
Appeal Decision

Hearing Held on 20 April 2021

Site visit made on 21 April 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/Y3940/W/20/3261201

Little Kent End, Ashton Keynes, Swindon SN6 6PF

- 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 Mrs Selene Cripps against the decision of Wiltshire Council.
 - The application Ref 20/03599/FUL, dated 29 April 2020, was refused by notice dated 3 July 2020.
 - The development proposed is the erection of a dwellinghouse and garage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwellinghouse and garage at Little Kent End, Ashton Keynes, Swindon SN6 6PF in accordance with the terms of the application, Ref 20/03599/FUL, dated 29 April 2020, subject to the conditions in the attached schedule.

Procedural Matters

2. It was clarified at the hearing that the reference to policy CSP3 of the Ashton Keynes Neighbourhood Plan 2015-2026, made May 2017 (NP) in the refusal reason on the Council's decision notice should have been policy HSP3.

Main Issues

3. The main issues are:
 - Whether the site provides a suitable location for residential development having regard to local planning policies and accessibility;
 - The effect of the proposal on the character and appearance of the area, and;
 - If harm arises, whether this is outweighed by other material considerations.

Reasons

Location and accessibility

4. Core Policies 1 and 2 (CP1 and CP2) of the Wiltshire Core Strategy, January 2015 (CS) respectively set out a settlement and delivery strategy for development in the county. Together they seek to direct residential development to settlements at a scale commensurate with their position in the hierarchy described in the CS. Large and small villages comprise the lowest

rung of the hierarchy where only limited development is supported by CP1. CP2 of the CS stipulates that residential development is not supported outside of the defined limits of development save for express exceptions in the development plan. It is not part of the appellant's case that the proposal would meet any of the express exceptions for dwellings outside of the defined limits of development in either the CS or saved policy H4 of the North Wiltshire Local Plan 2011, June 2006 (NWLP).

5. Core Policies 60 and 61 of the CS underline the spatial strategy by requiring new development to be in accessible locations in order to contribute towards reducing the need to travel, particularly by private car. Policy HSP3 of the NP is consistent with the settlement strategy in the CS in that, subject to criteria, it supports infill and windfall residential development within the settlement boundary of Ashton Keynes.
6. Taken in combination these policies broadly align with the approach to rural housing in paragraphs 77-79 of the National Planning Policy Framework (the Framework) which, amongst other things, require planning policies to identify opportunities for villages to grow and thrive whilst generally avoiding the development of isolated homes in the countryside. However, the Framework does not expressly advocate the use of settlement boundaries.
7. The appeal site lies at the periphery of Ashton Keynes, which is identified as a large village within the Malmesbury Community Area in Core Policy 13 (CP13) of the CS. Large villages are defined in the CS as settlements with a limited range of employment, services and facilities and have defined settlement boundaries. Until the beginning of last year, the appeal site lay within the settlement boundary for the village. However, it was removed following a revision to the settlement boundary as part of the Wiltshire Housing Site Allocations Plan, Adopted February 2020 (WHSAP).
8. The appellant is critical of how the Council carried out its methodology as part of the WHSAP. In addition, as the appellant was unaware of the revision, she did not make representations as part of the examination of the WHSAP. However, the scope of my determination does not extend to reviewing the procedures or outcomes of the now adopted WHSAP. Despite having misgivings regarding the process and outcome, the appellant accepts that, as a matter of fact, the appeal site now lies outside of the revised settlement boundary for Ashton Keynes. Moreover, it forms part of the development plan against which the scheme must be assessed¹.
9. The Council clarified that the main reason for the appeal site having been excluded from the defined settlement was because it was considered, together with other land nearby, necessary to remove employment development and isolated development at the edge of the large village. Accordingly, this relied upon an assessment of the character² of the land being more related to the edge of the settlement and to the open countryside beyond. I shall consider the character of the appeal site later in my decision. However, the reasoning given for the amended settlement boundary in the WHSAP did not include any reference to a material change in the accessibility of the site.

