
Appeal Decision

Site visit made on 25 May 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2023

Appeal Ref: APP/X1925/W/21/3289069

Land off Picknag Road, Barley, Hertfordshire SG8 8HP

- 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 permission in principle.
 - The appeal is made by Marriott Land, Brian Homent and James Squier against North Hertfordshire District Council.
 - The application Ref 21/02973/PiP, is dated 15 October 2021.
 - The development proposed is Permission in Principle: Erection of 9 dwellings, replacement local community shop (Class F2 (a)) of 265 square metres, and associated access, parking, drainage, and biodiversity/landscaping area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order). The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of the subsequent technical details consent (TDC) application if permission in principle is granted. Planning permission does not exist unless both the permission in principle and the technical details are approved.
4. During the course of the appeal the North Hertfordshire Local Plan 2011-2031 (NHLP) was adopted² and replaces the saved policies of the District Local Plan Second Review with Alterations (1996)³. Both main parties' appeal statements included references to the policies of the Proposed Submission Local Plan and the parties have had the opportunity to comment on the adoption of the NHLP.

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

² Adopted on Tuesday 8 November 2022

³ North Hertfordshire District Local Plan No. 2 with alterations, April 1996 (Saved Policies from September 2007)

I have taken those comments into account and the determination of this appeal is based on the policies in the NHLP as that is the development plan applicable at the date of this decision.

5. This appeal is against the failure of the Council to make a decision within the prescribed period. Following the lodging of the appeal, the Council has indicated that, had it been in a position to do so, it would have refused the application for the following two reasons:
 - i. *Due to there being no unmet need for a shop facility in Barley, there is no policy support for the proposed shop and 9 enabling dwellings on land outside of the village boundary. The proposed development would have adverse harm on the context of open landscape and edge of village setting in this location as well as unacceptable impact on the residential amenities of the adjoining neighbour number 36. As a result, the application is considered to fail to comply with the provisions of saved Policy 6 of the Local Plan 1996 and emerging Policies CGB1, CGB2b and D3 of the Submission Local Plan 2011 – 2031.*
 - ii. *The submitted planning application has not been accompanied by a valid legal undertaking (in the form of a Unilateral Undertaking) securing obligations towards education, library and youth services. The secure delivery of these obligations is required to mitigate the impact of the development on local infrastructure and services in accordance with policy 51 of the North Hertfordshire District Local Plan No. 2 – with Alterations (Saved Policies 2007) and proposed Local Plan Policy SP7 of the Council’s Proposed Submission Local Plan (2011-2031) (Incorporating Proposed Main Modifications 2018). Without this mechanism to secure these provisions the development scheme cannot be considered a sustainable form of development contrary to the requirements of the National Planning Policy Framework.*
6. A Unilateral Undertaking (UU1), dated 19 October 2021, was submitted as part of the appellants’ initial application documents. UU1 includes an obligation that a maximum of four dwellings can be occupied prior to the completion of the build of the shop. A second Unilateral Undertaking (UU2), dated 17 May 2022, was submitted by the appellants during the appeal process. UU2 includes obligations securing the various contributions required by the Council in their second putative reason for refusal.

Main Issues

7. The main issues are whether the site is suitable for residential development, in terms of its location, land use and amount of development, with particular regard to:
 - i) local and national planning policy relating to the location of the proposed development;
 - ii) the effect of the proposal on the living conditions of neighbouring occupiers;
 - iii) the effect of the proposal on the character and appearance of the area; and
 - iv) the effect of the proposal on the setting and significance of the Barley Conservation Area (BCA);

Reasons

Location

8. NHLP Policy SP2 (Settlement Hierarchy) identifies Barley as a Category A Village in which general development within the defined settlement boundary is allowed. As a Category A Village, Barley provides a range of facilities, including a primary school, church, sports field and public houses. The main parties accept that the development would be in a location that would enable sustainable journeys to be made to key services and facilities in accordance with NHLP Policy SP6 (Sustainable Transport). I see no reason to disagree.
9. The site is, however, located at the eastern edge of Barley, outside of the village settlement boundary and within the 'Rural Area beyond the Green Belt' (RABGB). As such, NHLP Policies CGB1 (RABGB) and CGB2b (Community Facilities, Services and Affordable Housing in the RABGB) are relevant.
10. NHLP Policy CGB1 sets out the broad typologies of development considered acceptable within the RABGB, including (b) meeting a proven local need for community facilities, services or affordable housing in an appropriate location; and (e) modest proposals for rural economic development or diversification. Whilst the appellants assert that there is a proven local need for a replacement community shop, the proposals also include 9 market dwellings for which there is no support within Policy CGB1.
11. NHLP Policy CGB2b supports the development of community facilities, services and affordable housing in the RABGB adjoining Category A villages where:
 - a. It meets a proven local need as identified through a parish survey or other relevant study;
 - b. There are no reasonable alternate, suitable and available sites within the defined settlement boundaries of relevant towns or Category A villages or the built core of relevant Category B villages;
 - c. The proposal would meet relevant criteria of Policy HS2 (Affordable housing), particularly in relation to need, affordability and retention of dwellings;
 - d. The proposed development would not have a substantial adverse impact on the openness or general policy aims of the Green Belt or Rural Area beyond the Green Belt; and
 - e. The public benefit of the proposal outweighs any harm that might arise against these aims.
12. Policy CGB2b also allows, in exceptional circumstances, for the provision of limited market housing to cross-subsidise schemes otherwise supported by the policy, where it can be demonstrated that the level of market housing proposed is strictly necessary to make the required development deliverable and that it would accord with criteria (d) and (e) of the policy. The explanatory text to the policy states that where market housing is proposed, it must be justified by the submission of viability evidence.
13. The appellants advise that the existing village shop has been identified within the 2015 Village Plan as the most important village amenity/facility. I also note that the significant benefit to the local community of having a village shop is supported by the submissions of both Barley Parish Council and many

interested parties. Furthermore, I acknowledge that some interested parties have expressed a desire for a larger village shop in a location with more allocated parking and better access. Whilst I accept that there is a local need for a shop in the village, the evidence falls short of the parish survey, or other relevant study, required by criterion (a) of Policy CGB2b, to demonstrate that the proposed shop would meet a proven local need given the presence of the existing shop.

14. I have had regard to the letter submitted by the proprietor of the existing shop, and I acknowledge that ensuring the shop remains viable, given its limited floor area and the constrained levels of nearby parking, is a challenge. However, no financial accounts have been provided and there is no substantive evidence to indicate that the shop would be unviable for other potential proprietors. As such, there is insufficient evidence to demonstrate that the existing shop is at an imminent risk of permanent closure. The existing shop, therefore, remains a reasonable alternate, suitable and available site within the defined settlement boundary of Barley. The proposal does not, therefore comply with criterion (b) of Policy CGB2b.
15. The proposal does not seek to provide affordable housing, and in the absence of substantive evidence of a proven local need for the new shop, there is no justification for the provision of the open market dwellings to cross-subsidise delivery of the shop. Notwithstanding this, I do have concerns about the appellants' approach of proposing market housing without providing a comprehensive viability assessment of the overall scheme. In stating that the level of market housing must be strictly necessary to make the shop deliverable, Policy CGB2b clearly indicates that the market housing component should be the minimum necessary. The submitted Indicative Build Cost Plan of the shop, however, represents insufficient information to identify the strictly necessary level of market housing required. Consequently, in this regard, the level of proposed market housing is contrary to Policy CGB2b.
16. I acknowledge that other policies within the NHLP support existing and new shops that serve the day-to-day needs of local communities. Those policies broadly reflect the support within the National Planning Policy Framework (the Framework), at paragraphs 84, 85 and 93, for the provision of new and expanded local shops in rural areas.
17. NHLP Policy SP4 (Town Centres, Local Centres and Community Shops) supports the retention and provision of shops outside of identified centres where they serve a local day-to-day need. Whilst the proposed shop would serve the day-to-day needs of the community, Policy SP4 provides support of only limited weight given the lack of a proven need for the proposed shop.
18. NHLP Policy ETC7 (Scattered Local Shops and Services in Towns and Villages) states planning permission for small-scale proposals providing new shops and services to serve the day-to-day needs of the local community will be granted where, amongst other criteria, the site is within a defined settlement boundary. Given the proposal relates to a new shop outside of the defined settlement boundary of Barley, Policy ETC7 does not support the specifics of the appeal proposals.
19. The appellants also refer to NHLP Policy SP10 (Healthy Communities), but I find this policy to offer only overarching support for community facilities rather

than support for a new retail unit outside of the settlement boundary of a Category A village as is the case in this instance.

20. Overall, notwithstanding the national and local policy support noted above, the location, land use, and amount of development proposed, do not accord with important NHLP policies with regards to location, and I give significant weight to the identified conflicts with Policies CGB1 and CGB2b.

Living Conditions

21. I note that there are concerns that the retail unit and its associated parking would result in harm to the living conditions of the occupiers of no 36 Picknag Road. Those concerns are largely based on the site being developed in accordance with the submitted illustrative masterplan, which locates the retail unit adjacent to the southern boundary of no 36. The detailed layout of the development does not, however, fall within the scope of consideration for the first stage of the permission in principle consent route.
22. Whilst a retail unit on the site has the potential to result in harm to living conditions through light and noise pollution, the site is of sufficient area to allow for many different layouts that may mitigate any such harm. Those potential layouts could also avoid any harm by virtue of overlooking or overbearing adjoining dwellings. As such, in principle, I am satisfied that the land use and the amount of development proposed could be arranged on the site location without harm to the living conditions of adjoining occupiers. I do not, therefore, find the development to conflict with NHLP Policy D3 (Protecting Living Conditions).

Character and Appearance

23. The Council objects to the effect of the proposals on the site's context of open landscape and edge of village setting. Whilst I acknowledge that there is existing housing development on the eastern side of Picknag Road, the appeal site, as part of a sloping, agricultural field within an undulating, productive rural landscape, is representative of the wider agricultural and open landscape surrounding Barley. The site presents a long and undeveloped frontage to Picknag Road, allowing views from Picknag Road across the open, agricultural fields to the east of the village. The appeal site, therefore, forms a positive part of the village's transition to the open countryside, and is an important part of the rural setting of the village.
24. The proposed change from arable field to a shop and housing would fundamentally change the rural character of the site, altering its nature and function, which can only be seen as high magnitude change, notwithstanding the potential for open space and landscaping to be included in the final details of the scheme. The development would project into the open countryside on a prominent slope, representing an urban intrusion detrimental to the connection between the village and its open agricultural surroundings. I find, therefore, that significant landscape character and visual harm would result by virtue of the development of an open agricultural site that contributes positively to the rural setting of the village.
25. The explanatory text within the NHLP advises that the RABGB, in terms of intrinsic character and beauty, contains some of the highest quality countryside in the district and that a policy of restraint within the RABGB is therefore

justified. As such, the land use and amount of development proposed for the site would not accord with criterion (d) of Policy CGB2b by virtue of its substantial adverse impact on the policy aims of the RABGB, which includes seeking to provide strong policy protections for the countryside of North Hertfordshire.

26. Whilst the Council has found that the development would result in harm to the local landscape, it has not included conflict with NHLP Policy NE1 (Landscape) within its putative refusal reason. Such a position is inconsistent with its finding of landscape harm. Both the main parties' statements refer to Policy NE1 as a relevant material consideration and address the effect of the proposals on the character and appearance of the area.
27. I am not restricted to considering the appeal against only the policies within the putative refusal reasons. Consequently, for the reasons above, the development would fail to accord with Policy NE1 insofar as it requires, amongst other things, development not to have a detrimental impact on the appearance of their immediate surroundings and the landscape character area unless suitable mitigation measures can satisfactorily address the adverse impact. The development would also conflict with the Framework requirements, set out at paragraphs 130 and 170(b), for planning decisions to ensure developments are sympathetic to local character and that they recognise the intrinsic character and beauty of the countryside.

Conservation Area

28. The Barley Conservation Area (BCA) includes the majority of Barley and extends across Picknag Road to include the very western edge of the appeal site. S72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. The BCA is characterised by not only the many traditional rural buildings clustered along High Street and Church End, but also the considerable open spaces within it. The mix of traditional rural buildings and open spaces, together with the rural landscape surrounding the village, contribute to the significance of the conservation area.
29. The site lies at the edge of the BCA and its undeveloped character forms an important element in outward views from the BCA. The undeveloped nature of the site maintains the open character and the long-distance views from the eastern edge of the village. The site is, therefore, a significant visual element in the setting of the BCA. I find the site to contribute to the sense of space and rural tranquillity, characteristic of the wider countryside surrounding the BCA. As such, the undeveloped site helps to preserve a sense of timelessness and a connection to the village's agrarian and rural origins, positively contributing to the heritage significance of the BCA.
30. The land use and amount of development proposed for the site would reduce the connectivity of the BCA with the rural landscape on its east side, which forms part of its setting. The contribution that the appeal site makes to the BCA as part of its rural setting would be diminished as a result. This would be harmful to the character, appearance, setting and significance of the BCA. That harm would be less than substantial.

31. I note that both the Council and appellants also identify that the proposal would represent less than substantial harm to the BCA. I also note that Barley Parish Council assert the development would cause significant harm to the BCA. The Council has not, however, included a putative refusal reason in relation to that harm, viewing it not sufficient to warrant a reason for refusal. It is not clear from the Council's submissions, however, that it has, in its assessment of the development, weighed the identified less than substantial harm against the development's public benefits. Nevertheless, paragraph 202 of the Framework, and NHLP Policy HE1 (Designated Heritage Assets), require such a balance to be undertaken.

The Heritage Balance

32. The PPG⁴ advises that, 'public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework'.
33. Amongst the benefits of the proposals would be the provision of 9 homes in a location accessible to the services and facilities available within the village. Following the recent adoption of the NHLP, the Council asserts that it is now able to demonstrate a five-year supply of deliverable housing sites (5YHLS). The appellants' final appeal submissions do not dispute the Council's ability to demonstrate a 5YHLS. The appellants do advise, however, that the Housing Delivery Test⁵ (HDT) results for 2021 show that just 49% of the requirement over the previous three years was achieved, which is significantly below the expectation set out within the Framework.
34. The Housing Delivery Test period covers the previous 3 financial years, and in the case of the 2021 measurement, the years are 2018/19, 2019/20 and 2020/21. The Government is yet to publish the 2022 measurement. Framework paragraph 222 states that until new HDT results are published, the previously published result should be used. As such, I give moderate weight to the delivery of the proposed housing, acknowledging that the HDT measurement indicates a recent history of under-delivery, and that the Framework supports the Government's objective to significantly boost the supply of homes.
35. The new residents and the proposed retail unit would contribute to the social role of the village within its rural hinterland. The retail unit would provide additional parking and have capacity for a greater range of produce, thus easing access and reducing the need for shopping trips further afield. I acknowledge that Framework paragraphs 84, 85 and 93 offer support for new and expanded local shops in rural areas. There would also be some economic benefits resulting from the development, including employment during construction and new residents supporting local services and businesses. There is, however, limited evidence before me regarding the employment implications of the development, and it is unclear as to what would happen to the site of the existing shop. I am not persuaded, therefore, that the development would secure improvements to either parking, congestion or highway safety along Church Lane. Nevertheless, I afford the above economic, environmental, and social benefits of the development moderate weight.

⁴ Paragraph: 020 Reference ID: 18a-020-20190723 - Revision date: 23 07 2019

⁵ The 2021 Housing Delivery Test results were published on 14 January 2022.

36. Whilst it may be possible to secure biodiversity net gain at the technical details stage, there is no substantive evidence to demonstrate how those gains would be achieved. I therefore afford the potential benefit of biodiversity net gain from the development limited weight.
37. Framework paragraph 199 requires that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. I, therefore, attribute great weight to the conservation of the BCA, understanding that heritage assets are an irreplaceable resource. Accordingly, I also give great weight to the identified less than substantial harm to the setting and significance of the BCA. The public benefits of the scheme, even if taken together, do not outweigh the identified harm to the BCA. The development is, therefore, contrary to NHP Policy HE1 and the Framework's aim to conserve heritage assets in a manner appropriate to their significance⁶.

Other Matters

Interested Parties

38. I have had regard to the various comments of interested parties which have been received in response to the proposed permission in principle. In addition to matters related to the location, living conditions, character and appearance, and conservation area impacts of the development addressed above, concerns have also been raised regarding a number of other matters. These other matters include the effect of the development on housing mix, ecology, flooding, congestion, parking and highways safety. I have been provided with no substantiated evidence which would persuade me that, with regards to these other matters, the location, land use and amount of development proposed is not acceptable in principle.

Planning obligations

39. The Planning Practice Guidance (PPG) indicates that there is no scope to secure planning obligations at the permission in principle stage, although they can be secured at the TDC stage⁷. Nevertheless, I have had regard to the legal effects of the unilateral undertakings submitted by the appellants given that each deed is conditional on the grant of Planning Permission (including the TDC). However, in view of my conclusions on other substantive matters, I have not taken this matter further and it is not necessary to set out an assessment of whether the obligations would comply with the tests set out in the Framework, the PPG, and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

Planning Balance

40. Framework Paragraph 11 states that, in instances where the HDT indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years, permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development.

⁶ Framework paragraph 189

⁷ Paragraph: 022 Reference ID: 58-022-20180615

Footnote 7 of the Framework specifies that designated heritage assets are included within such protected assets. Given my findings with regards to the harm to the setting and significance of the BCA, the Framework therefore provides a clear reason for refusing the proposal, and the so-called tilted balance at Framework paragraph 11d(ii) does not apply in this case.

41. It is not unusual for some tension to be found between different policies in a development plan, when applied to a specific proposal. Although there would be compliance with limited aspects of the NHLP, I have found conflict with significant policies relating to the safeguarding of the RABGB, landscape character, and designated heritage assets. These identified conflicts with the development plan are given significant weight, as are the identified conflicts with the Framework, including paragraphs 130, 170(b) and 189.
42. Whilst the public benefits listed above in the heritage balance are afforded moderate weight, they would not outweigh the significant harms set out above. Even if I were to conclude the so-called tilted balance at Framework paragraph 11d(ii) to apply, the adverse impacts of granting permission in principle would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the site is not suitable, in principle, for the development given its proposed location, land use and the amount of development.

Conclusion

43. For the reasons given above, the appeal is dismissed.

S D Castle

INSPECTOR