an advanced stage and although the site is in close proximity it is acknowledged to be part of the settlement boundary unlike the proposals before me which fall within the designated countryside. In any event the appeal site has to be considered on its own merits.

11. For the above reasons, I conclude that the principle of the proposed development would be unacceptable and would be contrary to Policies SS1, RA2, RA3, SS4, SS7 and MT1 of the HLPCS, which all seek a positive approach in favour of sustainable development; focussing development to the most sustainable locations; in or adjacent to settlements whilst limiting residential development outside of settlements and encourages high quality sustainable schemes which are appropriate to their context and make positive contributions to the surrounding environment and landscape settings. It would also be in conflict with Policies P2 and P4 of the WGNPD, which seeks development is within settlement boundaries and restricts residential development within the open countryside, whilst promoting local distinctiveness and good design.

Highway Safety

12. The proposed development would be served from a new access created on to Veldo Lane, which is an unsurfaced narrow lane with no pedestrian footways. From the evidence before me it is not clear who owns the road and would be responsible for any future upkeep. The proposed development would lead to an intensification of use of this lane and in its current poor form of being unmaintained, unsurfaced and consisting of a number of potholes would be unsuitable for such an increase in vehicles using this to serve the proposed dwellings and would result in further deterioration of the condition of the lane. Although the appellant has indicated that they would improve the lane, without such evidence of ownership it would be difficult to control and ensure works were carried out in the interests of highway safety.
13. The appellant submitted a speed survey and included visibility splays with the application. There is some disagreement between the parties of where the visibility should be measured from, be that as it may, the access would fail to meet the Council's guidelines for achieving suitable visibility to the north. Furthermore, it would not meet the guidance or criteria for reduced visibility as set in Manual for Streets 2. Although the lane is used infrequently by vehicles due to the limited residential properties it serves, I noted on my site visit that the lane is popular with pedestrians due to its footpath connection with the nearby residential estate and the site directly adjoins designated public rights of way.
14. The proposed access for the new dwelling would be severely restricted by existing vegetation and land in third party ownership. In this instance, the new vehicular access for the proposed dwellings, would have severe restricted visibility. I therefore consider the location of the access to be a dangerous situation for pedestrians, cyclists and other road users, as their views from travelling along Veldo Lane in either direction would be impeded from the layout of the lane. With such restricted visibility it would be unlikely that road users would have a clear view of vehicles manoeuvring from driveways to the lane, to the detriment of their highway safety.
15. For the reasons outlined above, I conclude that the appeal proposals would have an unacceptable harmful and significant impact on highway safety and be contrary to Policy MT1 of the HLPCS, where proposals should demonstrate that development does not adversely affect the safe and efficient flow of traffic; traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts. The development would not therefore accord with the

highway safety aims of The Framework, Paragraphs 108 (b) and Paragraph 109.

Protected Tree

16. Near the site on Veldo Lane is a substantial Oak Tree, protected under a tree preservation order and is also located within the Withington Conservation Area (WCA). The tree is visually attractive and positively contributes to the setting of the WCA and is considered as having high amenity value. The Oak tree is positioned at an awkward angle to the lane where its canopy spread overlaps considerably in width, it is possible that the roots would be well established along the lane towards the appeal site. Given the lack of evidence I have before me it would be difficult to fully assess the length of the Oak tree roots and the extent of the tree being compromised during construction works.
17. However, I consider that it would be likely that there would be some impact during construction traffic movements, vehicles accessing the site and potentially any works to the access and lane itself. Any damage incurred to this tree or harm which would contribute to its loss would be harmful to the visual appearance of the WCA.
18. Therefore, in the absence of suitable mitigation and protection evidence I conclude the proposed development would have an unacceptable impact on the protected Oak tree during construction works and would have implications for the retention and health of the protected tree, leading to harm to the character and appearance of the WCA. The proposal would be contrary to Policies LD2, LD1, LD3, LD4 and SS6 of the HLPCS, these policies taken together ensure development should conserve and enhance the natural, historic scenic beauty of important landscape features including biodiversity and conservation areas; maintain and extend tree cover where important to amenity; and protect trees.

Significance of Heritage Assets

19. Although the proposed dwellings are not directly located within the WCA, the appeal site in terms of its highway access fall within this as shown on the application plans. I have a duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the WCA.
20. The appeal site is an agricultural field that lies within an area of open countryside, which is visually prominent from the surrounding landscape including views across the WCA, particularly from designated rights of way from within the settlement. I have had regard to the landscape assessment submitted by the appellant. Nevertheless, the site is free from any built development and forms a grass pasture field with tree and hedgerow coverage, contributing to the setting of the area. The WCA consists of a small linear settlement and features clusters of larger dwellings or smaller properties. The addition of a further two dwellings within this field, their built form and domestic paraphernalia and the loss of mature hedgerows would change the character of this landscape and further erode the open countryside causing harm to the historic rural character and appearance of the immediate and wider area, which includes the WCA.

21. Section 66(1) of 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.
22. Style House is a Grade II Listed Building (LB) set within its own grounds and is surrounded by predominantly stone walls and entrance at the edge of the village. The War Memorial and The Green and are also listed and are adjacent to Veldo Lane. The historic setting of these LB is clearly established due to the transition between the village and open countryside and all have a direct relationship with Veldo Lane, which forms part of the appeal site. As such the cumulative effect of additional residential development along Veldo Lane combined with the domestic and intensified use of the lane would cause harm to the setting of these designated heritage assets.
23. For the reasons given, I conclude that the proposed development would harm the character and appearance of the area and fail to preserve that of the WCA and the cause harm to setting of the LB, contrary to Policies SS6, LD1 and LD4 of the HLPCS which seek development proposals to conserve and enhance the natural, historic and scenic beauty of important landscapes and features and that proposals affecting heritage assets should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance; contribute to the character and local distinctiveness of the townscape or wider environment, especially within conservation areas.
24. Whilst the harm to the heritage assets would be less than substantial, I must nonetheless give this considerable importance and weight in the context of a duty to favour preservation or enhancement.
25. Paragraph 196 of the National Planning Policy Framework (the Framework) states that where a development proposal will 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 including, where appropriate, securing its optimum viable use. There would be little public benefit with the provision of the two dwellings, although they would contribute to the Council's housing land supply shortage, this would be limited due to the quantum of development proposed. There would be a small social benefit in providing the two housing units and economic advantages would also arise from the construction and occupation of the new houses, however this does not outweigh the harm found to the significance of the WCA and LB.
26. It would also be contrary to Section 16 of the Framework as it would not conserve the heritage asset in a manner appropriate to its significance, or positively contribute to local character or distinctiveness.

Other Matters

27. The appellant submitted an ecological assessment as part of the application. From the evidence before me the proposed development would not have an adverse impact on protected wildlife species, habitats and aquatic ecology. Suitable worded conditions would address enhancements and any mitigation required. However, this does not outweigh the harm I have identified above.
28. The appellant refers to the Framework and that it is supportive of positive planning and sustainable development and refers to the proposed development

being in healthy demand for the area and for the social-well being of the settlement. Whilst this may be the case, it is not without caveats, including that developments are sympathetic to local character. Furthermore, I have no evidence before me to suggest the properties would be utilised for the provision of social, medical care or affordable housing. These properties would be substantial residential market dwellings. Although there would be some social and economic benefits to the village, this does not outweigh the significant harm I have found.

29. I have been referred to other developments for residential development. However, I do not have full details of the circumstances that led to these proposals being accepted and so cannot be sure that they represent a direct parallel to the appeal proposal, including in respect of scale, location, parking and development plan policy. In any case, I have determined the appeal on its own merits.
30. I have also had regard for other appeal decisions. However, neither decision found harm to the significance and setting of listed buildings, while the effects on the character and appearance of the area were not identical to this appeal proposal. Therefore, these appeal decisions have had little bearing on my findings.
31. The site is at low risk of flooding (Zone 1) and the disposal of surface water can be controlled by condition. The proposed development would be unlikely to exacerbate any surface water flooding issues in the area. So, the development would be acceptable in these respects, but this does not outweigh the harm identified.

Planning Balance and Conclusion

32. The Council cannot currently demonstrate a 5-year supply of housing land. The proposal would provide a small benefit in helping to address this. On the basis in accordance with the Framework paragraph 11 d), the policies that protect heritage assets in this provide a clear reason for refusing the development. The small benefits of the proposal would not outweigh this clear reason and, along with the further harm identified, means that I must conclude that the appeal be dismissed.

Karen Taylor

INSPECTOR