



Appeal Decision

Site visit made on 27 May 2020

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2020

Appeal Ref: APP/M1005/W/19/3243348

Land at Moor Lane, Kirk Langley, Ashbourne

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Chevin Homes Ltd, Helen Carter and Alistair McGee against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2018/0648, dated 29 June 2018, was refused by notice dated 8 November 2019.
 - The development proposed is described as "Residential development of up to 14 dwellings with associated landscaping and public open space (outline with all matters reserved except access)".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Chevin Homes Ltd, Helen Carter and Alistair McGee against Amber Valley Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal is made in outline form with all matters other than access reserved for later approval.
4. The application was originally made on the basis of a scheme of 38 dwellings with associated landscaping and public open space with all matters reserved other than access. During the course of the application the scheme was amended to a scheme described as residential development of up to 14 dwellings with associated landscaping and public open space with all matters reserved except access. The revised proposal was accompanied by illustrative plans showing a layout for 14 houses and the approximate location of the Roman Road. This includes illustrative plan ref 180722- PEV-ZZ-00-DR-A-001. The Council determined the appeal on this basis and I have therefore also determined the appeal on the basis of this revised scheme.
5. The Parish Council have referred to policies within the submission copy of the Kirk Langley Neighbourhood Plan to explain their objection to the proposal. As the document put to me has not been through examination, I can attribute it only very limited weight and have not relied on it in my decision.

Main Issues

6. The main issues for the appeal are:

- Whether the proposal would preserve the special interest of the Scheduled Monument and any special interest that it possesses;
- Whether the proposal would conflict with national policy for rural development which seeks to achieve a sustainable pattern of development;
- Whether the proposal would conflict with national policy which seeks to recognise the character of the countryside including historic landscape.

Reasons

Effect on Heritage Assets

7. S16(2) and S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The National Planning Policy Framework (the Framework) also requires that the significance of heritage assets is conserved in a manner appropriate to their significance.

The Roman Road

8. During the course of the application archaeological survey work was carried out which confirmed that a Roman Road crosses the site. This is recognised in the designation of this part of the site as a Scheduled Monument¹ (SM). The listing refers to a 5 – 5.25 metre wide road with associated side ditches. The extent of the monument appears to comprise a strip of around 20 metres which extends across the width of the site.
9. Scheduled Monuments are designated in order to secure their legal protection in the national interest, and to secure their long term preservation in situ. The buried section of road within the site was designated in part due to its antiquity and rarity, as part of only a small proportion of the Roman Road from Chesterton to Derby which is known to survive physically. The site has also been shown to contain highly significant archaeological evidence, and has the potential to retain further important archaeological deposits.
10. The Framework advises that in assessing proposals the decision maker should take the significance of the asset into account when considering the impact of the proposal on heritage assets, including the setting of a heritage asset.
11. The Roman Road which comprises the SM is buried below ground. The wider area surrounding the SM is characterised by a mix of housing and open fields. There are no remains visible above ground and the current use of the site as pasture is not indicative of the remains below ground. Nevertheless, whilst the significance of the asset lies primarily in its rarity, its antiquity and in the potential of the site to yield further archaeological evidence, now that the asset has become known, the setting of the asset and the contribution the largely undisturbed nature of the site and the immediate surroundings also contributes to its significance. Although there is, in effect, nothing to see, the absence of development immediately around the asset draws attention to the fact that

¹ List Entry Number 1462649

something significant lies underground. An alteration in the setting therefore has the potential to impact upon how the asset is appreciated.

12. The application is in outline form with approval sought for access, and matters of layout, appearance, scale and landscaping reserved for later approval. The most recent illustrative layout would limit development to the south of the asset, but would result in a residential layout which would include a metalled access road extending up to and along the boundary of the SM with no buffer between it and the development. Illustrative plans refer to a hedge along the southern boundary but this is not marked and the layout shown does not provide sufficient space to comfortably accommodate it. The illustrative layout also shows dwellings located very close to the SM, the closest of which is shown facing onto the SM at a distance of around 2 metres.
13. In this regard, the layout proposed uses the openness of the asset to facilitate and enhance development on site. However, the very close proximity of development to the site boundary, and the extent to which the development would diminish the open and undeveloped quality of the space immediately around the asset, would not preserve the existing sense of openness when experienced at the asset. This would have a detrimental impact on how the asset is appreciated.
14. Although I note the layout is indicative, given the shape and size of the site and the location of the point of access, it is nonetheless representative of the likely extent of development for a scheme of this number of dwellings. As such, the spread of development across the site, and its relative proximity to the edge of the SM would be likely to be similar even if an alternative layout were adopted. I am conscious that future development need not take the form as shown on the illustrative plan. However, on the basis of what has been put to me, I do not have convincing justification that a suitable scheme for the number of dwellings proposed could be appropriately accommodated without having an adverse effect on the SM.
15. In coming to a view I have taken account of the view of the various statutory consultees, including the informal comments of the County Archaeologist in relation to the illustrative layout referred to above. However, having regard to the statutory duty explicit in the Act, I am not bound by these comments. As heritage assets are an irreplaceable resource, and in the absence of convincing evidence to the contrary, I have taken a precautionary approach and conclude that the proposal would be likely to lead to less than substantial harm to the heritage asset. The Framework directs that in such cases the harm identified should be weighed against the public benefits of the scheme.
16. The proposal would provide 14 new homes. Taking account of the impetus in the Framework to provide housing, I attribute significant weight to this matter as a public benefit. The development would also bring economic benefits through construction and I also attribute this some weight. Some social benefits would accrue through increased population within the settlement commensurate with the scale of the development and I also attribute this some limited weight.
17. The appellant contends that taking the Scheduled Monument (SM) out of a regime of agricultural land management and into use as a managed grassland, would reduce the potential for the archaeological interest on site to be impacted. I see no firm basis for this view. The site is not presently being

cultivated, being described as semi-improved grassland, and shows no recent evidence of being ploughed. The size and configuration of the fields also suggests limited potential for use by heavy agricultural machinery. The scheme may provide some potential for interpretation of the asset, be it through landscaping or other means. However, as such enhancements could take place without development of the extent proposed, I attribute this matter very limited weight.

18. The Framework is clear that when considering the impact of a proposal on the significance of a heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be. Scheduled Monuments are considered to be assets of the highest significance. Accordingly, notwithstanding the considerable benefits of the scheme, I attribute more weight to the conservation of the heritage asset in this case and conclude that the proposal would conflict with guidance in the Framework.

Kedleston Hall

19. The site lies within the wider setting of Kedleston Hall Registered Park and Garden. As there would be no discernible inter-visibility between the site and Kedleston Hall I am satisfied that the proposal would have a neutral effect on this heritage asset.

Historic Landscape

20. The Council also referred to the impact of the proposal on the historic landscape. The site comprises a larger field to the south, with a smaller field to the north which is enclosed by field boundaries. The Derbyshire Historic Environment Record (HERs) records the site as part of the Derbyshire Historic Landscape Character Assessment and the field pattern at the site can be considered to be a non-designated heritage asset as the remaining field boundaries which define the site may represent part of a much earlier field pattern.
21. I noted on site that the configuration has been eroded by the removal of hedge boundaries across the site and by the introduction of the nearby public house and residential development and so is not immediately apparent. A more obvious strip field pattern exists on land adjoining the north of the site and is also recorded on the HERs register. Such remnant field patterns are important both for their historic and aesthetic qualities. Shared views of the development and field pattern to the north are likely to be limited and would also be likely to include the modern housing to the east and west.
22. Development is proposed towards the south of the site. Although the nature of the use would clearly change, the original field pattern towards the north of the site would be preserved and the strip pattern beyond the site would not be impacted. I am therefore satisfied that although the development would lead to a loss of a small part of the field pattern, the level of preservation of the asset is relatively poor and so the harm that would occur would be very limited. Furthermore, the loss would not have a discernible impact on the setting of the better preserved strip pattern to the north. Having regard to the significance of the assets I am satisfied that the limited harm to the significance of the non-designated heritage asset is outweighed by the benefits of the scheme.

23. The Council have referred to policies LS3 and EN7 of the Adopted Amber Valley Local Plan (Local Plan). Policy EN7 relates to landscape character, including the presence and pattern of local historic landscape features. As I have found that the proposal would not have a significant effect on the pattern or presence of historic landscape features, I find no conflict with this policy. Policy LS3 does not refer specifically to heritage assets, and insofar as the first reason for refusal relates specifically to harm to the historic landscape, rather than wider design principles, I find the policy to be of limited applicability to this aspect of the proposal.

