



Appeal Decision

Site visit made on 10 November 2020

by R Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal Ref: APP/A0665/W/19/3222101

Commonside House, Norley Road, Kingsley, Frodsham WA6 6LT

- 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 Tim Gibbs against the decision of Cheshire West & Chester Council.
 - The application Ref 18/04373/FUL, dated 8 November 2018, was refused by notice dated 4 January 2019.
 - The development proposed is demolition of existing building and construction of single storey dwelling.
 - This decision supersedes that issued on 19 August 2019. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Tim Gibbs against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Procedural Matters

3. Since the application was determined the Council have adopted the Local Plan (Part Two) Land Allocations and Detailed Policies (LP2) (2019). The main parties have commented on the implications of this for their cases and I have had regard to the comments received.
4. The description of development in the heading above for the demolition of existing building and construction of single storey dwelling is taken from the application form and is that entered in the appeal form. The Council determined the application on that basis. The appellant's Design and Access Statement however describes the proposal as *'to demolish the existing building and construct one single affordable, one bedroom, single storey dwelling on a self-build basis for a family member'*. Nevertheless, the proposal has been submitted for an independent dwelling, not an annexe, with no restrictions on future occupants. I have therefore assessed the appeal on the same basis as the Council.
5. The appellant has provided a signed Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). The UU is concerned with ensuring that the proposed dwelling is provided and maintained as affordable housing. I shall return to the UU later in my decision.

Main Issues

6. The main issues are:

- whether the proposal constitutes inappropriate development in the Green Belt;
- the effect of the proposed dwelling on the character and appearance of the surrounding area; and
- whether the appeal site would provide a suitable location for the proposed dwelling, having particular regard to access to services and facilities.

Reasons

Green Belt

7. The appeal site is situated within the North Cheshire Green Belt. The Government attaches great importance to Green Belts. The appeal site comprises previously developed land (PDL). Paragraph 145 (g) of the National Planning Policy Framework (the Framework) stipulates, amongst other things, that development is not inappropriate, if it results in the redevelopment of PDL, provided it would not have a greater impact on the openness of the Green Belt than the existing development. Although the wording differs slightly Policy STRAT 9 of the Council's Local Plan (Part One) Strategic Policies (LP1) (2015) also has a similar provision.
8. As an independent dwelling there would be an intensification of activity, additional parked cars, garden furniture and paraphernalia. However, the proposal would have a smaller volume than both the existing building and the replacement building previously accepted by the Council under a Lawful Development Certificate (LDC). Restrictions on permitted development rights could also control the potential for future incremental alterations to the dwelling. As such, on balance I consider that the proposal would not have a greater impact on the openness of the Green Belt.
9. I therefore find that the proposal would accord with the exception listed in paragraph 145 (g) of the Framework and it would not constitute inappropriate development in the Green Belt. Moreover, in so far as it relates to the Green Belt, the proposal would accord with the relevant provisions of Policy STRAT 9 of the LP1. I will return to other requirements of this policy in relation to the next main issue.

Character and appearance

10. The position of paddocks, fields, boundary hedges, trees, lack of footway along the road and properties with spacious grounds results in a distinctly rural quality to this part of Norley Road. This contrasts with the more built up environment and character of housing along Top Road which appears to me to define this part of the settlement's (Kingsley) edge. As such, the appeal site is not adjacent to the settlement, but forms part of the surrounding rural area.
11. The appeal building is positioned in part of the domestic land associated with the host property. This grassed area contains various domestic accoutrements and a separate large single storey building. Although well contained, the spaciousness, vegetation and ancillary nature of this area makes a small but positive contribution to the rural character of the area.

