



Appeal Decision

Site visit made on 9 March 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 09 April 2020

Appeal Ref: APP/A0665/W/19/3236916

The Farmer's Arms, Chester Road, Kelsall, Chester CW6 0SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Punch Partnerships (PML) Ltd. against Cheshire West & Chester Council.
 - The application Ref 19/00694/FUL, is dated 15 February 2019.
 - The development proposed is described on the application form as 'construction of two dwellings (Use Class C3), together with associated car parking, landscaping and other ancillary works on Land to the rear of the Farmer's Arms Public House, Chester Road'.
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant has made an application for costs against Cheshire West & Chester Council which is the subject of a separate decision.

Preliminary matters

3. The appeal is against the Council's failure to reach a decision within the relevant statutory timeframe. However the Council have explained at appeal that, had they been in a position to do so, they would have refused permission for the development proposed. Their stated reasons reflect those given in the decision notice of 5 November 2019 in respect of a resubmitted application (Ref 19/03414/FUL).
4. There are three additional documents before me that were not before the Council in reaching a decision on application Ref 19/00694/FUL. One is a procedural notice concerning the potential for the proposal to affect highway land, and another a second (additional) parking survey.¹ The third is plan 18-3120-100 which overlays the dwellings proposed with existing parking provision.
5. None of the additional documents alter the scheme. Not unreasonably they seek to address concerns raised by the Council, either by way of regularising procedural matters or by providing up-to-date evidence. The Council have commented on the second parking survey at appeal (and do not raise objection

¹ Both parking surveys undertaken by TPA, the second 'Technical Note' is dated June 2019, the original survey within a Transport Statement is dated February 2019.

to the other documents). In that context there is no reason to discount those additional documents from my assessment of the scheme.

Planning context

6. The appeal site is part of the parking area serving the Farmer's Arms, accessed via Waste Lane close to the junction with Chester Road. Chester Road is the central route through the village of Kelsall, identified as a 'key service centre' in the Council's Local Plan Part 1 (adopted 29 January 2015, 'LP1'). Waste Lane represents the eastern boundary of the settlement, Kelsall falling within rural surroundings. The Council's Local Plan Part 2 (adopted 18 July 2019, 'LP2') provides additional detail as to how development should be assessed with regard to its location.
7. Across Chester Road, the Farmer's Arms faces the Green Belt. Both LP1 and LP2 guide development primarily towards main urban areas and key services centres in pursuit of sustainable patterns of development. The site also falls within the area covered by the Kelsall & Willington Neighbourhood Plan (made 15 March 2017, 'NP'). The NP identifies the view south-eastwards across fields by the Farmer's Arms as a key view point of the surrounding countryside.
8. Planning permission was granted via decision notice dated 10 February 2014 for the erection of a dormer bungalow at the appeal site (Ref 13/05069/FUL), albeit that permission has now lapsed. An application for two dwellings here was previously withdrawn.² I also note that a group of sycamore trees between the appeal site and Primrose Hill to the south are protected via Tree Preservation Order ('TPO').³
9. In that context, each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. I have had regard to various other material considerations including the National Planning Policy Framework ('NPPF'), and the Council's Parking Standards Supplementary Planning Document (adopted 3 May 2017, the 'SPD').

Main issues

10. Against the background above, I consider the main issues to be the effect of the development proposed on (i) the parking provision available to the Farmer's Arms and the safe and efficient operation of the nearby highway network, along with any implications for the viability of the pub, (ii) local character and appearance, including in respect of protected trees.
11. In the event that I find that harm would arise, I will then gauge whether or not other material considerations justify allowing the appeal. Whilst the appellant contends that the presumption in favour of sustainable development should apply, as set out in NPPF paragraph 11, that appears to be an overarching proposition rather than specific challenge to the Council's ability to demonstrate a five year supply of deliverable housing sites relative to needs.⁴

² Ref 13/02669/FUL.

³ Ref 13/00027/ORD.

⁴ With reference to NPPF paragraphs 67, 73 and 11)d)ii).

Reasons

Parking and highways effects

12. Pubs often represent important community facilities. There are representations before me attesting to the value of the Farmer's Arms as such, particularly under recent management, and also to that of the appeal site as the location for certain community events. The recent economic challenges faced by pubs are well documented. LP1 paragraph 5.71, LP2 paragraph 14.41 and NP paragraph 1.2.8 all recognise the importance of community facilities (the first two references specifically mentioning pubs). Similarly NPPF paragraph 83. d) sets out how planning decisions should seek to enable the retention and development of accessible local services and community facilities such as pubs.
13. In that context, in summary and amongst other things, LP1 policy STRAT 10 and LP2 policy T5 seek to ensure that sufficient parking is provided relative to needs. More broadly NPPF paragraph 108. b) sets out how planning should seek to ensure safe and suitable site access for all users. In the abstract, reducing parking available to the Farmer's Arms has the potential to compromise its ongoing viability by deterring future custom. Insufficient parking on site similarly has the potential to lead to adverse effects elsewhere, as individuals may seek to park in other locations, or to undertake atypical manoeuvres in the absence of anticipated provision. The Council's Parking SPD sets out recommended parking levels for different uses. Albeit guidelines and expressed as maximum levels, for use class A4 drinking establishments in this location, one parking space per five square metres of public floor area is advocated.
14. The Council sets out, and the appellant does not dispute, that the Farmer's Arms has about 165sqm of publicly-accessible floorspace. With reference to the SPD recommendations, that results in an indicative (maximum) need for 33 parking spaces. The proposal would reduce existing parking provision by some 40%, from 26 spaces available at present to 15.⁵ Had the bungalow permitted in 2014 been constructed, that would also have resulted in the loss of some spaces. I accept that the SPD is guidance, and that there may be justification for a lower level of provision relative to the accessibility of a given location. The Farmer's Arms is a relatively short walk for many residents of Kelsall.⁶
15. The appellant's first and second parking survey counted vehicles present at 30 minute intervals between 12:00 on Saturday 26 and 00:00 on Sunday 27 January 2019, and during the same times and days of the week on 8 and 9 June 2019. The 'peak' parking space occupancy level recorded in the first survey was 8, albeit that the second survey recorded a higher figure of 15. I am told, in line with standard practice, that similar surveys have been accepted as robust evidence elsewhere, as have permissions been granted for reduction in parking provision associated with public houses.⁷ Several appeals are also before me where similar matters were at issue, at the Pincushion Inn, 115 Munster Road and the Summer House.⁸

⁵ Albeit that an existing figure of 27 spaces is given in the appellant's statement of case, paragraph 5.0.13.

⁶ There may also be some passing trade from use of the 'Fruits of the Forest' local cycle route which runs along Waste Lane, and potentially on account of the connectivity of Kelsall by virtue of bus services.

⁷ Appellant's statement of case, paragraph 7.3.6.

⁸ Ref APP/Z2505/W/16/3148531, APP/H5390/W/15/3130745, and APP/C4615/W/15/3138401.

16. I am equally told that 'observations on site illustrate that on street parking demand is not overly high and thus some occasional overspill parking could be accommodated...'. I note that the appellant takes particular issue with the Council's suggestion that trade at the Farmer's Arms could intensify in time, resulting in additional parking demand beyond observed levels. I am told that the surveys were representative of 'typical trading/ parking demand'. The appellant takes the position that the requirement to provide a survey of parking availability in the surrounding area would have been unreasonable, on the basis that sufficient provision would exist on site. Consequently, allied with what the appellant explains to be a 'general decline' in pubs recently, the appellant makes the case that the loss of parking provision resulting from the scheme would not compromise the ability of the Farmer's Arms to operate successfully. I disagree.
17. As set out above, both relevant provisions of the development plan and of the NPPF are strongly supportive of maintaining community facilities and the vibrancy of rural communities. Accordingly any potential future limitation or constraint on the ongoing trading of the Farmer's Arms requires robust justification. In my view the challenges faced by pubs across the country accord some importance to ensuring that those which remain are able to keep operating successfully. It is primarily for an applicant to make the case for a scheme based on appropriate evidence.⁹ In my view there are several shortcomings with the evidence supporting the scheme.
18. Firstly the loss of parking provision is significantly below levels recommended in the SPD (approximately 45% of 33). Only 15 spaces would remain, compared against 23 had the 2014 permission for a bungalow been implemented.¹⁰ There is some flexibility in the SPD, and as set out above some trade will likely be from those nearby. However the Farmer's Arms is nevertheless at the edge of a village within a rural area. It will therefore likely draw trade from a greater catchment than a pub in an urban location where a greater proportion of custom can reasonably be expected to arrive on foot.
19. Given the historic origins of Kelsall resulting in a road network that 'does not interconnect well',¹¹ and the absence of dedicated footways on occasion such as along Waste Lane, it may also be that custom from the Village arrives by car on account of convenience. Given their urban locations, the appeals in respect of No 115 Munster Road, in the London Borough of Hammersmith & Fulham, and the Summer House in Dudley are not directly comparable to the circumstances here.
20. On the face of it, there appears to be greater similarity with the circumstances relevant to the Pincushion Inn appeal; that scheme would have resulted in additional pressure for on-street parking in a village at the fringes of Boston. However paragraph 11 of the Inspector's reasoning in that case was that 'the appellant's evidence is that London Road is currently functioning at free-flow and well within capacity, and that this would continue to be the case even if some [resultant] on-street parking were to occur' (my emphasis). There is no methodological evidence before me in respect of parking pressures nearby the appeal site in this case.