¹ Paragraph 6.12, Appellant's Statement of Case

² Paragraph 8.11, Council's Statement of Case

10. Paragraph 103 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. The CS describes the county as predominantly rural³. Neither CP60 nor CP61 of the CS in referring to accessible sites rely on settlement boundaries as the determinative factor. Supporting text at paragraph 6.155 explains that planning developments in locations that are accessible means that communities can access their needs (e.g. shops, schools and employment) easily and without always needing a car.
11. The local facilities at Ashton Keynes include a primary school, public house, village shop, church, some health services and recreational facilities. There is also a village hall where various community groups meet, including a pre-school. The parties generally agreed that these facilities were within reasonable walking and cycling distance from the appeal site, which is consistent with my observations. Furthermore, there are bus services that link the village to Malmesbury, although they could not be described as frequent.
12. As such, future occupants of the proposed dwelling would not always need a car to access some local shopping, recreational, social and education activities. Even so, they would be likely to rely on the private car for employment, shopping, entertainment, health and education activities located further afield. Nevertheless, cognisant of the rural context, the site would allow a genuine choice of travel mode to the limited range of local facilities in the village. Moreover, the site would perform no worse in accessibility terms than adjacent sites within the settlement boundary. Overall, the site would be reasonably accessible.
13. My attention is drawn to an appeal decision⁴ for a dwelling at 15, The Derry, Ashton Keynes in which the Inspector concluded that the site was not sustainably located in the wider context of Wiltshire's settlement strategy. However, unlike the appeal site, that decision related to a site in an enclave of development well removed from the main built-up area of Ashton Keynes, which the Inspector makes reference to in paragraph 6. In addition, the wider context of Wiltshire's settlement strategy did not, in that case, include the site in question having previously been included within the settlement boundary for the village. As such, it is of limited weight to the case before me, which, in any event I have determined on its own merits.
14. Drawing these factors together, I find that as the proposal would lie outside of the settlement boundary for the village it would conflict with the settlement and delivery strategy for the county set out in CP1 and 2 of the CS, as well as the strategy for the Malmesbury Community Area in CP13 of the CS. Although policy HSP3 of the NP does not expressly refer to development outside of the settlement boundary, its positive wording works with the wider strategic approach to housing delivery set out in the CS. Therefore, whilst the appeal proposal would not directly conflict with the wording of policy HSP3, read as a component of the wider housing strategy, it would conflict with the thrust of the NP. Furthermore, as it would fall outside of the exceptions permitted by saved policy H4 of the NWLP, it would be contrary to that policy.

³ Paragraph 4.10 of the CS

⁴ Appeal reference, APP/Y3940/W/17/3175380, Appendix 3, Council's Statement of Case

15. In addition, notwithstanding the reasonable degree of accessibility of the site, there would be limited conflict with policies CP60 and 61 of the CS which seek to reduce the need to travel, particularly by car.
16. I shall consider the weight that should be attributed to the conflict with the development plan policies I have identified as part of the overall planning balance.

Character and appearance

17. The appeal site is in a peripheral location on the north east side of Ashton Keynes and within the Ashton Keynes Conservation Area (CA). The CA covers the central part of Ashton Keynes as well as some outlying spurs of development and surrounding countryside. Its significance primarily lies in the way the mix of buildings, spaces, watercourses and countryside reflect the evolution of the village over time. I am mindful of my statutory duty⁵ to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
18. Residential development at Kent End comprises a mix of pre-1900 dwellings with some limited modern infill. Many of these are traditional two storey stone cottages but there is some diversity in the architectural styles and materials in evidence. The settlement pattern is generally loose knit, irregular and with predominantly detached dwellings set within generous gardens. The prevalence of mature trees adds significantly to the verdant appearance of the area. In combination with the winding narrow lanes and proximity to fields and lakes beyond, the village has an attractive, organic rural character and appearance.
19. Until recently, the appeal site formed part of the domestic garden to 4 Little Kent End albeit in a discrete enclosed rectangular parcel separated from the main dwelling by a footpath. It is generally flat, with grass, mature trees, shrubs, raised planting beds and limited built form comprising domestic outbuildings. The most striking characteristic of the site are two tall mature lime trees, which due to their significant height are visually prominent in the local landscape. Consequently, the site respects and contributes positively to the attractive rural verdant character of the village and CA.
20. The proposal would introduce a new detached dwelling in a combination of single and two storeys. The design would employ a flat, sedum covered roof and vertical timber cladding walls. The combination of rounded corners and flat roof would be reminiscent of some 1930's architecture but the choice of materials would result in a distinctive attractive contemporary dwelling. On that basis, the building would depart from the more traditional built form nearby. However, there are factors at the appeal site which would mean the development would nevertheless remain sympathetic to the surrounding built environment and landscape setting.
21. Firstly, the arboricultural impact assessment⁶ provided shows that the two lime trees would be successfully retained as part of the development, thereby preserving their positive contribution to the CA and local landscape. In addition, the broadly central siting of the dwelling within a generous plot, away from the boundaries of the site would allow for the existing screening and

⁵ Section 72, Planning (Listed Buildings and Conservation Areas) Act 1990

⁶ Prepared by S J Stephens Associates, dated 16 April 2020

planting along the boundaries to be retained and/or supplemented. As a result, the verdant and contained appearance of the site would be preserved.

22. Furthermore, the muted tones and natural appearance of the sedum roof and timber cladding in combination with the unobtrusive siting and modest roof height would mean that the additional built form would be assimilated into the verdant surroundings. This would allow the lime trees to take precedence even when they were not in leaf. Although some glimpses of the dwelling would be possible from nearby footpaths, it would not be obvious or intrusive in the overall impression of the area, rather its distinctive attractive form, if spotted would add interest, thereby enhancing the CA. My view is reinforced by the supportive comments of the Council's Senior Conservation Officer⁷, which given her expertise attract considerable weight.
23. It follows that the balancing exercise necessary when a development proposal would lead to less than substantial harm to the significance of a heritage asset in paragraph 196 of the Framework, does not apply in this case.
24. The Council raise concerns that the additional built form would encroach into the countryside and would harmfully urbanise the landscape setting of the village. However, my observations were that the appeal site has the appearance of a domestic garden, and therefore, relates to and reads as part of the village. It possesses characteristics more in common with the nearby loose knit residential development rather than open agricultural fields, lakes or woodland. Given the sensitive nature of the proposal outlined above, it would avoid an overtly urban or suburban appearance. Furthermore, its limited scale and proximity to other buildings would prevent it from appearing to extend the settlement overall. Taking these factors together, the development would avoid appearing as harmful encroachment into the countryside.
25. Accordingly, I find that the proposal would not result in harm to the character and appearance of the area and moreover, would preserve and enhance the character and appearance of the CA. Therefore, in this regard I find no conflict with the settlement and delivery strategy for the county set out in CP1 and 2 of the CS, nor saved policy H4 of the NWLP as these policies do not expressly refer to matters of character or design relevant to the circumstances of the appeal proposal. It would comply with CP13 of the CS which sets out the strategy for the Malmesbury Community Area, which amongst other things, refers to future development in the community area attaining a high quality design. Furthermore, the character and appearance of the proposal would not conflict with the reference in policy HSP3 of the NP to additional housing development being of a scale and form in keeping with surrounding properties.

Other Matters

26. Representations received raise concerns regarding harm to the safety of users of the footpath and highway. Nevertheless, one dwelling is likely to generate a limited amount of additional traffic over the use of the existing access, and the associated construction period and traffic would be unlikely to be extensive. The alignment and narrow width of the lane leading to the vehicular access would generally result in slow moving vehicles. Furthermore, it would affect a relatively short section of the footpath where there are also other domestic and farm accesses present. As such, walkers would be aware of the potential

⁷ Comments dated 13 May 2020

presence of vehicles accessing the premises nearby. Overall, the proposal would not materially alter the degree of safety or experience for users of this part of the footpath. At the hearing there was reference to a planning decision⁸ made for a dwelling in the grounds of Doveswell where the Highway Authority had objected. Nevertheless, that decision was made a considerable time ago and would have related to a longer stretch of public footpath. No substantive technical evidence has been provided to undermine the view of the Highway Authority who raise no objection to the appeal proposal subject to a condition to require a construction management statement.

27. Reference is made to increased pressure to fell trees on the site arising from the development. However, the arboricultural information before me demonstrates that the significant trees within the site will be protected and retained. The principal elevation of the dwelling would address the lime trees, with a usable section of garden contained in the more open northern part of the site. This arrangement would minimise the degree of overshadowing from the trees to the area of garden that is likely to be most intensively used and consequently, would reduce pressure to remove or reduce the lime trees in the future. In any event, since the site is within the CA, notification must be given to the Council of any intended tree surgery works, to allow them the option of imposing a Tree Preservation Order.
28. At my site visit I was able to observe the relationship of the appeal site with The Willows. The part of the proposed dwelling that would be closest to the boundary with that property would be single storey. Moreover, the degree of separation and configuration of the proposed building from the house, patio and annexe at The Willows would maintain an acceptable degree of privacy and outlook for the respective residents. In reaching my view I have given particular consideration to the first floor window serving bedroom 2 that would face broadly westwards. This would be a considerable distance from the boundary and when the position of the wall of the study/staircase structure is also taken into account, this would limit the range of views. As such, the development would avoid intrusive views towards The Willows.

Planning balance

29. The Council's Housing Land Supply Statement published in December 2020 states that it can demonstrate 4.56 years' supply of deliverable housing sites. In these circumstances footnote 7 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. There is nothing otherwise before me to show that the Framework policies in footnote 6 provide a clear reason for refusing the proposal. Consequently, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
30. The main benefit of the proposal would be the provision of an additional dwelling towards the overall supply where there is unmet need. The Council highlights that Wiltshire is a large county and the Malmesbury Community Area has been delivering well, in addition to which a major residential development has been recently permitted outside of the settlement boundary for Malmesbury. Moreover, the NP has planned positively for the local need in the

⁸ Reference N97/2430/F

village. In any event, they state that the overall housing supply figure is not significantly below five years.

31. Nevertheless, the appeal site lies within the North & West Housing Market Area⁹ within the county. Of the three Housing Market Areas (HMAs) within Wiltshire it has the lowest five year housing land supply position¹⁰. Paragraph 4.33 of the CS states that the HMAs are the appropriate scale for disaggregation across Wiltshire, as they define areas within which the majority of household moves take place and that is it against them that housing supply will be assessed. Whilst the proposal would not make a significant difference to overall supply, nor represent strategic development, recognition must also be given to the important contribution small sites can make to meeting housing requirements highlighted in paragraph 68 of the Framework.
32. Furthermore, there would be economic benefits associated with the construction of the proposal as well as the activity of future occupants. Even so, the extent of benefits accruing from a single dwelling would be proportionate to its modest scale. Therefore, overall, I attribute moderate weight to the benefits of the proposal.
33. The appeal site is closely related to the village in physical terms and there would be some choice of modes of travel for future residents in accessing the facilities in the settlement, albeit their range is limited. As such there would be limited conflict with policies CP60 and 61 of the CS. Therefore, notwithstanding that it would lie outside of the settlement boundary for the village, largely due to its limited scale and proximate location, the proposal would not seriously undermine the strategic objectives of CP1 and 2 of the CS.
34. For similar reasons, it would comply with paragraph 78 of the Framework which states that rural housing should be located where it will enhance or maintain the vitality of rural communities.
35. The Council raises concerns that development at the appeal site would set an undesirable precedent for development outside the village boundary that could cumulatively undermine the spatial strategy and harm the plan-led system. It lists development proposals that it has refused in relation to two sites in 2018¹¹. However, planning applications must be determined on their own merits. Moreover, the circumstances of this case, involving a single dwelling on a site comprising garden land and bordered by a settlement boundary on three sides seems, based on the examples put forward, unlikely to recur frequently. On that basis, the concerns of a wider precedent being established attract little weight.
36. Taking these factors together, the conflict with the development plan taken as a whole attracts moderate weight, making the issues in this case finely balanced. Hence, it differs from the balance of issues in the recent appeal decision¹² to which I am referred. Unlike the case before me, it was found in that case that the development would have caused unacceptable harm to the character and appearance of the area, which in turn affected the overall planning balance.

⁹ Figure 1, Housing Land Supply Statement, Published December 2020

¹⁰ Table 3b: Housing Land Supply calculation by HMA, Housing Land Supply Statement, Published December 2020, 4.29 years

¹¹ Paragraph 7.23, Council's Statement of Case

¹² Reference APP/Y3940/W/20/3261340, Appendix 7, Council's Statement of Case

37. I have had regard to paragraph 14 of the Framework which states that in situations where paragraph 11 d) applies, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits provided all the specific criteria listed apply. However, this does not apply where the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made. As the NP was made in May 2017 it would not fulfil all the criteria specified in paragraph 14. Consequently, this has not affected the overall planning balance.
38. Therefore, in this case, I find that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. It follows that the presumption in favour of sustainable development applies in this case and furthermore, represents a material consideration of considerable weight.
39. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹³. The location of the proposed dwelling outside of the settlement boundary would conflict with the spatial strategy for residential development in the development plan. Balanced against that is the presumption in favour of sustainable development. In this instance, this represents a material consideration of sufficient weight to justify that the decision should be taken otherwise than in accordance with the development plan.

Conditions

40. The three-year period in which the planning permission may be implemented is a statutory requirement. I also consider that it is necessary to specify the plans that are approved, and that the development shall be undertaken in accordance with these, as this provides certainty.
41. To ensure the quality of the appearance of the building a condition is imposed to require the external materials to be agreed, as only generic references are included with the application.
42. It is important to ensure the protection of the trees to be retained on the site during the construction process. Therefore, a condition to require the development to be carried out in accordance with the arboricultural impact assessment is imposed.
43. The parties concurred that a pre-commencement condition to agree the proposed site and floor slab levels was necessary. Although I observed the site to be reasonably flat, I accept that it is important to establish appropriate floor slab levels primarily to ensure that the final details would not undermine the tree protection measures. As such, it is appropriate in these circumstances to ensure this is the case before any works that might otherwise cause harm to trees take place.
44. Conditions to agree and implement a landscaping scheme prior to the occupation of the dwelling are necessary to ensure a high quality design.

¹³ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

45. A construction management statement should be agreed to protect users of nearby rights of way during construction. Logic dictates that this would need to be agreed in advance of construction activity commencing to be effective.
46. A condition to agree and implement a surface water drainage scheme that includes sustainable drainage measures is also imposed given the proximity of the site to watercourses. However, I am not convinced that this needs to be a pre-commencement condition and so have adjusted the wording accordingly.
47. Two conditions were suggested by the Council that would restrict permitted development rights normally afforded to householders. These conditions would limit the ability of future occupiers to enlarge or alter the dwelling, erect outbuildings, fences, walls or other means of enclosure without first applying to the local planning authority for consent. I have had regard to Planning Practice Guidance¹⁴ which states that such conditions may not pass the tests of reasonableness or necessity. The appeal site is within a conservation area. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) already takes account of such designations by reducing the extent of permitted development. I am not persuaded that there are grounds to justify a further curtailment as the context is not otherwise so sensitive that small scale proposals should be made the subject of specific consent. Hence, it would be disproportionate and therefore, unreasonable to impose such conditions.

Conclusion

48. For the reasons given above, I conclude that the appeal should be allowed.

Helen O'Connor

Inspector

APPEARANCES

FOR THE APPELLANT

Aaron Smith BA(Hons) DipTP MRTPI	Fowler Architecture & Planning Ltd
Hollie Snyder BA(Hons) MSc	Fowler Architecture & Planning Ltd
Mrs Selene Cripps	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Catherine Blow BA MSc	Senior Planning Officer, Wiltshire Council
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INTERESTED PARTIES

Clare Moran	Local Resident
Roger Britton	Local Resident

¹⁴ Paragraph:017 Reference ID: 21a-017-20190723

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, drawing number 180934-01 Revision A; Existing Site Plan, drawing number 180934-10; Proposed Site Plan, drawing number 180934-11 Revision F; Design Scheme, drawing number 180934-13 Revision D and Tree Protection Plan – Working drawing 1487-01.
- 3) Prior to the commencement of the installation of windows, walls, rain water goods or roof materials associated with the development hereby approved, details and samples of the materials to be used for the external walls, windows, doors, roof materials and rain water goods shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The development shall be carried out as specified in the approved Arboricultural Impact Assessment and Tree Protection Plan Drawing No. 1487-01 prepared by SJ Stephens Associates dated 16th April 2020.
- 5) No development shall take place until details of the proposed site levels (above ordnance datum), together with the finished floor slab levels of the proposed buildings and structures (including finished ground level of open areas of the site), in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) The dwelling hereby permitted shall not be occupied until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority, the details of which shall include:-
 - A detailed planting specification showing plant species, supply and planting sizes and planting densities;
 - Details of the planting associated with the green roof;
 - Means of enclosure, including positions, heights and materials;
 - Surfacing materials including access and parking areas;
 - Refuse storage and external lighting.
- 7) All soft landscaping in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwelling. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of the dwelling or in accordance with a programme to be agreed in writing with the local planning authority.

- 8) Prior to the commencement of the development, a construction management statement shall be submitted to and approved in writing by the local planning authority. This shall include details regarding:
- Routes for construction traffic,
 - Management of construction activities/vehicles along AKEY24 including notification procedures to the Council and any safety/mitigation/reinstatement measures required,
 - Working times,
 - Types of vehicles,
 - Construction staff parking requirements, management of debris/mud from the site and a program of works,
 - Pedestrian and cyclist protection,
 - The statement should also include a pre-construction photographic survey of the unclassified access road to its junction with Kent End.
- The development shall be constructed in accordance with the details so agreed.
- 9) A scheme for the discharge of surface water from the site as outlined in red on plan 180934-01 Rev A incorporating sustainable drainage measures and a maintenance schedule for those drainage systems for the lifetime of the development and arrangements for the adoption by any public or statutory undertaker and any other arrangements to secure operation of the scheme throughout its lifetime shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the dwelling hereby approved.