Sustainable Location

24. Langley Common has very limited local services. The village has a public house and a bus stop (both currently closed), and an electric car charging point. The limitations of local services compared to other settlements in the district are identified in the evidence base for the emerging local plan² which identifies Langley Common as performing very poorly in terms of provision of local amenities.
25. However, nearby Kirk Langley has a less limited range of services, with a church and primary school both within around half a mile of the site and relatively easily accessed by foot, with a paved footway along the road into the village. A bus service also links Kirk Langley with Ashbourne and Derby which would provide a means of reaching essential services in larger settlements nearby and a school bus also provides access to secondary education. Although public transport to nearby settlements would be unlikely to meet all the needs of most residents, trips by car to higher order settlements would be relatively short with the potential for cycle trips. An increase in residents could also contribute in a small way to enhancing the vitality of the village, and to sustaining available services.
26. On the second matter I therefore conclude that the proposal would not be entirely reliant on the private car and would not conflict with guidance in the Framework which seeks to locate rural housing where it can enhance or maintain the vitality of rural communities, especially where this can support local services.

Landscape Character

27. The Council's second reason for refusal also referred to paragraph 170 of the Framework, which seeks to recognise the intrinsic character and beauty of the countryside. The section of Moor Lane immediately around the site is largely undeveloped with dwellings to the rear of the site on Pimms Lane being set well back from the road frontage. Development of the site would lead to some infilling of the road frontage between The Bluebell Inn and The Lawns and I acknowledge that this would lead to some incremental erosion of openness. Nevertheless, the site would not appear prominent in the landscape and would lead to a very limited loss of fieldscape.
28. The site sits close to adjacent housing to the west at the junction with Long Lane. As such, as the wider surroundings of the site are characterised by loosely knit residential development, the proposal would not be isolated, or appear particularly obtrusive in this context.

² Amber Valley Local Plan 2016 – Establishing a Settlement Hierarchy. Although the Local Plan has not been advanced, the factual information within the evidence base to support it is relevant nonetheless.

29. I therefore find that the proposal would not lead to significant harm to the character of the countryside in this location and find no conflict with policy EN7 of the Local Plan, which seeks to ensure that development is appropriate for the landscape character type in which it is proposed or Policy LS3, which seeks to conserve the local distinctiveness of the natural and built environment.

Other Matters

30. The appellant considers that the Council cannot demonstrate a 5 year supply of housing land. As I have found that the proposal would be likely to harm the setting of the Scheduled Monument the "tilted balance" as set out in paragraph 11 of the Framework would not be engaged. Furthermore, even if were to accept that there was a substantial deficit in housing supply, as originally suggested by the appellant, the contribution of housing from the scheme would be insufficient to outweigh the harm to the asset identified above.
31. The appellant has not disputed the need for a financial contribution toward the provision of education and open space and based on the case put to me I see no reason to disagree with the Council's view that such contributions are necessary to mitigate the potential adverse impacts of the development proposed. The proposal is not accompanied by any means of securing these payments as no legal agreement has been provided. In the absence of such an agreement the development would therefore fail to provide appropriate provision for education and public open space. A legal agreement was also intended to ensure long term maintenance of Sustainable Urban Drainage on the site.
32. In order to address these matters I have considered whether a condition requiring that a planning obligation be entered into before development can commence would be appropriate in this case. However, Planning Practice Guidance indicates that such a condition should only be used where there is clear evidence that the delivery of the development would otherwise be at serious risk. I have been provided with no such evidence in this case and so I must conclude that a condition would not be appropriate. In the absence of a planning obligation the proposal would fail to make appropriate provision for education and public open space and this further weighs against the proposal. Nevertheless, as I have found the scheme to be unacceptable for the reasons set out above, this matter is not, in the event determinative.
33. Local residents have expressed a range of concerns, including the effects of the proposal on highway safety, living conditions, local wildlife, trees, loss of agricultural land, flood risk, and the impact of additional residents on services including doctors surgeries. As I consider the proposal to be unacceptable for other reasons, as already outlined, these matters do not alter my reasoning set out above.

Conclusion

34. The proposal has failed to demonstrate that it would preserve the significance of the Scheduled Monument. The benefits of the proposal in terms of housing supply and the other social and economic benefits identified would be insufficient to outweigh this harm. Furthermore, it would fail to make appropriate provision for education or public open space.

35. Accordingly, having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR