



Appeal Decision

Site visit made on 22 April 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/B3438/W/23/3333338

Whiston Hall Golf Club, Black Lane, Whiston, Staffordshire ST10 2HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Gary Webb against the decision of Staffordshire Moorlands District Council.
 - The application Ref is SMD/2023/0114.
 - The development proposed is the development of existing over flow car park for new residential dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters reserved for future consideration. The description of development does not refer to a specific number of proposed dwellings. However, the planning application form indicates that permission is sought for 6 dwellings. I have determined the appeal on this basis, treating the submitted plans as illustrative.
3. In December 2023 the Government published a revised National Planning Policy Framework (the Framework). The revisions do not relate to anything that is fundamental to the main issues in this appeal. Consequently, the main parties would not be prejudiced by reference to the revised Framework.

Main Issues

4. The main issues in relation to this appeal are;
 - i) Whether the appeal site would provide a suitable location for housing having regard to the development strategy for the area and accessibility to services and facilities;
 - ii) The effect of the proposed development on the character and appearance of the area, with particular regard to protected trees, the public right of way network (PROW) and utilities; and
 - iii) The effect of the proposed development upon protected species.

Reasons

Suitable Location

5. Whiston is identified as a smaller village within Policy SS9 of the Staffordshire Moorlands Local Plan (LP) 2020. Such settlements shall only provide for appropriate development which enhances community vitality or meets a social or economic need of the settlement and its hinterland. This is to be achieved by enabling limited new housing development, including small infill schemes in

accordance with Policy H1 of the LP. Taken together these policies seek to meet the needs of the district's residents, to avoid isolated new homes in the countryside and restrict development to that which needs to take place there.

6. LP Policy H1 clarifies that limited infill development will be supported where it is well related to the existing pattern of development and will not create or extend ribbon development or lead to a sporadic pattern of development as well as not leading to a prominent intrusion into the countryside or having a significant adverse impact on the character and appearance of the countryside.
7. The Framework does not include a definition of 'infill' and I have not been directed to a definition within the development plan. The term is essentially a question of planning judgement having regard to the location of the appeal site and its relationship to other existing development adjoining or adjacent to it. The Collins English Dictionary definition of infill is '*the act of infilling or closing gaps etc. in something, such as a row of buildings.*' The appeal site is bounded to the south-west by the drive to Whiston Hall and an area of woodland and by a tree plantation and track to the north-east. Consequently, the appeal site could not be described as being contained by existing buildings, nor does it sit within a line of built-up development along Black Lane. Therefore, no matter how the proposed dwellings would be sited or designed at the reserved matters stage, they would not constitute infilling.
8. The majority of development in this part of Whiston lies on the northern side of Black Lane where there is a more informal pattern of development that has evolved over time. As the proposed development would not relate to existing development to either side it would constitute a sporadic form of development that would adversely curtail the wide-open vista out of the settlement. I will return to the matter of the impact of the proposal on the character and appearance of the area later in this decision.
9. The Council has clarified that even if I were to apply the provisions of Policy SS10 rather than those of LP Policy SS9, the proposal would need to meet the exceptions for housing in the other rural areas of the countryside as set out within LP Policy H1. These include affordable housing, a rural workers dwelling, replacement dwellings, the conversion of rural buildings, the redevelopment of previously developed land (PDL) or the subdivision of a dwelling not in an isolated location.
10. The appellant suggests that the appeal site consists of previously developed land (PDL). I have not been directed to a definition of PDL in the development plan. However, the definition of PDL within the Framework's Annex 2: Glossary is, '*land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.*'
11. The evidence before me indicates that the appeal site has been used as an overflow car park for the hotel and golf course, although it was not in use at the time of my visit. The use therefore relates to the parking of vehicles on an informal area of open space. Whilst the site has been used, it does not automatically follow that it is PDL.
12. Gravel has been scattered at some point on the section of the appeal site adjacent to the drive to Whiston Hall. However, whether there is any substrate or degree of permanence is unclear. In any case, there are no buildings associated with the use and I have not been directed to any evidence that the

land was previously occupied by a permanent structure or that it could be considered to fall within the curtilage of Whiston Hall. Consequently, I am not satisfied on the available evidence before me, that the land does constitute PDL. The proposal would not therefore, meet any of the exceptions for housing development for Policy H1 of the LP.

Accessibility of Services

13. The Council suggests that Whiston has no surviving village services. I observed that there is a village hall and children's playground but that these are to the south-west of the built-up area of the settlement. There are no other apparent services such as a shop, pub or primary school that would help to meet the everyday needs of the future occupants of the proposed dwellings. Even if the existing facilities could be considered to meet such needs, Black Lane is an unlit road without a dedicated pedestrian footway. It would not therefore be particularly pleasant to walk from the appeal site to access these facilities with young children or after dark.
14. Similarly, the A52 is an unlit, well-trafficked main road without pedestrian refuge such that it would not provide suitable walking conditions to services and facilities in other nearby settlements. Only the most confident of road cyclists would be likely to access nearby settlements via the A52 due to the speed of vehicles and lack of dedicated cycle way, such that it would be of limited benefit overall.
15. No evidence has been presented to indicate that Whiston benefits from a regular bus service suitable for commuting or school transport. Acknowledging opportunities to maximise sustainable transport solutions will vary between urban and rural areas, future occupiers of the proposed dwellings are likely to be car dependant for the majority of journeys particularly those to access schools, employment and supermarkets.
16. Whether or not the appeal site can be considered to be within Whiston, and the local highway network could accommodate traffic generated by the proposed development, the location would not limit the need to travel, nor offer a genuine choice of transport modes including walking and cycling. Such findings are consistent with appeal decision APP/B3438/W/19/3240834.
17. The proposal would therefore be contrary to the provisions of Policy T1 of the LP and paragraph 109 of the Framework, which places walking and cycling at the top of the movement hierarchy. The fact that existing residents are already car dependant does not justify permitting new dwellings that would perpetuate an unsustainable pattern of development.
18. Even if I could consider the appeal site to be PDL or that the proposal was infill development, Policy SS9 of the LP is clear that housing development within small settlements such as Whiston shall only provide for appropriate development which enhances community vitality or meets a social or economic need of the settlement and hinterland. No evidence has been presented to demonstrate that the proposal would meet a particular social or economic need for the type, size and tenure of dwellings proposed in Whiston. Whilst the future occupants of the dwellings may add to the community, there are very limited services within the settlement that they could support, such that overall the development would not enhance the vitality of a rural community.

Conclusion – Location of Development

19. Drawing all of the above together, I find that the appeal site is not a suitable location for housing having regard to the development strategy for the area and accessibility to services and facilities. Consequently, the proposal would be contrary to Policies H1, SS9, SS10 and T1 of the LP which together seek amongst other things, to restrict and control housing development outside of the main settlements and promote sustainable transport, an objective shared by the Framework.

Character and Appearance

20. From my observations Whiston Hall appears to be a grand Victorian building of local natural stone set in its own spacious grounds, including that of the appeal site. It is currently occupied as a hotel and club house for the adjoining golf course on land elevated above the settlement. Although there is no evidence to suggest that it is a listed building or located within a conservation area, it is of considerable architectural quality, stature and historic interest as recognised by interested parties. As such, it has all of the hallmarks of being a non-designated heritage asset (NDHA). However, the Council has not made this assessment, and neither will I.
21. The appeal site comprises an area of open ground to the west of Whiston Hall. It is suggested that the appeal site is buffered from the open countryside by Whiston Hall and the main car park. However, it seems to me that being open in character and free from built development, it marks the transition between the built environs of the settlement and the wider countryside beyond. Consequently, it contributes positively to the rural character and setting of the settlement. Development on the opposite side of the road has occurred organically over time such that it has a rich tapestry of different ages, styles and orientations.
22. Whether or not the proposal would result in an efficient use of land on a road that other dwellings face, the proposal would be more than frontage development. The present views through to the wider countryside to the south would be severely curtailed as a result of the amount of development proposed, such that an urbanising effect would be exerted on the street scene. Acknowledging that design and layout would be determined at the reserved matters stage, I am not convinced that a development of the number of dwellings proposed could be designed to reflect the adjacent assemblage of buildings. As indicated in relation to the first main issue, as the proposal would not amount to infill development it would result in a distinct group of sporadic dwellings visible in views along Black Lane, as well as from the PROW network to the south. A markedly different character would ensue, adversely affecting the undeveloped and verdant qualities of the area as identified above.

Trees

23. The parties dispute the impact of the proposed development upon the group of trees to the north-east of the appeal site which are protected by a Tree Preservation Order (TPO) SM.108 (W1). The Council considers from measuring the proposed site plan and transcription onto an aerial photograph that at least 1 protected tree falls within the appeal site. There is no evidence before me to the contrary and the appellant has not disputed this claim despite being given the opportunity to comment during the appeal process. I also observed during my visit that the crowns of a number of adjacent trees appeared to overhang the appeal site. As roots can be contiguous with the extent of the crown, the

groundworks associated with the proposed development could cause damage to the root protection areas of the TPO trees.

24. Without an arboricultural assessment of the protected trees, it is not clear what impact, if any, the proposed dwellings would have on the health and condition of the protected trees. Providing a verdant belt of trees, visible for some distance along Black Lane they provide visual separation between the built-up part of the village from Whiston Hall. Any loss or damage to these trees would therefore have a harmful effect on the character and appearance of the area. The appellant has failed to demonstrate that the amount of development proposed would conserve the existing protected trees as required by Policy DC3 of the LP.

Public Right of Way

25. From Black Lane, Public Right of Way (PROW) Kingsley 51 extends southwards traversing reasonably centrally through the appeal site. The outline nature of the proposal does not negate the need to consider the impact of the proposed dwellings on the PROW network, which should not be interfered with lightly.
26. The appellant considers an application would be required to extinguish the footpath¹. Even if applied for, there is no guarantee that a public path order would be made or confirmed. Consideration would be required as to whether the section of route is needed for public use including consultation with the local community and footpath societies.
27. It is not for me as part of this appeal to determine the acceptability of diverting the footpath to join with PROW 50 at the junction with Black Lane, an alternative suggested by the appellant. However, I note that this would provide a less convenient route for walkers heading south along Black Lane and wishing to access the open countryside beyond the settlement. It would also cause pedestrians to walk in the road for longer, in contrast to the safe passage that the current route of PROW 51 offers through the appeal site.
28. It may be possible to make provision for the diversion of the footpath elsewhere through the appeal site. However, given the number of dwellings proposed, it is not clear that a safe and pleasant route could be created at the reserved matters stage that would avoid pedestrian conflict with vehicles using driveways, or that would not be enclosed by proposed boundary treatments. I am unable to conclude that the integrity of the PROW would be retained or enhanced as required by Policy T1 of the LP.

Utilities

29. Electricity apparatus is present on the appeal site. Whilst the appellant suggests it can be moved, I am not aware as to whether this would be on or off-site and what the resultant impact if any, on the character of the area would be². If it would be a case of moving the existing apparatus it is unlikely to have any greater impact on the surroundings than the existing. However, if it requires new apparatus of a different form and scale the impact may be different. Without any substantive evidence of the implications of the proposed development on the existing infrastructure, I cannot be satisfied that the character and appearance of the area would not be unduly harmed.

¹ Paragraph 2.28 of the appellant's statement of case.

² Appendix 2 of the appellant's statement of case is blank.

Conclusion – Character and Appearance

30. The appellant has failed to demonstrate that the appeal site could accommodate the level of development proposed given the constraints imposed by the adjacent protected trees, the PROW and the presence of electricity apparatus. Moreover, the proposal would result in the sporadic development and urbanisation of an open parcel of land which marks the transition between the built environs of the village and the wider countryside setting.
31. For these reasons the proposal would have a significant adverse effect on the character and appearance of the area. It would fail to comply with Policies H1, SS1, SS9, DC1, DC3 and T1 of the LP. Together these policies seek amongst other things, that development is compatible with the character of the area, well designed, reinforces local distinctiveness and is designed to respect the site and its surroundings. Conflict is also found with paragraphs 135 and 136 of the Framework which seek to ensure that developments are sympathetic to local character including the surrounding built environment and landscape setting and that existing trees are retained.

Effect upon Protected Species

32. The Council has raised concerns about the lack of biological survey information but does not qualify precisely what ecological impacts it is concerned about. Reference is made to Policy NE1 of the LP which seeks to protect and enhance habitats and species of principal importance for the conservation of biodiversity as identified in legislation.
33. Bats are protected by law³ and their presence is a material consideration when a development proposal is being considered that would be likely to result in harm to the species or its habitat. The fact that ecological evaluation was not required at the validation stage for the planning application does not preclude it being required to address concerns arising during the determination stage.
34. Circular 06/2005⁴ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. As an outline permission is 'the planning permission,' it would be necessary to consider this matter at this stage, otherwise all relevant material considerations may not have been addressed in the decision-making process.
35. The appellant advises that a detailed ecological appraisal of the wider golf club site has taken place as part of a proposal for its remodelling that was recently allowed at appeal⁵. Be that as it may, it has not been presented to me as part of the documentation for this proposal and appeal. I also note that the determining authority was different for that application. I cannot therefore be certain that the previous ecological appraisal has been seen by the Council.
36. Nevertheless, the appellant reports that the ecological appraisal found there may be bat foraging activity to consider and as such has proposed the retention of trees with high roosting potential and replacement of planting for foraging areas⁶. It seems to me therefore given the appellant's evidence that there is a reasonable likelihood that protected species such as bats may be

³ Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981).

⁴ Biodiversity and Geological Conservation – see footnote 61 of the Framework.

⁵ Appeal reference APP/D3450/W/22/3309457.

⁶ Paragraph 2.35 of the appellant's statement of case.

present on or utilise the appeal site, given the rural location and the presence of trees.

37. Without a detailed ecological survey, I cannot be certain of the presence of bats, nor which trees have high roosting potential and whether they would be affected by the proposed development, including the protected trees as discussed above. Without this information it is not clear what mitigation if appropriate, may be required, including the amount of any replacement planting. The circular advises that ecological surveys should only be left to a planning condition in exceptional circumstances, which have not been advanced here.
38. For the above reasons, I cannot be certain that the proposal would not adversely affect protected species. The proposal would therefore conflict with Policy NE1 of the LP as set out above. It would also be contrary to paragraph 180 of the Framework which amongst other things, seeks to minimise impacts on sites of biodiversity.
39. I note that Policy NE1 also requires the provision of biodiversity net gain on all sites where possible. However, as the Council has not advanced any evidence of this being a matter in dispute, I have not considered it further.

Planning Balance

40. The Council cannot demonstrate a 5-year supply of deliverable housing sites (5YHLS). Uncontested by the appellant, the Council's shortfall in supply amounts to 1.42 years. The lack of a 5YHLS means that paragraph 11d) of the Framework is engaged. In accordance with paragraph 11d ii) consideration must be given as to whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
41. The proposed development would be located in a rural area where new housing development is limited to specific circumstances. The 6 dwellings would make direct and indirect economic contributions during the construction period and through the occupation of the dwellings, which would also be of social benefit. Whilst any contribution to housing delivery would be worthwhile, the benefits would be restricted to the provision of 6 dwellings that would make a limited addition to housing supply overall and the Government's objective of significantly boosting the supply of new homes. These benefits therefore carry modest weight in favour of the scheme.
42. The proposed development would provide investment for the hotel and golf club. Nonetheless, no case has been made that the development is required to support the ongoing viability of the business such that this attracts only limited weight as a benefit.
43. Even so, the proposed development would not be suitably located with regard to the housing strategy for the area and would not be accessible to services and facilities by means other than the private car. Moreover, a significant adverse effect would be exerted on the character and appearance of the area and protected species. The constraints of the site and the indicative layout indicate there would be challenges in accommodating the quantum of development proposed. In these respects, the proposal is contrary to the Framework with regard to the location of development, sustainable transport and good design. Consequently, I find the adverse effects of granting permission would significantly and demonstrably outweigh the benefits, when

assessed against the policies in the Framework as a whole. The proposal would not represent a sustainable form of development and I am led to a dismissal of the appeal.

Other Matters

44. Suggestion is made that there is sufficient car parking for the hotel and golf club and that there is no demand for overflow car parking. However, no evidence has been presented as to the capacity of the hotel and club house and whether it hosts events such as weddings that might increase car parking demand at certain times. Neither is it clear what the capacity is of the main hotel car park. This would also seem contrary to a previous proposal for a new car park to the west of the appeal site within a woodland area⁷. This does not affect my findings with regard to the main issues.
45. Evidence of local support does not equate to a lack of harm, and I note objections to the scheme have also been received. Considered carefully I have come to a different view regarding the impact of the proposal in relation to the main issues, for the reasons given above.

Conclusion

46. The proposal would conflict with the development plan as a whole and there are no other considerations, either individually or in combination, that would outweigh the identified harm and development plan conflict. Consequently, the appeal is dismissed.

M Clowes

INSPECTOR

⁷ As shown in Fig 2 Site Layout of the Unity Environmental Phase 1 Geo-Environmental Assessment.