
Appeal Decision

Site visit made on 31 July 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal Ref: APP/L3245/W/23/3334841

Clubhouse Farm, Church Street, Hinstock TF9 2TF

- 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 Victor Simpson (Goulden Simpson Limited) against the decision of Shropshire Council.
 - The application Ref 23/04127/OUT, dated 19 September 2023, was refused by notice dated 21 November 2023.
 - The development proposed is an outline planning application (access, landscaping and layout) for the construction of three 3 bed bungalows plus a Self-Build Plot.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved for future consideration except for access, landscaping and layout. I have determined the appeal on this basis and have treated any plans showing details of reserved matters of appearance and scale as illustrative.
3. The appeal application follows a recently refused proposal (Ref 22/01679/OUT) at the site for seven open market dwellings. This proposal was subsequently dismissed at appeal (Ref APP/L3245/W/23/3314030). Both main parties have referred to the previous application and appeal in the evidence provided to support their respective case. Where relevant, I have taken into account the previous application and appeal decision in my determination of the appeal before me and as set out below.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (NPPF) and other changes to the planning system. The proposed reforms are draft and therefore may be subject to change before the final document is published. The consultation closes on 24 September 2024. Also on 30 July 2023, the Secretary of State made a written ministerial statement (WMS) entitled "Building the homes we need". The WMS is an expression of Government policy and is, therefore, capable of being a 'material consideration' in appeal casework.
5. Although, the consultation and draft NPPF do not constitute Government policy or guidance, they are capable of being material considerations. The main parties were invited to provide comments in relation to the above documents prior to my determination of this appeal. Although no response was provided

by the Council, the Appellant provided comments on 5 August 2024. Where relevant, I have taken into account the views of the Appellant and the WMS in my determination of this appeal.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area.
- Whether the proposed development would be appropriately located, taking into account the Council's spatial strategy for housing development with particular regard to the location of part of the site in the open countryside.
- The effect of the proposed development on existing trees to the west of the appeal site.
- Whether the proposal would make adequate provision for affordable housing.
- The effect of the proposed development on protected species.

Reasons

Character and appearance

7. The appeal site comprises land to the western side garden and rear of Clubhouse Farm with the latter area comprising predominantly overgrown forming grazing/garden area. Clubhouse Farm comprises a two storey former farmhouse accessed off Church Street.
8. There is no predominant pattern, style or construction ages of development along Church Street with the majority of the properties fronting to the southern side of the road comprising of relatively closely spaced dwellings, having relatively large open rear gardens. Property boundaries with the southern side of Church Street comprise predominantly stone boundary walls with access gaps. The road appears to be lightly trafficked which contributes to a relatively tranquil environment. Overall, the diverse nature of development in the vicinity of the appeal site makes a significant contribution to the character of the area which displays little uniformity in the settlement pattern.
9. Open countryside lies to the rear of the appeal site and the properties on the southern side of the street. There is an intervening area of woodland and ponds comprising the 'Old Church farm Pond Nature Reserve' with open countryside beyond. There are some examples of single dwelling backland development having been constructed to the rear of some properties on the southern side of Church Street, comprising Churchwood House and 7A Church Street. These properties have been built within spacious grounds and are visible from the road.
10. The proposed development would involve the construction of three detached bungalows, together with a self-build plot positioned to the rear of Churchouse Farm and Nos. 3-5 Church Street. The site would be accessed off Church Street and would involve the removal of part of an existing stone wall. Thereafter, the access would run immediately to the west of Clubhouse Farm.

11. Apart from the access road and part of Plot 1, the majority of the appeal site is located outside of the settlement boundary of Hinstock. By virtue of it being outside of the defined settlement it is, by definition in planning terms, located within the countryside. Although the site is predominantly outside of the settlement boundary, given its proximity to existing properties it cannot be considered as being truly isolated. However, it does not form part of the more recognisably developed part of Hinstock.
12. In my view, the removal of part of the stone wall and vegetation to create the access off Church Street would be in keeping with similar accesses along the road. As such, I do not consider that the construction of the access itself would cause material harm to the character and appearance of the area.
13. Whilst I recognise that the number of residential units has been reduced from the previous proposal, the development of four units would still result in the unacceptable incursion of built development into the open countryside. This would significantly alter the appearance and the contribution that the appeal site makes to the rural character of the area. The proposal would have a detrimental urbanising effect on this part of the countryside and would result in a separated cluster of development that would have no visibility from, or interaction with, Church Street.
14. The proposed dwellings would have reasonably sized gardens and, as such, I do not consider that the proposal would result in a cramped form of development of an extent that would warrant the dismissal of this appeal on that ground. However, there would be a degree of regularity in the urban form and layout of the proposed development that would markedly contrast with the diverse layout and character of development in the surrounding area.
15. At my site visit I observed land in the vicinity of the appeal site from the Nature Reserve. In such views the rear of Churchwood House was particularly evident. This demonstrated the dominance that built development can have on the character of this part of the countryside. The proposed development would appear to be positioned closer to the Nature Reserve and, in my view, would therefore unacceptably add to an urbanising effect on this part of the countryside.
16. For the above reasons, the proposed development would unacceptably harm the character and appearance of the surrounding area. It would therefore be contrary to Policies CS6 and CS17 of the Shropshire Council Core Strategy (2011) (Core Strategy) and Policies MD2 and MD12 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (2015). Amongst other things, these require development to contribute to and respect local distinctiveness and respond appropriately to the form and layout of existing development.

Appropriate location

17. Policy S11.2 of the SAMDev sets out the Community Hub and Cluster Settlements in the Market Drayton Area, which are identified in Core Strategy Policy MD1, together with the agreed housing requirements and key elements of each Hub and Cluster's development strategy. Hinstock is defined as a 'Community Hub'.

18. Core Strategy Policy CS4 states that in rural areas development will be focussed, amongst other areas, on Community Hubs and Clusters and does not permit development outside such settlements unless it meets the requirements of Core Strategy Policy CS5. Policy CS5 allows for development outside defined settlements where it meets one of several exceptions (albeit these are not exhaustive). This includes reference to 'other affordable housing/accommodation to meet a local need'. As set out above, the development would also not maintain or enhance the character of the countryside, which is also a requirement of this policy.
19. Policy MD7a of the SAMDev 'strictly controls' new market housing outside Community Hubs. This policy allows for suitably designed and located 'exception' sites where they meet 'evidenced' local needs. An 'exception' site is again required to deliver affordable housing/accommodation to meet a local need. Thus, the proposed market dwellings would not meet this requirement. Whether or not there is a local need or demand for bungalows, the three open market dwellings plus a self-build plot would not fall into any of the listed exceptions. This policy therefore provides no support for the proposal.
20. Policy MD3 of the SAMDev also allows for development outside allocations, subject to other policies, including CS5 and MD7a. It also requires development to meet the relevant design policies of the plan. Given my conclusions with regard to the effect of the proposal on the character and appearance of the surrounding area, the development would not comply with this policy.
21. The proposal would not be considered an 'isolated' development in terms of paragraph 84 of the NPPF. Nonetheless, while the NPPF seeks to resist such development in all but a few circumstances, it does not follow that all development which is not isolated is acceptable in principle, particularly considering other relevant development plan policies.
22. The Council indicates that Shropshire has 5.64 years supply of deliverable housing land against the housing requirement identified within the Core Strategy and 7.20 years supply of deliverable housing land against the local housing need. Furthermore, housing delivery in Shropshire over the last three years has exceeded the housing need for this period as calculated within the national housing delivery test (158% delivery).
23. The Council suggest that the housing guideline for the Hinstock Community Hub is around 60 dwellings over the Core Strategy plan period up to 2026. These dwellings would be delivered through allocated sites and infilling and conversions on suitable sites within the development boundary. Housing supply figures for the hub indicate that there were 116 housing completions up to 2021/22 and there are additional sites which benefit from planning permission which could be implemented.
24. Hinstock has therefore been considered a sustainable location for development in principle. Nevertheless, the plan is clear about the scale of development envisaged for Hinstock and where this should take place within it. While housing requirements may be a minimum, they appear to have been significantly surpassed and there is no apparent overriding need for additional windfall development outside the defined settlement boundary to meet any housing supply requirements. In this regard, I agree with the Council's contention that sites outside the development boundary will only usually be

considered where the housing guideline for the settlement would be unlikely to be met.

25. I am mindful that Policy MD3 specifically refers to the settlement housing guideline as a significant policy consideration, particularly where proposals would exceed the guideline figure. There is no evidence of a quantitative supply issue either locally or in the wider district.
26. In conclusion on this matter, the proposal would predominantly be located in the open countryside and no exceptions or evidenced housing need have been identified which would justify development in this location. The proposal is not an appropriate location for new development and would therefore be contrary to Core Strategy Policies CS4 and CS5 and SAMDev Policies MD3, MD7a and S11.2 (iv).

Effect on trees

27. There is some dispute between the Appellant and the owners of the adjacent properties to the west of the appeal site regarding the position, ownership and extent of the required root protection area (RPA) of trees currently positioned along the boundary between the sites. I have considered the information provided by the owners of the adjacent properties that the position of the proposed access road may cause damage to the RPA of the boundary trees. There is contention that this matter, together with some degree of dispute regarding the extent that pruning work may be permissible, could require the position of the access road to be pushed eastwards towards Clubhouse Farm and could necessitate the partial demolition of the existing building.
28. The Planning Officer's Report suggests that the Council's Tree Officer originally raised no objection to the appeal proposal, subject to conditions. However, following knowledge of the above dispute the Tree Officer requested the submission of an Arboricultural Method Statement and Tree Protection Plan to demonstrate how retained and off-site trees and hedges can be successfully protected during the construction of the proposed development.
29. The appeal submission includes an Arboricultural Method Statement (AMS) and Arboricultural Justification Report dated 26 May 2024 and 27 May 2024 respectively. These documents consider the arboricultural information provided by the owners of the adjacent properties to the west of the appeal site.
30. I have no evidence to suggest that any trees on, or adjacent to, the appeal site are the subject of a Tree Preservation Order. The AMS is based on a topographical survey provided by the Appellant which identifies the position of the tree stems. In considering the arboricultural information provided by the adjacent property owners, the AMS has revised the RPAs of a number of trees to the diameters recorded in the adjacent owners arboricultural report and explains why one tree diameter is not accepted as being correct.
31. The AMS sets out a number of proposed measures to ensure that retained trees are not harmed by the proposed development. These include a reduction in the width of the access road from 5m to 4.5m with the inclusion of a passing place, the use of trenchless insertion methods or the use of hand tools for service installation and the use of a three-dimensional cellular confinement system in the construction of the access drive.

32. In my view, the use of the above methods within the proximity of RPAs is common on construction projects. Furthermore, were I minded to allow this appeal, an appropriately worded planning condition could be imposed requiring the implementation of the details of such works and securing arboricultural supervision during the relevant construction period. Subject to the imposition of such condition, I am satisfied that the proposed development would have no material adverse impact on the RPA of trees in the vicinity of the property boundary that are to be retained.
33. Taking the above factors into account, I am satisfied that appropriate measures can be employed, secured by an appropriate planning condition, to protect the integrity of the root system of trees that are to be retained. As such, there would be no material conflict with the provisions of Policies CS6 and CS17 of the Core Strategy and Policies MD2 and MD12 of the SAMDev.

Affordable housing

34. Core Strategy Policy CS11 requires all new open market housing development to make appropriate contributions to the provision of local needs affordable housing having regard to the current prevailing rate, set using the Shropshire Viability Index and the viability of developments. The policy further states that for all sites of five dwellings and above, the provision of affordable housing will be expected on-site. For sites of less than five units, provision will be in the form of equivalent contributions towards the provision elsewhere in the local area, unless the developer wishes to make provision on-site.
35. The appeal proposal would provide for four residential units and would therefore be below the threshold for on-site provision as identified in Policy CS11. However, the policy, supported by the accompanying text, remains clear that provision should be made for a financial contribution towards affordable housing in circumstances where the development proposed is for less than five units. In this regard, I accept the Council's view that such provision would normally be secured by means of a completed planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990.
36. I have no evidence to suggest that a completed planning obligation has been submitted with the planning application or as part of the submission documentation made in this appeal. I note that the Appellant refers to an email, dated 30 August 2022, in respect of the previous planning application and relates to comments from the Council's Affordable Housing Team. This states that "as the site is over 0.5ha and in a rural area the development will be required to contribute towards affordable housing and a pro-forma should be submitted in order for it to be agreed".
37. The Appellant contends that, as the appeal proposal relates to a site area of 0.38ha, it is below the threshold identified in the above email. As such, a contribution to affordable housing is not necessary. However, I have no evidence to indicate the planning policy basis for the alleged site area threshold of 0.5ha and how this may relate to the provisions of Policy CS11. Furthermore, I have no evidence to suggest that the viability of the proposed development may compromise any contribution to be made towards the provision of affordable housing.
38. Taking the above factors into account, and in the absence of any compelling evidence to the contrary, the proposal would not make appropriate provision

towards affordable housing. It would therefore be contrary to the provisions of Core Strategy Policy CS11.

Protected Species

39. The proposed development is located in relatively close proximity to the 'Old Church Farm Pond Nature Reserve'. There are a number of ponds within 250m of the site, including two directly south of the site which have historically supported a habitat for Great Crested Newts (GCNs). The submitted 'Extended Phase 1 Habitat Survey & Daytime Bat Survey' (November 2023) (EP1HS). provides a Habitat Suitability Index (HSI) assessment for the ponds. This identifies that the two ponds to the south of the site have 'Good' habitat suitability for GCNs, with a further pond to the east having 'Excellent' suitability.
40. The Appellant has secured an Impact Assessment and Conservation Payment Certificate (IACPC) from Natural England which confirms that the proposed development is eligible to enter into a District Level Licensing Scheme. The EP1HS states that as the site has been entered into the District Level Licensing Scheme (reference DLL-ENQ-SHRP-00036) there is no requirement to undertake any further GCN surveys or provide GCN habitat mitigation measures on site.
41. The Council's Planning Officer Report identifies that provided the works are carried out under the District Level Licensing Scheme, the Council's Ecology Officer is satisfied that the impacts of the development on GCNs are capable of being addressed. In this regard, I note that the submitted plans show temporary and permanent wildlife protection barriers and that the Appellant advises that the appeal proposal is positioned approximately 16m further away from the Nature Reserve than was the case in the previous scheme.
42. However, the Council contends that Natural England are required to have regard to the Conservation of Habitats and Species Regulations 2017 (as amended) and will only issue a licence pursuant to the District Level Licensing Scheme if three tests have been met. Namely: the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest; there is no satisfactory alternative; and the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
43. The Council contend that the proposed development is not necessary to preserve public health or public safety. Likewise, there is no imperative reason of overriding public interest through the delivery of houses in a location that is not supported by the development plan where there is already sufficient housing delivery. Also, the Council suggest that the delivery of housing on sites, within and close to Hinstock, that have been previously granted planning permission is a satisfactory alternative to the proposed development.
44. The Council suggests that the proposal would fail the first two of the above three tests and therefore consider it unlikely that Natural England would issue a licence. Consequently, the Council consider that the appeal proposal would not provide sufficient mitigation measures and therefore it would likely result in damage to the protected species habitat and would be contrary to the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) and Section 15 of the NPPF.

45. I have no evidence of the views of Natural England on this matter and how that organisation may interpret compliance, or not, with the three tests. I recognise that in the previous application and the appeal both the Council and the Inspector considered that a licence pursuant to the District Level Licensing Scheme was unlikely to be forthcoming. However, I have no evidence of the information that was provided to the Council and the Inspector in that case which justified such assertion. Whilst the Council may be correct in the interpretation of the licence application, it is not the statutory decision maker in that regard.
46. In the absence of any evidence from Natural England in the appeal before me, I consider that any interpretation of the potential outcome of the District Level Licensing Scheme by that organisation can only be considered as being speculative. As such, I do not consider that it would be appropriate or soundly based for a reason for the refusal of planning permission in this regard to be based on a speculative assertion of how Natural England may, or may not, interpret the three tests. This is particularly pertinent in circumstances where I have no evidence, views or comment from that organisation, as the decision maker, of how such licence application may be interpreted.
47. In my view, and in the absence of any other evidence to the contrary, a speculative view on how Natural England may approach the licence would not form a sustainable basis on which a reason for the refusal of planning permission could be substantiated.
48. As a consequence of the above, I do not consider that it can be conclusively demonstrated that the appeal proposal would have a detrimental effect on the GCN habitat and the species itself of an extent that would justify the dismissal of this appeal on those grounds. Therefore, in the absence of any formal view from Natural England, I cannot be certain that the proposed development would be contrary to Policies CS6 and CS17 of the Core Strategy or MD12 of the SAMDev. Consequently, I have placed little weight on such potential conflict with the Development Plan on these matters in my determination of this appeal.

Other matters

49. St Oswald Church, a Grade II Listed Building, is located to the north of the appeal site. Although the Council has raised no concerns regarding the impact of the proposed development on designated heritage assets, I am nevertheless required to have regard to the statutory duty to consider the effect of the proposal on such assets. In applying the statutory test as set out in Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have had regard to the desirability of preserving or enhancing the designated heritage assets.
50. The church and adjoining cemetery are set above residential properties on Church Street and, in my view, the setting of this heritage asset is primarily associated with its immediate formal grounds. The proposed development would be set below the level of the church grounds and separated and screened from it by intervening residential development. As such, there would be no discernible views between the church and the proposed development. For these reasons, I find that the proposed development would preserve the special historic setting of the Grade II Listed Building.

51. In addition to the main issues set out above, I have taken into account the concerns raised by Hinstock Parish Council and a number of local residents regarding, amongst other things, potential contamination of the ponds to the south of the site, loss of privacy, the impact on nature conservation and highway safety. Although these matters have been carefully considered, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council's reasons for the refusal of planning permission do not identify any objection to the appeal scheme for these other reasons.
52. My attention has been drawn to the emerging Shropshire Local Plan. Neither party has referred to any emerging policies contained within that Plan. I have no evidence to suggest the current stage that this emerging Plan is at in the plan making process. However, the Council indicates that the appeal site remains outside of the draft proposed settlement boundary in the emerging Plan. Also, I have no indication of the level of unresolved objections to the policies contained therein. As such, I have given little weight to this emerging Plan.

Planning Balance

53. I recognise that both the existing NPPF and the Government's Draft NPPF seek to significantly boost the supply of housing land. I have also taken into account the Appellant's view that there is a local need for bungalows, albeit I have no substantive evidence to confirm that this may be the case. However, paragraph 47 of the NPPF remains clear that development should be achieved through a plan led system.
54. I also recognise that there are benefits, both socially and economically, associated with the proposed development, notably its contribution to boost the supply of housing generally. The proposal would also provide for a self-build plot and would thus gain some support from Paragraph 70 (b) of the NPPF which supports small sites to come forward for self-build and custom-build housing.
55. However, given the scale of development, any benefits associated with these factors would be limited. Furthermore, the evidence suggests that the Council can demonstrate more than a five-year housing land supply and the housing requirement identified for Hinstock has been more than met. There is no evidence of a quantitative housing supply issue either locally or in the wider district.
56. I have found that there would be environmental harm caused to the character and appearance of the local area and the creation of new housing at an inappropriate location. The proposed development within the countryside and being contrary to the locational strategy of the development plan would not accord with the environmental dimension of sustainability. In addition, the proposal does not provide for an appropriate contribution to the provision of affordable housing.
57. Overall, the benefits associated with the development are not sufficient to outweigh the clear conflict with the Development Plan. Furthermore, the expansion of Hinstock beyond the defined settlement boundary would undermine the spatial integrity of the Development Plan and the ability of the Council to deliver a truly plan-led approach.

Conclusion

58. There are no material considerations, either individually or in combination, that would outweigh the identified harm and associated conflict with the Development Plan when read as a whole. Consequently, for the above reasons, taking into account the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR