
Appeal Decision

Site visit made on 20 July 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/M1005/W/22/3291303

Land adjacent to Christmas Cottage, Church Lane, Kirk Langley DE6 4NG

- 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 Thompson against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2021/0765, dated 29 June 2021, was refused by notice dated 23 November 2021.
 - The development is described as 'Outline Permission sought for the principle of constructing a new dwelling with all matters reserved'.
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Decision

1. The appeal is allowed and outline planning permission is granted for one dwelling at Land adjacent Christmas Cottage Church Lane Kirk Langley DE6 4NG in accordance with the terms of the application, Ref AVA/2021/0765, dated 29 June 2021, subject to the following conditions:
 - 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 0323-1-02-00 and 0323-2-08-00 (but only in respect of those matters not reserved for later approval).
 - 5) Prior to occupation of the hereby approved dwelling, a drainage scheme to demonstrate how surface water will be disposed of from the new dwelling, access road and car parking areas shall be submitted to and approved in writing by the Local Planning Authority. Once agreed the drainage scheme shall be implemented fully in accordance with the approved details.

Application for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate decision.

Procedural Matters

3. I have amended the description of development in my decision from that shown in the heading to remove elements that are not acts of development and to be more precise.
4. For the avoidance of doubt, the Development Plan for the purposes of this appeal comprises the Saved Policies of the Amber Valley Borough Local Plan April 2006 (AVBLP) and the Kirk Langley Neighbourhood Development Plan 2019-2032, made June 2021 (KLNDP).

Main Issues

5. The main issues are:
 - The principle of a new dwelling in this location; and
 - The effect on the character and appearance of the area, with particular regard to the Kirk Langley Conservation Area.

Reasons

Principle of development

6. The parties are in dispute as to whether the site falls within the built framework of Kirk Langley village. The KLNDP is up-to-date and, albeit within the supporting text, defines the built framework as “the limits of continuous or contiguous development forming the existing built up area of a settlement”.
7. The KLNDP, at Figure 2, shows the site as falling within ‘The Green’ and ‘The Patures’ settlements, distinct from Kirk Langley. Figure 25 shows the site as being within an area that is outlined in blue in the same manner as Kirk Langley Village. There are no references to either of these diagrams in any of the policies of the KLNDP, nor advice in the supporting text as to how they relate to the policies. Despite this, they have been included in the plan and so are of use in interpreting the policies, as the Council have acknowledged in their report.
8. The Council in their report specifically refer to the blue line being ‘significantly reduced for two sections’. This would suggest that the retained areas within the blue line have been subject to some degree of analysis and consideration. The Council go on to assess the distances between individual and groups of properties along Church Lane, and note the objection from the Parish Council who prepared the KLNDP. I observed these gaps during my site visit, and the small but significant concentration of dwellings adjacent to the appeal site.
9. I have had regard to the detailed comments of both parties in relation to this issue. However, in the absence of a definitive statement of what constitutes the built framework, it is a matter of planning judgement for the decision taker to establish what the built framework is. It is my view that the site is within an area of contiguous development that does form part of the existing built up area of Kirk Langley given the cluster of dwellings at The Green and the host property and the spacious, but ongoing development along Church Lane. This is reinforced by Figure 25 of the KLNDP which illustrates the site as being part of the developed area of Kirk Langley.
10. AVBLP Saved Policy H4 sets out criteria for allowing housing development within settlements such as Kirk Langley. The appeal proposal clearly does not

comply with any of these criteria, as they allow for conversions, replacement dwellings, development on previously developed land, and small infill. The development does not meet any of these criteria and is therefore not in accordance with the policy. The parties are in dispute as to whether this policy is consistent with the Framework.

11. KLNDP Policy HOUS2 supports housing development within or adjacent to the built framework. As I have found the site to be within the built framework, the appeal proposal is in accordance with this policy. There is no suggestion that this policy is out of date or inconsistent with the advice in the Framework.
12. S38(5) of the Planning and Compulsory Purchase Act 2004 sets out that 'If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan'. The KLNDP is the last document to become part of the development plan and is consistent with the Framework. Therefore, even if I were to find that AVBLP Saved Policy H4 was up-to-date, it is more restrictive than KLNDP Policy HOUS2 and the conflict would be resolved in favour of the KLNDP.
13. In relation to this main issue, I find that the appeal site does lie within the built framework of Kirk Langley and that the principle of the development would therefore be in accordance with KLNDP Policy HOUS2.

Character and appearance with particular regard to the Kirk Langley Conservation Area

14. The site is within the Kirk Langley Conservation Area (CA) where s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies. Notwithstanding my findings in relation to the site with regard to the built framework, Church Lane has a rural character and provides an attractive route moving from the countryside to the historic core of the village.
15. The appendices to the KLNDP include the Kirk Langley Conservation Area Description. This set out that the appeal site falls within the 'West end of the village' character area. While it states there is a 'return to smaller dwellings with a workers' cottages feel', it does also acknowledge the detached and semi-detached cottages on the north side of Church Lane. At my site visit, I observed that some of the properties are of considerable size and scale. The proposed dwelling would not be isolated and would repeat the pattern seen further along Church Lane of small clusters of housing facing onto the road, each set in its own plot. The site is clearly domestic in nature, serving Christmas Cottage as its garden. It does not contribute to the wider agricultural character. The appeal proposal would therefore not detract from the wider agricultural character and setting of the CA. For these reasons, I find that the development of a dwelling on this plot would have a neutral impact on CA and would therefore preserve its character and appearance.
16. Paragraph 174 of the Framework seeks to protect valued landscapes, however there is no definition of a valued landscape. The appeal site lies directly within sight of Significant View H identified in the KLNDP, therefore I consider the site to be within a valued landscape. However, this must be commensurate with its statutory status or identified quality in the development plan. Due to the surrounding topography, the site is not readily visible within Significant View H.

Indeed, the KLNDP acknowledges that the houses along Church Lane are largely hidden in mid and longer views due to it following the contours of the land.

17. In relation to this main issue, I find that the appeal proposal would preserve the character and appearance of the CA in accordance with AVBLP Saved Policy EN27 and KLNDP Policy HER2; would preserve the open rural feel of the vistas in accordance with KLNDP Policy ENV2 and would have appropriate regard to the settlement pattern and scale of local buildings in accordance with AVBLP Saved Policy EN7. It would therefore have an acceptable impact on the character and appearance of the surrounding area.

Other Matters

18. I note the Council's comments on previous appeal decisions, other applications, the Framework and their observation that the appeal should be determined with reference to paragraph 11(d)(ii) of the Framework. As I have set out above, the KLNDP contains relevant policies, is up-to-date and is the most recent document in the development plan. It is undisputed that the Council can demonstrate a five year supply of deliverable housing land. This decision can therefore be taken in accordance with paragraph 11(c) of the Framework, which requires development proposals that accord with an up-to-date development plan to be approved.
19. The concerns expressed by the Council in relation to AVBLP Saved Policies LS3 and H12 and KLNDP Policy HOUS4 insofar as they relate to design are issues that can be adequately dealt with at the Reserved Matters stage.
20. I note the concerns raised by residents with regard to biodiversity and the effect of the development on the public well which is identified in the KLNDP as an important feature valued by the community and the Kirk Langley Conservation Area Description as a feature of local interest. The Council has not raised these as issues and I see no reason to disagree.

Conditions

21. I have imposed standard conditions relating to the submission and timing of reserved matters and the commencement of development. While not suggested by the Council, it is necessary to require compliance with the submitted plans to define the terms of the permission but only in relation to site area as all other matters are reserved.
22. It is necessary and reasonable to ensure appropriate surface water drainage is provided and I have imposed a condition to secure this.
23. I have not imposed the visibility splay condition requested by the Council as that relates to access which is a reserved matter and it is not necessary to require an access be created prior to the commencement of the development.

Conclusion

24. For the reasons given above, the appeal scheme complies with the development plan. As such, the appeal is allowed.

J Downs

INSPECTOR