



## Appeal Decision

Site visit made on 11 November 2019

**by Matthew Jones BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 March 2020**

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**Appeal Ref: APP/U3935/W/19/3235317**

**Land to the North of Nightingale Lane, South Marston, Swindon SN3 4SR**

- 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 Bower Mapson Homes Limited against the decision of Swindon Borough Council.
  - The application Ref S/18/1483/EDSN, dated 3 August 2018, was refused by notice dated 12 April 2019.
  - The development proposed is described as the '*creation of public park and woodland with pond and eight 3, 4 and 5 bedroomed homes together with access, parking, garaging, screening and landscaping*'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Amended plans in relation to Plots 1, 2 and 4 accompanied the appeal. The height of the house within Plot 1 would be reduced in height. The changes to the dwelling within Plot 2 would amend its external appearance and consequently the living conditions of its future occupants. The house within Plot 4 would be substantively altered. In my view, the alterations to each amended house are significant. As such, pursuant to the Wheatcroft principles<sup>1</sup> and the Planning Practice Guidance (PPG), I did not have regard to these amended drawings as to do so would likely prejudice other parties.
3. The Council and the appellant have drawn my attention to a current planning application on the site, Ref S/19/1245, which I understand reflects the amendments I have referenced above. Whilst that scheme has been subject to public consultation, the results of the consultation have not been provided to me, and there is no guarantee that the parties involved are entirely the same as those interested in the appeal proposal. For these reasons, this matter did not alter my decision to disregard the amended plans.
4. During the appeal the Environment Agency made an objection to the proposal, owing to concerns regarding the extent of Flood Zone 2 within the site, both now and accounting for climate change. The appellant had only a limited opportunity to comment on this complex issue during the latter stages of the appeal. As such, had I found all other elements of the proposal acceptable, I would have had to consider this matter further. However, as I am dismissing the appeal for other reasons, it has not been further addressed in my decision.

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<sup>1</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another [1980]

5. It is undisputed by the main parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. It is uncontested that the current supply is less than three years<sup>2</sup>. I have no reason to take a contrary view.

### **Main Issues**

6. The main issues with regard to the proposed development are:
- whether or not the site would be a suitable location for housing having regard to local housing policy;
  - the effect on the setting of the Grade I listed Church of St Mary Magdalen and the Grade II listed Church Farmhouse;
  - the effect on the character and appearance of the area, with regard to the village setting, Nightingale Lane and urban design.
  - the effect on the living conditions of the occupants of No 19 Church Ground with reference to privacy and outlook; and,
  - the effect on highway safety.

### **Reasons**

#### *The site and its surroundings*

7. The appeal site is an agricultural field to the south east of South Marston, which is a village on the outskirts of Swindon. Housing within the small estates of Church Land and Church Farm Lane are to the west, with the Grade II listed Church Farmhouse (the Farmhouse) and its grounds to the north. Nightingale Lane runs along the south boundary, beyond which is a dwelling and farmland. Fields and a solar farm are to the east and north east. South Marston Brook borders the site to the north and a water pumping station is to the east.
8. The site incorporates an area of the field which extends northwards as a narrow strip between the houses on Church Land and Church Farm Lane on one side and the Farmhouse on the other. It then turns west and runs parallel to the Grade I listed Church of St Mary Magdalen (the Church). A Public Right of Way (PROW) enters the site off Nightingale Lane, runs diagonally across it, passes the church, before exiting at the site's western limit. Nearby to the east, along Nightingale Lane, is the public recreation area at Nightingale Wood.

#### *Suitability of location*

9. The proposal seeks 8 traditionally designed, detached, open market houses, varying between 3, 4 and 5 bedrooms, arranged within a cul-de-sac, within the south western extent of the field. The houses would share vehicular access off Nightingale Lane, aside from that within Plot 1, which would have a private access close by. The remainder of the site is proposed to be set aside as parkland and woodland. The PROW would be upgraded.
10. South Marston is allocated for around 500 homes on greenfield sites and 140 on brownfield sites under Policy SD2 of the Swindon Borough Local Plan 2026 (adopted 2015) (SBLP). Its expansion is part of wider housing allocations in the area under Policy NC3 of the SBLP, known as the New Eastern Villages (NEV), which includes allocations at nearby Rowborough. Policy RA3 restricts housing

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<sup>2</sup> As set out within APP/U3935/W/17/3192234

around South Marston to locations set out within Policy SD2. Together with Policy NC3, it establishes zones of non-coalescence (ZN), within which development is precluded, in order to retain the individuality of the villages. The site is not within a ZN. However, nor is it identified for housing or within the defined settlement boundary for South Marston.

11. As such, it is for planning purposes within the countryside. Under Policy SD2, proposals in such locations are required to meet one of a set criteria, the most relevant to this proposal being a basis of identified local need and the site's allocation within a Neighbourhood Plan. Beyond a letter from a local estate agent, the scheme does not present substantive evidence of an identified local need. The South Marston Neighbourhood Plan (SMNP) (made 2017) does not allocate the appeal site. Whilst I understand that the site is identified within the 2019 Swindon Strategic Housing and Economic Availability Assessment (SHELAA), this is a scoping exercise of limited current relevance.
12. I therefore conclude on this issue that the site would not be a suitable location for housing having regard to local housing policy. It would conflict with Policies SD2, NC3 and RA3 of the SBLP and Policy NC1 of the SMNP in this regard.

#### *Listed buildings*

13. The site is within the setting of the Church and the Farmhouse and I have a duty to consider the impact of the proposal on the special architectural and historic interest of these listed buildings. As designated heritage assets are irreplaceable, any harm or loss requires clear and convincing justification.
14. The Church and the Farmhouse have historically enjoyed isolated and open rural locations, and this informs their character and significance. Although this has been somewhat eroded by modern housing development, retained areas of open space, including the appeal site, contribute positively to their setting.
15. The main area of the appeal site is physically detached from the Church, with little tangible intervisibility. The siting of the housing here would ensure only a limited effect on the open setting of the Church, adding modest urbanisation to the journey towards and away from it along the PROW. On the other hand, in the areas where the church would be visible, the site would be left open. The more accessible PROW would also provide more people the chance to enjoy views of the heritage asset from this area. Taking these factors into account, the scheme would have a neutral effect on the setting of the Church overall.
16. The Farmhouse has a more prominent location in that its south elevation and garden associate closely with the area proposed for the housing, which would encroach directly upon the open farmland which evokes its historic rural setting. The open views of the Farmhouse from this section of the PROW would be compromised. Given that the harm would arise through the loss of openness, this would not be mitigated by existing or new boundary/buffer planting. That there are existing dwellings already close to the Farmhouse, and established industrial and renewable energy developments nearby, would not justify this new intervention. Similarly, any retained open land around the Farmhouse would not mitigate the partial loss of the open farmland setting.
17. Consequently, whilst I have identified no harm to the setting of the Grade I listed Church of St Mary Magdalen, I conclude that the proposal would harm

the setting of the Grade II listed Church Farmhouse. It would conflict with the heritage aims of Policies DE1, EN5 and EN10 of the SBLP in this regard.

18. As is common ground between the parties, the harm to the setting of the Farmhouse would be less than substantial<sup>3</sup>. Any such harm nonetheless merits great weight under the terms of the Framework and falls to be weighed in the balance with the public benefits of the development.
19. The proposal would contribute a mixture of 8 homes to the local housing stock. I have no reason to doubt that they would be built out quickly. Whilst these benefits would be tempered by the small scale of the scheme and the absence of affordable housing, I am also mindful of the significant shortfall of the housing land supply in the Council area. Taking these matters into consideration, the housing is a benefit of moderate weight in the balance.
20. The new homes would likely attract new families to the village, and its services and facilities would be enhanced by increased use. Given the small scale of the scheme, and that the village is already allocated for significant growth, this benefit attracts very limited weight. There would also be a modest, time limited economic benefit through the construction phase.
21. With regard to the parkland and the woodland, the appellant intends to transfer this to a wildlife habitat management company. However, there is no legal mechanism before me which would secure public access, and I cannot be certain that the parkland and woodland would be used and maintained as publicly accessible open space. It is suggested that a condition could resolve this. However, the PPG states that using a negatively worded condition to provide an obligation or other agreement is unlikely to be appropriate in the majority of cases. It may be appropriate if there are exceptional circumstances where the development would otherwise be at serious risk, but there is no evidence of this before me. The appellant has referred to the housing at St Julian's Close, elsewhere in South Marston, but it is unclear if a legal agreement was involved in that case.
22. Given the circumstances, the proposed public open space attracts negligible weight. Had the public open space been secured through an appropriate legal agreement, it would have attracted limited weight, given the existing provision nearby at Nightingale Wood. That aside, a condition would ensure delivery of the planting, which would secure net gains in biodiversity, providing a limited public benefit. The improvements to the PROW also attract limited weight.
23. Taken together, these public benefits of the development weigh moderately in the balance. They would not outweigh the harm caused by the proposal to the setting of the Grade II listed Church Farmhouse.

#### *Character and appearance*

24. The site is suburban, and Church Ground offers a conspicuous, raw edge to the village. In these circumstances, I find the compact, cul-de-sac arrangement of the proposal to be acceptable. Moreover, the green infrastructure would provide an enhanced edge to the village, helping to prevent coalescence between South Marston and settlements elsewhere. Considering the presence of existing vehicular accesses and buildings within Nightingale Lane, and the perceptible proximity of the site to South Marston, the works to Nightingale

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<sup>3</sup> As identified within the appellant's Heritage Statement dated February 2018 and revised July 2019

Lane, including the new accesses, and the presence of the house set back into Plot 1 would not be out of place.

25. Turning to the detailed urban design, the housing within the immediate area is formed in a number of individual set pieces, without clear uniformity or conformance to a village vernacular. I do not find the style of the housing inappropriate within this context. Regarding crime, it seems to me that the PROW would have equivalent, if not better, surveillance than at present.
26. Policy NP2 of the SMNP, amongst other things, seeks proposals to maintain at most a 2-storey height, unless the site occupies a landmark location. To my mind the Church and the Farmhouse are the landmark buildings in the locality, and the appeal site lends itself more to development seeking to assimilate. As two of the dwellings would be more than 2-storeys tall, there would consequently be conflict with Policy NP2. As this would relate to a single criterion within the policy, and as I have found the proposal in relation to this issue to be otherwise acceptable, this conflict attracts limited weight.
27. Drawing my findings together on this issue, whilst there would be conflict with Policy NP2 of the SMNP, I conclude overall that the proposal would have an acceptable effect on the character and appearance of the area, with regard to the village setting, Nightingale Lane and urban design. The scheme would accord with Policy DE1 of the SMNP and the Framework insofar as they require development to integrate successfully into its environment. I find no conflict under these terms with the Swindon Residential Design Guide Supplementary Planning Document (adopted 2016) (the SRDG).

### *Living conditions*

28. The properties within Church Ground have taken advantage of the outlook provided by the appeal site. No 19 Church Ground, in particular, has an extension very close to the low hedge which separates it from the field. The extension contains a large opening to the living room, and an equally sized first floor bedroom window, both of which look out over the appeal site.
29. There is dispute between the parties as to whether No 19's facing elevation constitutes the rear or side of the property<sup>4</sup>. This influences the application of the SRDG, which recommends separation distances of 12m and 21m to neighbouring side and rear elevations respectively. However, the SRDG provides guidance, which would not be appropriate to prescriptively apply without due regard to individual circumstance. Of more practical importance, No 19 experiences high levels of privacy where it faces the site, and its windows here serve habitable rooms and appear to be designed with this freedom in mind.
30. The house within Plot 2 would be around 15m from No 19. Within the rear elevation would be three dormer windows at eaves level, all serving bedrooms. The dormers would allow intrusive levels of overlooking into No 19. In addition, the low boundary hedge would do little to prevent close overlooking from the ground floor and garden of the proposed dwelling into the living room of No 19.
31. These issues could be resolved through a boundary treatment such as a fence. However, as No 19 is very close to the boundary, it seems that such a measure

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<sup>4</sup> The extension was described as a 'side extension' when approved in 2010 under Ref S/10/0555

would, in itself, cause significant harm to the living conditions of those within No 19 by reason of loss of outlook.

32. I therefore conclude on this issue that the proposal would have an unacceptable effect on the occupants of No 19 Church Ground with reference to privacy and outlook. It would conflict with the residential amenity aims of Policy DE1 of the SBLP and the Framework.

#### *Highway safety*

33. The accesses would be located within a widened section of Nightingale Lane, with the main site access designed to accommodate manoeuvring space for the largest anticipated vehicles. I am satisfied, on the appellant's evidence, that the separate accesses would have a significantly different appearance, which would prevent any confusion between them. The scenarios envisaged by the Council appear largely typical of highway conditions within rural areas. I see no reason why, with users taking due care and attention, such scenarios would unacceptably prejudice the safe use of the highway.
34. Given its resurfacing, the PROW would provide the most appealing route to access the village services and facilities, and any increase in pedestrian activity within Nightingale Lane would be very low. I note the concerns raised by South Marston Parish Council regarding the introduction of the new accesses and additional vehicle movements within Nightingale Lane. However, given that the policy in dispute, NP Policy 7, is titled 'Rowborough traffic', it appears that its application relates solely to traffic proposed as part of the NEV allocation.
35. I therefore conclude on this issue that the proposed development would have an acceptable effect on highway safety. It would accord with the relevant aims of Policy TR2 of the SBLP and the Framework.

#### **Planning Balance**

36. Paragraph 11 d) of the Framework, amongst other things, states that, in instances where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development<sup>5</sup>. Pursuant to footnote 6, this includes designated heritage assets. Given my findings in regard to the harm to the setting of the Grade II listed Church Farmhouse, the Framework therefore provides a clear reason for refusing the proposal, and the presumption in favour of sustainable development does not apply.
37. The site would not be a suitable location for housing having regard to the housing policies within the development plan. Due to the Council's current housing land supply position, these policies are out-of-date and the conflict with them attracts limited weight. However, the harm to the setting of the Grade II listed Church Farmhouse attracts great weight and outweighs the benefits of the scheme, even before the unacceptable effect on the living conditions of the residents within No 19 Church Land is taken into account.
38. The proposal would therefore conflict with the development plan when read as a whole and there are no other considerations, including the Framework, that outweigh this conflict.

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<sup>5</sup> Through Footnote 7

## **Conclusion**

39. For the reasons outlined above, and taking all matters raised into account, I conclude that the appeal should be dismissed.

*Matthew Jones*

INSPECTOR