



Appeal Decision

Site visit made on 2 February 2024

by A Dawe BSc (Hons), MSc, MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/A0665/W/23/3322268

Corner of Chester High Road and Dunstan Lane, Neston CH64 8TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by The KL Pension Fund against the decision of Cheshire West and Chester Council.
 - The application Ref 22/02818/PIP, dated 21 July 2022, was refused by notice dated 21 December 2022.
 - The development proposed is demolition of the existing petrol filling station buildings and associated infrastructure and erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. 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 permitted. All other matters are considered as part of a subsequent Technical Details Consent application if permission in principle is granted. I have determined the appeal accordingly. As such, the submitted proposed site plan Ref 0085-A-G100-PLN-001 is indicative only.
4. Since the Council's determination of this application, the Government has published a revised National Planning Policy Framework (the Framework) in December 2023. All references to the Framework in this decision relate to the revised document. In relation to the matters that are most relevant to this appeal, there are no material changes to the Framework of relevance to the substance of the appeal. I am therefore satisfied that no party relating to this appeal would be prejudiced by the changes to the Framework.

Main Issues

5. It is not disputed by the Council and Appellant that the proposed development would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies. In this respect, policy

STRAT 9 of the Cheshire West & Chester Council Local Plan (Part One): Strategic Policies (LP1) states that in settlements and areas of the countryside that are within the Green Belt, additional restrictions will apply to development in line with the Framework.

6. The undisputed position is on the basis that the proposed development would comprise the construction of new buildings in the Green Belt and that it would not meet any of the exceptions set out in paragraph 154 of the Framework. This includes agreement that the proposal, which would not include any affordable housing, would have a greater impact on the openness of the Green Belt than the existing development on the site. Based on the evidence submitted, I concur with that position, albeit recognising that there are no detailed proposals before me at this stage. As set out in the Framework, substantial weight is given to any harm to the Green Belt. It also remains the case that consideration of the character and appearance of the area is a separate matter from that relating to factors concerning protection of the Green Belt.
7. As such, the main issues are:
 - i) whether or not the proposed development would be in a suitable location for the dwellings concerned, having regard to development plan and national policies;
 - ii) the effect of the proposed development on the character and appearance of the area; and
 - iii) whether the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Suitability of location

8. Policy STRAT 1 of LP1 sets out sustainable development principles including, amongst other things, the location of new housing, with good accessibility to local shops, community facilities and primary schools and with good connections to public transport.
9. Policy STRAT 2 of LP1 then sets the development hierarchy with policy STRAT 8 setting out those settlements that will be the focus of new development in the rural area along with local service centres, as detailed in Policy R1 of the Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (LP2). The proposed development would not be within any such settlements or service centres.
10. Policy STRAT 9 of LP1 sets out that development in the countryside will be restricted to that requiring a countryside location and which cannot be located within identified settlements. Amongst the types of development listed in that policy as being those that will be permitted in the countryside are replacement buildings.
11. Policy DM 19 of LP2 provides detail concerning residential development in the countryside, outside of identified settlements, which will only be supported

where necessary to meet the minimum levels of development for new housing or where certain other criteria are met. In this case, I have no substantive evidence to indicate that the proposed development is needed in order to meet minimum housing levels. However, the other criteria include the replacement of buildings on previously developed land where, amongst other things, there is good access to public transport; and it is located within reasonable walking distance of local services and facilities along a safe route; together with factors concerning the character and appearance of the area which I shall consider separately. I will therefore consider the proposal in that development plan policy context.

12. Furthermore, the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
13. The proposed development would not be in an isolated location given the presence of a number of other dwellings in the immediate locality. However, it would be noticeably separate from the settlement of Willaston in terms of access to the small number of shops, including a convenience store, cafes and public houses, and other services and facilities such as a school, doctors surgery, dentist and pharmacy. There is an existing footway alongside the direct road, Hadlow Road, to that settlement from the site. However, it is narrow in places, and has limited protection from vehicles travelling at potentially fairly high speeds given the speed limit of 50mph and with no separation from the footway, which often has limited or little kerb. There is also a lack of road lighting during hours of darkness, other than at either end of the route. Additionally, from my albeit snapshot observation, that road is a well-used vehicular route.
14. Although walkable in terms of distance, and I did observe one small group of people doing so, the above factors would be likely to combine to make the route between the site and Willaston generally unattractive for walking and cycling, particularly on a regular basis, regardless of there being no evidence of reported accidents. Added to this, and importantly, to reach the footway along Hadlow Road this involves crossing the A540 dual carriageway where vehicles are potentially travelling at high speeds. Although signal controlled at this road junction with an island and central verge, there are no pedestrian crossing points, making it an unattractive and potentially dangerous road to cross. In respect of cycling, use of the road itself along Hadlow Road would likely be an unattractive option, especially for less confident cyclists, given the traffic speeds along that route and absence of road lighting during hours of darkness as mentioned above.
15. Whilst I have no substantive evidence of any accident data relating to conflicts between pedestrians, cyclists and motorised vehicles, this does not negate the above factors which I find would be likely to discourage regular walking and cycling into Willaston from the site.
16. Although The Wirral Way Trail located close to Willaston provides some connectivity with other destinations, this again would be dependent on access via the unattractive route referred to above along Hadlow Road. Furthermore, although Neston's services, facilities and employment would only involve a short drive from the site, it is unlikely that they would be accessed on foot or cycle on a regular basis, not least due to the distance involved.

17. I noted that further along the A540 is Gordale Service Station which has a small associated shop and where there is also a garden centre that sells a variety of goods. However, not only is this noticeably separated from the appeal site, walking there would again involve crossing the A540 and via a poorly maintained footway, and cycling on the road would be alongside fast moving traffic. As such, this again would be an unlikely destination by foot or cycle.
18. In terms of accessibility to a greater variety of shops, services and facilities, employment and recreation destinations further afield including in larger settlements such as Chester, and to rail services to wider destinations, there are bus services that stop close to the site. However, these again would only be accessed from the site by crossing the A540. Together with the submitted evidence indicating these to be generally infrequent two hourly services, they would therefore be unlikely to be used on a regular basis.
19. There are school bus services available in the area. However, I have no detailed evidence of the pick-up and drop-off places to provide certainty that such facilities would be likely to be used by prospective occupants, either at all or without a need to be driven by private car to meet the buses, albeit only likely to be a short drive. In any case such school bus provision would only be likely to relate to access to and from schools and not for any non-school purposes. Access to the nearest train stations, due to the distances involved would be likely to require motorised transport to reach them, comprising park and ride.
20. For these reasons, whilst the site is well situated for road connections to the wider area and that some journeys maybe short, connectivity is likely to involve a high reliance on private motor vehicles.
21. I acknowledge that there would be scope to secure provision for electric vehicle charging and cycle parking on the site, having regard to sustainable travel, albeit that any conditions that could secure this would not be imposed until the second, technical details consent stage. Nevertheless, even with provision for electric vehicle charging, it could not be guaranteed that this would be utilised, and likewise with any cycle parking, especially given the likely deterrents to cycling referred to above.
22. Notwithstanding the presence of existing dwellings in the vicinity of the site, and taking account of the variations between urban and rural areas in respect of opportunities to maximise sustainable transport solutions, the above factors all combine to make the appeal site an unsuitable location for the proposed dwellings in terms of accessibility.
23. In considering whether the proposal would be likely to enhance or maintain the vitality of rural communities, I acknowledge that the site, as it currently lies unused and unkempt, would not be fulfilling that role. Furthermore, construction of the proposed dwellings would potentially generate employment for local people. However, that would only be in the short term and not guaranteed. In the longer term, prospective occupants would be likely to contribute economically and socially to the local area. However, I have no clear evidence that the occupancy of two dwellings in this location would have a material effect in terms of enhancing or maintaining the economic and social well-being of local rural communities. This is particularly given the degree to which the proposed dwellings would be separated from the nearest defined

settlements such as Willaston and the factors concerning accessibility to such centres that I have considered above.

24. I have had regard to three allowed appeal decisions referred to by the Appellant by way of comparison, which are for dwellings in the countryside, albeit that I do not have the full details of those cases to enable a proper comparison, and that I am determining this appeal on its own merits. I saw that the one nearest to the appeal site, at Hans Hall Livery¹ was closer to Willaston than the current appeal site. Walking to and from Willaston, and to a nearby bus stop, would also not involve crossing the A540 in that case. The circumstances are therefore different to those of the current appeal proposal.
25. The other two decisions relating to Kellys Barn² and The Stable³ relate to proposals not in the same general locality as the appeal site, some distance away, albeit within the same local authority area. Furthermore, in the former of the two decisions, whilst the Inspector refers to car journeys to a large supermarket and the nearest larger settlement being short, in that case it was also found to be the case that the site was not a significant distance from the nearest village. In the case of The Stable, the Inspector found, amongst other things, that whilst the lane concerned had no footway, it was lightly trafficked and that there were also other public rights of way and a cycle route providing connections. As such, again, the circumstances were different in those cases to those of the current appeal proposal.
26. For the above reasons, I conclude on this issue that the proposed development would not be in a suitable location for the dwellings concerned, having regard to development plan and national policies, and as such, in respect of this issue, would be contrary to policies STRAT 1, STRAT 2 and STRAT 8 of LP1, policies R1 and DM19 of LP2 and the provisions of the Framework.

Character and appearance

27. The site is previously developed land, located on a prominent corner plot at the junction of Dunstan Lane and the A540. It is set within a cluster of existing detached two and single storey dwellings which extend along Dunstan Lane on both sides and a short way alongside the A540 in both directions. Those existing properties have varying plot sizes and building to plot ratios. The road junction, also serving Hadlow Road on the opposite side of the A540 from the site, is signalised and there are also regular road lighting columns either side of the A540 at this location.
28. In that context, in terms of the principle of development and in the absence of further details at this stage, two dwellings on the site, indicated in the submissions as likely to be 2-storey height, would be unlikely to stand out as alien or highly urbanising features.
29. Furthermore, it is clear that the site is currently, and has been for some while, in a poor visual state at a prominent corner location, and while the site remains vacant and unused its appearance is likely to continue deteriorating. As such, and given my findings above, if anything the proposed development, including any new landscaping, would be likely to enhance the character and appearance of the area, which I shall consider further later in my decision.

¹ Ref APP/A0665/W/19/3232921

² Ref APP/A0665/W/19/3243132

³ Ref APP/A0665/W/21/3268590

30. For the above reasons, I conclude on this issue that in terms of the considerations at this permission in principle stage, the proposed development would not harm the character and appearance of the area. As such, in respect of this issue, it would accord with policy DM19 of LP2, cross-referenced to in policy DM 1 of LP2, which amongst other things and in so far as being applicable to consideration of the proposal in principle, requires the replacement of buildings on previously developed land in the countryside not to have a greater impact on the character of the countryside and to result in an enhancement of the site and the rural setting.
31. The Council's reason for refusal in respect of this issue includes reference to policy STRAT 1 of LP1. However, this relates generally to sustainable development as opposed to specifically referring to character and appearance, and as such is not directly relevant to consideration of this main issue.

Other considerations

32. Set against the existing poor condition and visual appearance of the site, I have had regard to whether there would be the potential for alternative proposals or uses on the site to the proposed development. In this respect, it is important to note that I do not have any other proposals or substantive evidence before me to enable their detailed consideration, including in relation to the extent or otherwise of any associated benefits. I acknowledge that there may be limitations as to what could be developed on the site, having regard to Green Belt and strategic and countryside protection policies, as well as other locational compatibility considerations. But equally, I have no substantive evidence to suggest that nothing other than the proposed development could be provided on the site. This is regardless of whether there are permitted development rights available to support a case for a fallback position for residential use that would allow a reasonable volume of accommodation, as claimed by the Appellant not to be the case. It is also in the absence of substantive viability and marketing evidence to demonstrate that alternative proposals would not be feasible.
33. As to any potential to re-use of the existing building, I acknowledge that this is purpose built for petrol filling station purposes and that such a use would be unlikely again, particularly given the proximity of another such operating facility a short distance away along the A540. Nevertheless, again I have no detailed evidence to clearly demonstrate that it could not be appropriately reused in some other way. I also saw that the existing building, whilst abandoned and in a state of disrepair, was nevertheless largely of brick-built construction and generally intact externally. I also have no substantive evidence such as structural and condition surveys to demonstrate that it could not be retained.
34. There is also the question of whether any alternative proposal would make efficient use of the site. However, this is a judgement I am unable to clearly make without details of such schemes before me.
35. For the above reasons, I afford limited weight to the consideration concerning any lack of potential for an alternative form of development on the site.
36. I acknowledge that further contamination investigation and remediation may be necessary on the site to enable its redevelopment, regardless as to the extent of any such works to date. However, I have no substantive evidence as

to the likely extent of any such work or the extent to which this would impinge on the viability of redevelopment for alternative proposals. Likewise, I have no substantive evidence as to the extent to which any demolition works on the site would be likely to impact on viability. As such, I afford limited weight to these viability factors.

37. I also acknowledge the benefit of improving the appearance of the site compared to its existing poor state, having been vacant for what I understand to be some while. In this respect, I have found that the proposed development would, if anything, be likely to enhance the character and appearance of the area. Although I have no substantive evidence of there being no environmental value to the existing site, there would also be the potential for biodiversity net gain on the site along with any further site remediation as referred to above. However, I have no substantive evidence to indicate that this could not all be achieved with an alternative form of development to that proposed. I also have little evidence at this stage as to the extent of any such environmental benefits. I therefore afford these likely enhancement and potential environmental benefits moderate weight.
38. Whilst the site remains vacant and unused, there remains the potential for anti-social behaviour on the site. However, I have received little substantive evidence of such behaviour and whilst I saw some graffiti, this was not highly conspicuous or extensive. Furthermore, I noted the presence of security fencing around the site which, despite seeing that a small section of it had fallen over, indicates scope for such unauthorised access to be managed. I also have no substantive evidence to indicate that, if necessary, site management and security could not be enhanced. I therefore afford this factor limited weight.
39. The proposed development would contribute two dwellings to the local supply of housing on a windfall site that has been vacant for some while and therefore not contributing socially or economically to the local area in that time. As such it would support the Government's objective of significantly boosting the supply of homes. The proposed dwellings would also have the potential to generate short term local economic benefits during the construction process, and in the longer term once occupied, including with any local spending. Through their occupancy, they would also have the potential to add to the social vitality of the associated cluster of dwellings. However, as only two dwellings would be added to the supply in this case, the above associated benefits would be modest, particularly in the context of the Council being able to demonstrate well in excess of a five year supply of deliverable housing sites. I therefore afford limited weight to these factors.
40. As referred to above, the proposal would be inappropriate development in the Green Belt by virtue of having a greater impact on the openness of the Green Belt than the existing development. Openness of the Green Belt has both a spatial and visual aspect. I acknowledge that the degree of harm to openness would be less in this case than a situation with no existing buildings being replaced, taking account of the comparison analysis carried out by the Appellant, and where the site's context is one with existing dwellings adjacent to it. I also note the intention for the proposed dwellings to comprise a low overall site coverage and how they would compare with surrounding residential densities. Nevertheless, the evidence indicates that there would still be a noticeable difference in the scale of development on the site compared with the

existing situation, both spatially and visually. Furthermore, it remains the case that any harm to the Green Belt attracts substantial weight.

41. I acknowledge that the visual aspect of openness has the potential to be mitigated to some extent depending on the detailed design, layout and landscaping of the site. However, the extent to which that would be the case is not clear in the absence of such details, and in any case would be unlikely to prevent the visibility of the proposed development from adjacent public vantage points.
42. I acknowledge that the level vehicular activity on a site can affect the openness of the Green Belt. In this respect I note the comparison between the likely levels for the proposed development when compared with those of a petrol filling station. Although it is likely that the former would be significantly less, the petrol filling station is clearly no longer in operation on the site and unlikely to be so in the future, based on the submissions. As such, the comparison is not with an existing operational use of the site or one that is likely in the future. I have therefore afforded little weight to this factor.
43. For the purposes of balancing the combined weight of the other considerations against the totality of harm, I have taken account of my findings of moderate weight attributed to the likely enhancement and potential environmental benefits and, at most, limited weight afforded to the remaining individual other considerations. I have found, in terms of the considerations at this permission in principle stage, that the proposed development would not harm the character and appearance of the area. However, the harm that would be caused by reason of inappropriate development in the Green Belt, and in respect of not being a suitable location for the dwellings concerned, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Conclusion

44. The proposal would conflict with the development plan as a whole, and material considerations do not indicate a decision should be made other than in accordance with the development plan. For the reasons set out above, I conclude that the appeal should be dismissed.

A Dawe

INSPECTOR