12. The appeal proposal would give rise to an intensification of activity, light from the building's occupation and additional domestic accoutrements serving a separate dwelling. These elements would incrementally urbanise and erode the more verdant characteristics of the site, even if the building subject to an LDC was implemented.
13. As a separate dwelling house, irrespective of its construction materials and design, it would occupy a contrived position in this rear area, between Commonsides House and its domestic land and other ancillary elements. In this context, even though the existing building is in a poor condition, the proposed replacement, with an independent dwelling would not enhance the site.
14. Whilst there is not a fixed building line, houses along this part of the road are generally closer to the road rather than set behind properties. In this regard, the appeal proposal would depart from this more established pattern. However, there are other houses in 'backland' positions, and, in isolation, this is not determinative but does add to my concerns regarding the positioning of the proposed dwelling.
15. The combination of the above elements would result in an ad-hoc form of development which would harm the character and appearance of the surrounding rural area. On this matter, the proposal would therefore conflict with the requirements of Policies ENV6 and STRAT9 of the LP1. These stipulate, amongst other things, that development should respect local character and achieve a sense of place through appropriate layout and design.
16. Although not referred to in the reason for refusal, following the adoption of the LP2 the proposal would also, on this matter, conflict with the requirements of Policies DM1 and DM19. These policies, amongst other things, support the replacement of buildings on PDL for housing, if it would result in an enhancement of the site and the rural setting.
17. The proposal would also conflict with the requirements of paragraphs 127 and 170 of the Framework. These seek, amongst other things, that decisions contribute to, and enhance, the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Location

18. There is no dispute that the site is not located within any defined settlement boundary and is not isolated in the context of paragraph 79 of the Framework. Nonetheless, the appeal site is, in my view, part of the rural area near, but not adjacent, to Kingsley.
19. Kingsley is defined as a local service centre in the LP2 with a range of basic services and facilities. The appeal site may well be within walking distance of some essential facilities as set out in the Manual for Streets. However, this would, in part involve walking along a grass verge along Norley Road and I have no evidence that safe and attractive walking routes exist. As such, I must question the practicality of walking as a realistic option. I am therefore not satisfied on the evidence before me that the appeal site is within reasonable walking distance of local services and facilities along a safe route.
20. Cycling would appear more realistic, given the distances and the nature of the routes. Even so, given the appeal site's location, future occupants would have a

high dependency on private vehicles, albeit they would not be wholly reliant on them.

21. I therefore find that the appeal site would not have particularly good access to services and facilities. However, the Framework acknowledges that opportunities for sustainable transport solutions in rural areas are reduced.
22. Moreover, although Policies STRAT1, STRAT2 and STRAT9 of the LP1, broadly, amongst other things, seek to locate new housing in accessible locations, I do not consider, in so far as the appeal sites accessibility is concerned, that this would lead to conflict with these policies.

Other Matters

Unilateral Undertaking

23. I have some concerns about the UU submitted, which seeks to secure the proposed dwelling as an affordable home. For example, it is not dated, the appended plan is unsigned, no title deed has been provided to confirm that the appellant has the sole power to sign such a deed and the UU places duties on the Council in the disputes section who are not party to the obligation. Moreover, the UU's definitions refer to discounted market housing but this isn't referred to elsewhere adding confusion, and the first schedule covenant doesn't itself secure the dwelling in perpetuity as an affordable home. Instead, it in effect requires a scheme which is likely to take the form of a further obligation.
24. I am therefore not satisfied that the submitted UU would be effective as an obligation and would not make adequate provision for securing the proposed dwelling as an affordable home. The appellant also suggests that a planning condition could be used to secure the proposal as an affordable home. However, the Planning Practice Guidance is clear that this approach should be considered in exceptional circumstances. Although I note that the Council secured affordable housing in a nearby scheme by way of a condition, there are no exceptional circumstances before me in relation to the appeal proposal that would warrant such an approach.
25. As such, although I note the appellant's intentions, as I do not have an adequate mechanism before me to secure the dwelling in perpetuity as an affordable home, I do not consider this to be a benefit in this instance.
26. In this regard, although I have been referred to Policies SOC2 and DM24 of the LP1 and LP2 respectively, which relate to rural exception sites, given my findings on the UU, the proposal does not fall to be assessed against the requirements of these policies.

Other cases

27. Whilst I have had regard to the planning history at the appeal site and previous comments made on application Ref 13/02680/FUL, I do not have the plans or full details of that scheme before me. As such, I cannot be certain that the circumstances remain the same in terms of the proposal, layout, design and relationship to the surrounding properties and their gardens. I have, in any case, made my own assessment of the proposal based on the plans, evidence and policies before me.

28. I have also been referred to several planning decisions by both parties, including examples of housing nearby and elsewhere. However, I do not have the full details of the circumstances that led to these proposals being accepted.
29. Nonetheless, from the evidence before me, the 15 affordable dwellings approved (17/02356/FUL) are positioned immediately adjacent to the settlement, in contrast with the appeal site. Although set behind frontage housing, the dwelling approved at Hollygate Barn (16/04302/FUL) was described as the conversion of an existing outbuilding and was designed with its own garden space and is clearly severed from any other dwelling. The approvals at Fir Tree House (15/00242/FUL and 13/05160/FUL) also involved the conversion of an existing rural building. Similarly, although set behind the frontage housing, the dwelling approved at Fir Tree House (14/03209/FUL) was again described as the conversion of an existing outbuilding.
30. As such, whilst recognising the geographical similarities, the circumstances that applied in those cases do not appear comparable to those before me, in terms of their proposal and relationship to other residential properties and their respective gardens.
31. The application at Woodhouses Farm (18/03934/FUL) was approved following an approval to convert the agricultural barns to dwellings and was assessed by the Council as being in keeping with its surroundings, in contrast with my assessment of the appeal proposal before me.
32. I have not been provided with any substantive details of the applications at Kingsley Mill (18/00909/FUL), Forestgate Farm (17/04478/FUL) or at Greenslade Farm (16/03416/FUL). As such I can not be sure that they represent a direct parallel to the appeal proposal. From the description given, they do not share the same combination of proposal or location as the scheme before me.
33. The appeal at The Firs (3218031) was for a development on former industrial land. This was deemed to enhance the site and improve the setting of a neighbouring locally listed building, distinguishing it from the appeal proposal before me.
34. The appeal at Three Stumps (3228895) was assessed as being infill within the village, in contrast with my assessment of the appeal site. Whilst the decision stipulates that the replacement of buildings is one of the forms of development envisaged by Policy STRAT 9, it confirms that this is subject to general criteria on scale and design. In this regard, I have found that the proposal would result in harm to the character and appearance of the area, distinguishing the proposal before me from the scheme at Three Stumps.
35. The appeal at Drakelow Gorse Farm (3224970) was for the conversion of an existing barn which was judged to result in an enhancement to its immediate setting. Whilst the findings in relation to the accessibility of that particular site are noted, along with the assessment against Policy STRAT9, this does not alter my assessment of the proposal before me in regard to the character and appearance of the surrounding area.

Other considerations

36. Although the Council has raised no objections in respect of other considerations, the absence of harm are neutral matters, weighing neither for

nor against the proposal. I have also considered the letters of support and recognise that the proposal would provide an opportunity for an independent home for a family member. However, personal circumstances will seldom outweigh more general planning concerns. Moreover, I have already concluded that the application was made for an independent dwelling not an annexe and I have no mechanism to secure the dwelling as an affordable home in perpetuity. I therefore afford these personal benefits limited weight.

Overall Conclusion

37. The proposal would deliver a dwelling on PDL and, therefore, would have economic and social benefits in line with the sustainability aims of the Framework.
38. The appeal site would not have particularly good access to services and facilities. However, I do not find specific policy conflict with regards to its accessibility, having regard to the objectives of Policies STRAT1, STRAT2 and STRAT9 of the LP1 and the Framework on this matter.
39. The proposal would not be inappropriate development in the Green Belt for the purposes of Policy STRAT9 (and the Framework). However, it would result in a dwelling that would harm the character and appearance of the surrounding area, bringing conflict with other requirements of Policy STRAT9 and the Framework. Moreover, this harm would bring conflict with Policy ENV6 of the LP1 and the requirements of Policy DM1 of the LP2.
40. The replacement of a building on PDL in the countryside is supported under Policy DM19 of the LP2 subject to criteria. However, I have already concluded that it is not located within reasonable walking distance of local services and facilities along a safe route, bringing conflict with criterion (ii). Moreover, I have also concluded that the proposal would harm the character and appearance of the surrounding rural area, bringing conflict with criteria (v), (vi) and (vii). As such, the proposal would conflict with the requirements of Policy DM19 of the LP2.
41. Given my findings on the UU, the proposal would not constitute a rural exception site and would not fall to be assessed against Policies SOC2 and DM24 of the LP1 and LP2 respectively.
42. Drawing the above together, the proposal would conflict with the development plan when read as a whole.
43. I have taken account of all the other matters raised, including the benefits of the proposal. However, a net gain of a single dwelling, would only have limited benefits. As such, I find there to be no material considerations, in this instance, that would indicate that the appeal decision should be taken other than in accordance with the development plan.
44. For the reasons given above, the appeal is dismissed.

Robert Walker

INSPECTOR