⁹ As reflected in section 62 of the Town and Country Planning Act 1990 as amended.

¹⁰ Albeit in a different policy context where parking standards based on 1 space per 7 sqm.

¹¹ NP paragraph 3.1.2.

21. By contrast I saw that there is no opportunity for parking along Waste Lane. Although two vehicles may pass at a time at the junction with Chester Road, Waste Lane narrows to become single track around Primrose Hill (a private road). Any opportunistic on-street parking in the immediate vicinity of the appeal site along Waste Lane would likely impede the flow of traffic. That is similarly the case of Yield Lane opposite. There is no opportunity to park on-street eastwards of the Farmer's Arms along Chester Road towards the A54 (just over a hundred metres away or so).
22. There is some on-street parking provision available westwards of the appeal site, by the dwelling named 'Highways'. However in that location there is a relatively close-knit pattern of traditional semi-detached properties, such that provision is limited. There were few demarcated spaces available in the immediate surroundings of the appeal site during my mid-afternoon site visit. On several occasions, again in contrast to the circumstances relevant to the Pincushion Inn appeal, the NP indicates that parking provision in Kelsall is at a premium.¹²
23. Secondly, whilst it is practically challenging to demonstrate parking demand over a long duration, the evidence in the first and second parking surveys reflects only particular points in time. The evidence related to the Summer House and Pincushion Inn appeals is explained in the appeal decisions to incorporate TRICS data. That data reflects general trends rather than observations in specific circumstances. There is no comparable broader benchmarking before me, for example what level of parking is typically associated with similar-sized pubs in comparable locations.
24. Moreover there is no evidence before me to substantiate the appellant's point that trading during the survey times was typical. A nearby resident refers to a recent change of management, and there is no indication how the survey dates correlate to that event. By way of comparison, generally and where available, an income or profits approach to valuation is undertaken on the basis of three years' worth of accounts. There is no evidence before me related to the recent turnover at the Farmer's Arms or of its typicality. Furthermore, LP1 policy STRAT 8 plans for a minimum increase in housing numbers at Kelsall over the plan period to 2030 of 200 homes. The NP sets out how that is likely to represent approximately a 20% population increase. In that context, and given few direct competitors with the Farmer's Arms,¹³ it is not unreasonable for the Council to have hypothesized that trade may intensify in the future.
25. I recognise that many pubs originated in different times with extensive plots, and that making effective use of surplus land may theoretically serve to buoy up their current financial position in the light of challenging circumstances. However, with reference to the other examples of reduced parking provision given in paragraph 7.3.6 of the appellant's statement of case, there is no evidence before me of the comparability of the schemes there and the proposal here (in terms of either proportionate loss, location, or viability).

¹² Including at paragraphs 3.1.2, 3.3.3, 3.4.9.

¹³ The nearest other pub I saw being the Morris Dancer to the far west of Kelsall.

26. In addition to reducing on-site parking availability for customers and staff, the proposal would entail the loss of the present entrance to parking provision (close to Primrose Hill). Only what is the current exit would remain. That exit is limited in width, such that it can only realistically be used by one vehicle at a time. Swept path analysis shows that, in turning to enter or exit the site, larger vehicles would impede the flow of traffic along Waste Lane. Such vehicles could only both enter and exit in forward gear if some spaces were not occupied.¹⁴ Whilst there is some potential to arrange deliveries out-of-hours, such an approach would not be infallible, customers' vehicles differ in size, and there may be other unforeseen circumstances necessitating use of the site by larger vehicles on occasion (such as for maintenance).
27. I note that there is no recent evidence of traffic accidents in the immediate vicinity of the appeal site, and that NPPF paragraph 109 guides how development should only be prevented or refused on highways grounds if the 'residual cumulative impacts' would be severe. However I saw that there is restricted visibility when exiting from the site of oncoming traffic from Chester Road on account of a rear element to the Farmer's Arms flanking Waste Lane impeding views. Reflecting its strategic location, there was a regular flow of traffic along Chester Road at the time of my site visit. By virtue of the limited area of parking provision that would result and access constraints, the proposal in my view has the clear potential to result in vehicles stopping haphazardly along Waste Lane, backing up to allow others to pass, or executing turning manoeuvres in the surrounding area in close proximity to a relatively busy junction.
28. Drawing together my reasoning above, the shortfall in parking provision proposed relative to the recommendations in the Parking SPD would be significant. The evidence before me is insufficient to demonstrate the proposed reduction would not compromise the ability of the Farmer's Arms, a facility of some local value, to continue to operate and thrive. The circumstances here are not directly comparable with other examples brought to my attention. Based on what I have read and seen there is limited readily-accessible parking provision in the immediate vicinity that could accommodate any overflow, without robust countervailing evidence in that regard. The resultant parking area would also be cramped so as to limit its usability, and access arrangements would be sub-optimal.
29. I therefore conclude that it has not been demonstrated that the reduced parking provision proposed would ensure the ongoing viability of the Farmer's Arms, nor that the scheme would be otherwise acceptable with regard to prevailing parking pressures and the safe and efficient operation of the nearby highway network. Consequently the proposal conflicts with the relevant provisions of policies SRAT 10 of LP1, T5 of LP2, NPPF paragraphs 83. d) and 108. b).

Character and appearance

30. In summary LP1 policy ENV6, LP2 policy DM3 and NP policy D1 all seek to ensure that development is designed so as to integrate sympathetically with its surrounding context and local character. Those aims are common to NPPF

¹⁴ Drawing SP01.

paragraph 127, and reflected also in the Government's National Design Guide. LP2 policy 45 sets out how development should seek to conserve existing trees, integrating those of significance or of particular value into the relevant development scheme.

31. Similarly NP policy E12 seeks to preserve trees in light of their contribution to local character, particularly those formally protected. As set out above a group of sycamores between the appeal site and private road of Primrose Hill to the south are protected via TPO. NP policy E12 references British Standard 5837:2012,¹⁵ which represents industry standard guidance as to how the value of trees may be assessed, the extent of their root protection areas quantified ('RPAs') and how safeguards may be put in place during construction. Statutory provisions also apply in respect of the preservation of trees.¹⁶
32. The Council do not dispute the methodology by which the theoretical RPAs of nearby trees have been calculated in the supporting Arboricultural Impact Assessment ('AIA'), notwithstanding that intrusive investigations have not been undertaken.¹⁷ The AIA has been prepared with reference to BS 5837:2012. Nevertheless, as shown on the composite plan in the AIA, the development proposed would transgress the RPA of one tree. I also note the Council's concern that the proposal may, by virtue of its proximity to trees, result in indirect pressure for felling or canopy reduction in the future.
33. However the appellant has set out at appeal that the proposal would encroach into the RPA of the nearest sycamore only by around 0.6sqm. That represents around 0.5% of the total RPA of about 128sqm. Sycamores are moderately tolerant of root loss.¹⁸ Furthermore, were the development proposed to be built, individuals would choose to live in this location taking account of its rural fringe character. As such they are likely to place some value on the presence of trees, and the protections afforded by the TPO would remain. Therefore, subject to the imposition of suitably-worded conditions, I am of the view that the scheme could suitably safeguard the wellbeing of nearby trees.
34. There is limited architectural consistency to properties around the Farmer's Arms. Some are turn-of-the century two-storey semi-detached properties, such as along Chester Road. Primrose Hill is instead characterised by relatively modern detached bungalows. Properties along Quarry Lane nearby are of varying scales and eras. The design of the dwellings proposed, in themselves, would not be out-of-keeping in that context. They would also be set broadly in line with the side elevation of the Farmer's Arms and what appeared to be a rear elevation to No 1 Primrose Hill, in so far as a building line exists here. In those respects there is some merit to the scheme.
35. However Waste Lane represents the limits of the settlement in this direction. With the exception of Braeside Cottage and the Laurels, judging by their design late Victorian in origin, there are no properties eastwards of Waste Lane as far as the eye can see from around the Farmer's Arms (on account of the rising topography southwards and trees in the landscape). I acknowledge that the

¹⁵ Trees in relation to design, demolition and construction. Recommendations.

¹⁶ Section 197 of the Town and Country Planning Act 1990 as amended.

¹⁷ Prepared by Arboriculturalist Barrie Draper of Ecourban Ltd., dated 18 February 2019.

¹⁸ Matheny, N., and Clark, J. R. (1998) Trees and Development: a Technical Guide to Preservation of Trees During Land Development, International Society of Arboriculture.

density proposed would be comparable with certain stretches of Chester Road, for example around the properties Primrose and Forresters Cottage.

36. However on account of its proximity to the surrounding landscape, there is a different and localised character here in contrast to that of the central route through the Village. Properties such as those along Primrose Hill and Waste Lane are invariably set within much more extensive plots than is proposed. That low level of density, combined with established gardens and mature trees, provides for a spacious and comfortable transition to the rural setting of Kelsall.
37. On account of the topography stepping down from Waste Lane and levelling off towards the A54, the appeal site, or rather the hedge flanking the Lane, is visible when approaching the Village from the east. From vantage points that way at present there is no discernible edge to Kelsall, but rather glimpsed views of rooftops nestled amongst mature trees. On account of being single storey, No 1 Primrose Hill is of little significance in the landscape, for example.
38. Whilst set back from Waste Lane, the dwellings proposed would face squarely across the fields eastwards. Their presence would be readily apparent in the landscape, detracting from the open and sylvan character here at present. With reference to the prevailing pattern of development in the immediate vicinity, they would represent an uncharacteristic level of density.
39. Effectively, in my view, the proposal would create an unduly stark built-up edge to the settlement. That would be discordant and detrimental to local character and appearance. A scheme for two two-storey dwellings would have a greater visual effect than the 2014 scheme for one dormer bungalow. Therefore, notwithstanding certain mitigating factors, I conclude that the proposal conflicts with the relevant provisions of LP1 policy ENV6, LP2 policy DM3, NP policy D1 and NPPF paragraph 127.

Other matters

40. I have taken careful account of the additional concerns raised by nearby residents, particularly regarding the potential for the proposal to result in adverse overshadowing and overlooking (albeit those matters do not form part of the Council's case at appeal). However, even were I to find that the proposal would be acceptable in those respects, or could be made so via the imposition of conditions, that would be neutral in my determination of the case rather than weighing positively in favour of allowing the appeal.
41. I acknowledge that the proposal would have certain benefits, including in supporting employment during construction, as future occupants would bring trade to nearby services and facilities, and also in pursuit of the planned housing figure for Kelsall in LP1 policy STRAT 8. As noted in paragraph 25 of this decision there may also be some potential financial benefit to the Farmer's Arms (albeit there is no precise enumeration of such, and that is reliant on a number of assumptions including that the proceeds would be recycled towards that end).
42. However the benefits of two new homes to housing supply, and in other respects, would inevitably be modest. As reasoned above, it has also not been demonstrated that would not be to the disadvantage of the continued operation

of the Farmer's Arms. Moreover neither the support in the development plan nor NPPF for new housing is at the expense of ensuring that all development integrates appropriately with its surroundings. As such the harm that would result would outweigh any benefits; no other relevant material considerations are sufficient to justify taking a decision other than in line with the relevant provisions of the development plan in this instance.¹⁹

Conclusion

43. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

¹⁹ With reference to paragraph 11 of this decision, there is no robust evidence before me in respect of five year housing land supply. However inherent in my reasoning is that, even were that not in existence, on the basis of the evidence before me the likely adverse impacts would significantly and demonstrably outweigh the benefits.