



Appeal Decision

Site visit made on 12 July 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/W1850/W/22/3290424

Castle End Farm, Lea HR9 7JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Hall of Churcham Homes Ltd against Herefordshire Council.
 - The application Ref 213248, is dated 14 July 2021.
 - The development proposed is residential development of 9 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Hall of Churcham Homes Ltd against Herefordshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council failed to determine the application within the prescribed period. However, following submission of the appeal, the Council have prepared an appeal statement. This advises that had the Council determined the application, planning permission would have been refused. Putative reasons for refusal are given and identifies that the principal concerns relate to the main issues set out below.

Main Issues

4. The main issues are:
 - Whether the appeal site is an appropriate location for new housing having regard to the development plan and relevant national planning policies;
 - The effect of the proposed development upon the setting of a nearby listed building;
 - The effect of the proposed development upon the safe and efficient operation of the highway network;
 - Whether the proposed development would provide satisfactory living conditions for future occupiers with regard to noise;
 - Whether the proposed development provides adequate water supply; and
 - The effect of the proposed development on the River Wye, Forest of Dean & Wye Valley Bat, and Wye Valley Woodland Special Area of Conservation.

Reasons

Appropriate location for housing

5. Policy RA2 of the Herefordshire Local Plan – Core Strategy (2015) (CS) states that in order to support sustainable growth housing will be supported in or adjacent to identified settlements. Lea is defined as such a settlement for proportionate housing development.
6. The Lea Neighbourhood Development Plan (2019) (NDP) defines the settlement boundary for the village and whilst the site lies adjacent to residential development it is nonetheless located outside the settlement boundary as defined in the NDP. Therefore, new development outside of existing boundaries will be considered to be located in the countryside.
7. CS Policy RA3 sets out that in rural locations outside of settlements, including those identified in Neighbourhood Plans, new housing will be limited to certain types of development. The proposed development has not been presented on the basis of any essential need for a countryside location.
8. Lea is a suitable location for new development and benefits from a variety of services and facilities to meet residents' day to day needs. These services and facilities are directly accessible from the site by foot and motor vehicle. However, as the development would be located beyond the settlement boundary of Lea it would not be an appropriate location for new housing. It would be contrary to CS Policies RA2 and RA3 and NDP Policy Lea 1 which do not support the provision of market housing in this location.

Heritage impact

9. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
10. Grade II* listed dwelling Castle End is located to the north of the appeal site. Its appearance, scale and detailing indicate that it is a building of some status. The dwelling is set within extensive walled surroundings. The listed building's significance is informed by its architectural and historic interest as a building dating back to the 17th century. Its grounds and the surrounding countryside contribute to its significance and status.
11. The extent of the setting of a heritage asset is not fixed and may change and be experienced differently as the asset and its surroundings evolve. I acknowledge that the site contains a number of buildings and is physically separated from Castle End by the A40, but these buildings are contained on part of the site with the area closest to the road free from development providing an open buffer between the built form of the village and Castle End.
12. I find that the introduction of built form, spread across the entire site, and the urbanisation of the site would encroach into an important open buffer. This would significantly erode the site's rural appearance diminishing the contribution it makes to the setting to the heritage asset and depriving Castle End of a proper setting.

13. When considering the impact of a proposed development on the significance of a designated heritage asset, the National Planning Policy Framework (the Framework) states that, great weight should be given to the asset's conservation. In light of the above I find that there would be some, albeit limited harm to the setting of Castle End.
14. In accordance with Paragraph 202 of the Framework, it is for the decision maker, having identified harm to designated assets, to consider the scale of that harm. In this case I conclude that the proposal would lead to less than substantial harm to the setting of the nearby listed building. This harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use, which I now turn to.
15. In this regard, the proposal would contribute to local housing supply and employment with the construction of the development. Future occupiers would help to maintain or enhance the vitality of services and facilities in the village. These benefits would be moderate. Taking into consideration the points above I find that the harm to the setting of Castle End would clearly outweigh the public benefits of the proposal and afford this considerable weight.
16. The appellant has referred to a Heritage Impact Assessment which establishes that there would be no harm to the setting of Castle End. Based on the evidence before me this assessment considers the impact relating to a materially different scheme. Therefore, I have given it negligible weight in coming to my decision.
17. As such, in my judgement, the proposed development would not preserve the setting of Grade II* listed Castle End, causing less than substantial harm to its significance. The public benefits would not outweigh this harm and therefore the proposal would be contrary to CS Policies SS1, RA2, LD1 and LD4 which, amongst other things, seek high quality design that protects, conserves and where possible enhances heritage assets and their setting in a manner appropriate to their significance.

Safe and efficient operation of the highway network

18. The Council's Design Guide sets out a maximum requirement of 12 spaces for residents of the 2 bed units and for visitors. The development proposes 8 spaces.
19. Whilst the figure is an upper limit it is not unreasonable to expect that some occupiers of the units would have more than one vehicle, given its rural location, resulting in a demand for vehicle parking. The proposed development would be deficient of parking spaces and the number of spaces proposed would not be adequate to serve it.
20. The lack of available on-site parking is likely to result in indiscriminate and inconsiderate parking taking place in the circulation areas and at the road junction with the A40 making manoeuvring within the site difficult. This would result in a significant adverse effect on the safe and efficient operation of the highway network.
21. I conclude that the proposed development would adversely affect the safe and efficient operation of the highway network. Consequently, it would be contrary to CS Policy MT1 which, amongst other things, requires developments to have regard to the Council's parking standards. It would also be contrary to

Paragraph 111 of the Framework which, amongst other things, sets out that development proposals should be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

Living conditions for future occupiers

22. The Council contend that the site is affected by road traffic noise. However, there is no evidence before me to substantiate their case. At the time of my visit, I observed low levels of traffic along the A40. Whilst this is a snapshot in time, based on my observations, there is little to indicate that the traffic flows I witnessed are untypical. Nor is there any indication that road traffic is affecting the living conditions of existing residents along the road.
23. The closest dwellings would broadly follow the line of the existing dwellings to the south with limited openings facing the road. The remainder of the dwellings would be set back well into the site and a good distance away from the road. On balance I am satisfied that future occupiers would not be adversely affected by noise from passing traffic.
24. I note the Council's comments in relation to air source heat pumps. Despite the absence of information from the appellant there is no substantive evidence before me to indicate that such units are excessively loud when in operation resulting in a noise nuisance, particularly as they are intended to be used within residential settings.
25. As such, I conclude that the proposed development would provide satisfactory living conditions for future occupants and would accord with CS Policies SS1, RA2 and SD1 which, amongst other things, encourage high quality sustainable schemes and ensure that new developments do not suffer from impacts arising from noise.

Water supply

26. I note that Welsh Water have raised concerns regarding the effect of the proposed development upon water supply to existing and future occupiers.
27. The Planning Practice Guidance sets out that planning for the necessary water supply would normally be addressed through strategic policies, which can be reflected in water companies' water resources management plans. Water supply is therefore unlikely to be a consideration for most planning applications.
28. Whilst these concerns may be legitimate, matters regarding the supply of potable water are regulated by other legislation including the Water Industry Act 1991. In this regard the supply of water is not a matter for me as part of a Section 78 appeal. I therefore give this matter negligible weight in coming to my decision.

Other Matters

29. The appeal site is located within the River Lugg catchment area which forms part of the River Wye SAC and near to the Forest of Dean & Wye Valley Bat SAC and the Wye Valley Woodlands SAC. The Council's putative reasons for refusal relate to the lack of an ecological assessment and bat survey and the absence of foul and surface water drainage details. However, as I have found conflict with the development plan in respect of the location of the site, harm to

the setting of a listed building and concerns in respect of highway safety which is significant enough to dismiss the appeal there is no benefit in me pursuing this matter any further, notwithstanding the submission of the Habitats Regulation Assessment by the appellant.

30. I acknowledge that the proposed development would be well related to the existing built form, would result in the redevelopment of brownfield land and that there would be no landscaping issues. However, these factors either individually or cumulatively would not outweigh the harm that I have identified.
31. The appellant has referred to a fallback position. However, based on the very limited information before me I am not satisfied that the circumstances in each proposal are materially similar and is not a reason, on its own, to allow unacceptable development. The appellant has also referred to an allowed appeal on the neighbouring site. However, it is incumbent upon me to assess the merits of the proposal before me and every appeal must be considered on its own merits, as I have done. These matters do not alter my overall conclusion in relation to the main issues.
32. The appellant contends that the policies in the CS and NDP should be considered to be out of date. Despite the date of adoption of the CS and NDP, the Framework sets out that existing policies should not simply be considered out of date because they were adopted prior to its publication. The Framework sets out in paragraph 219 that due weight should be attached to development plan policies dependent upon their degree of consistency with it. Despite their age, in my view, the most relevant policies are consistent with the Framework which seek sustainable development and the protection of the natural and historic environment.

Planning Balance

33. I acknowledge that when the application was determined the Council was unable to demonstrate a deliverable five-year supply of housing land. However, the situation has changed. Whilst the appellant questions whether the Council can demonstrate a deliverable five-year supply of housing there is no substantive evidence before me to refute the Council's position outlined in their latest Annual Position Statement. As such, there is a strong indication that a deliverable five-year supply of housing exists. Consequently, paragraph 11(d) of the Framework is not engaged. Planning law requires that applications for planning permission, should be determined in accordance with the development plan, unless material considerations indicate otherwise.
34. Furthermore, paragraph 182 of the Framework indicates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an Appropriate Assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out above I have not reached such a conclusion and consequently paragraph 182 applies.

Conclusion

35. Whilst the tilted balance does not apply for the reasons set out above, even if it did, the harm of granting planning permission in respect of the location of the site, its impact upon a heritage asset and the safe and efficient operation of the highway network would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
36. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR