

Appeal Decision

Site visit made on 19 September 2024

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Appeal Ref: APP/Y3940/W/24/3339487

Orchard Paddock, Main Road, Christian Malford, Wiltshire SN15 4BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Ward against the decision of Wiltshire Council.
 - The application Ref is PL/2022/5359.
 - The development proposed is described as the erection of replacement dwelling and garage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Wiltshire Council against Mr J Ward. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - Whether the site is an appropriate location for new housing having regard to local and national planning policies;
 - The effect of the proposed development upon the character and appearance of the area; and
 - Flood risk.

Reasons

Appropriate location

4. The Council advise that planning permission was granted on appeal¹ in 2004 for the use of the site as a Gypsy caravan site; the construction of a new access and driveway; and demolition of the existing stable block subject to a number of conditions.
5. Despite the appellant contending otherwise it is evident that the appeal site was advanced as and is an established Gypsy and Traveller site, albeit

¹ APP/J3910/A/04/1137217

restricted to a personal and temporary permission. This was based on the circumstances and needs of Miss L Ward, at the time of the appeal proceedings, including her status as a Gypsy and her need for a settled base.

6. As such, it would be amiss to call the site anything other than a Gypsy caravan site. In addition, I am not aware that planning permission has been granted for an alternative use at the site.
7. The statutory definition of a caravan is *any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.*²
8. Based on the evidence before me the structure is formed of a static caravan that stands on a raised plinth. The structure was capable of being moved from one place to another when it was brought onto site from the residential home provider in late 2004/early 2005. It has been designed or adapted for human habitation and so the question remains whether it is still capable of being moved from one place to another.
9. Moving the structure either being towed, lifted or carried on a trailer would be subject to strain and stress but this would likely be short term and subject to an assessment of the measures required to keep the structure stable during movement. No substantive evidence has been advanced to demonstrate that the structure would need to be broken down into separate parts or demolished in order to move it.
10. I acknowledge that the structure is connected to services, but such connections are not unusual for static caravans and could be easily severed to allow movement. There is nothing to indicate that the connections on site are any different and would hinder the ability to move the structure.
11. Whilst a plinth surrounds the structure there is nothing to suggest that it would hinder its movement nor is there anything to indicate that its attachments to the ground could not be reasonably severed.
12. Notwithstanding the length of time the structure has been on site it has not been demonstrated that the structure has a degree of permanence, is immovable or that it has become a building.
13. As such, based on the evidence before me, the structure is a caravan and not a building. Consequently, it does not constitute a dwellinghouse and as the land is not occupied by a permanent structure, I cannot agree with the appellant that the site comprises previously developed land.
14. Therefore, in my judgement the proposal is for a new dwelling rather than a replacement.
15. The site lies close to existing residential development but nonetheless is located beyond the settlement boundary of Christian Malford defined as a Large Village in the Wiltshire Core Strategy (2015) (CS). Core Policy 1 sets out the settlement strategy for the area and states that development in such

² S29(1) of the Caravan Sites and Control of Development Act 1960

villages will predominantly take the form of small housing and employment within the settlement boundaries.

16. Core Policy 2 outlines the delivery strategy and states that development will be delivered in a sustainable pattern that prioritises the release of employment land and the re-use of previously developed land and to limit the need for development on Greenfield sites. Development outside the defined limits of development will be limited to those specifically permitted by other CS policies. The policies do not support the provision of market housing in countryside locations.
17. Saved Policy H4 of the North Wiltshire Local Plan (2011) (LP) sets out the circumstances whereby new dwellings in the countryside will be permitted. This is limited to dwellings associated with the essential needs of agriculture or forestry or the replacement of an existing dwelling subject to a number of criteria.
18. Whilst the site is served by utilities connections and some services and facilities are located in the village close by as the development would be located beyond the settlement boundary of Christian Malford it would not be an appropriate location for new housing. As such, it would be contrary to CS Core Policies 1, 2, 10 and LP Policy H4 which, amongst other things, seek to direct new development to appropriate locations.
19. I note the Council have referred to CS Core Policies 60 and 61 in the first reason for refusal, however, I find that with specific regard to this appeal I give them negligible weight in coming to my decision.

Character and appearance

20. The site is located adjacent to but outside the settlement boundary of Christian Malford as identified by the Core Strategy and the Christian Malford Neighbourhood Development Plan (2018) (NDP). Christian Malford is a largely linear settlement and development along Main Road is scattered and more sporadic compared to the denser pattern of development on Station Road and Church Road.
21. The site is located to the west of a public right of way that extends across the countryside to the south separating the site from the built form of the settlement. The site is predominantly hard surfaced and includes a static caravan confined to a small section along its southern boundary. The static caravan is not of any particular architectural merit but its modest height and scale means it has a low-key appearance. The limited quantum of development on the site results in an appreciable sense of openness and provides a transition between the settlement and the open countryside.
22. The appellant is proposing to replace the existing static caravan with a two-storey dwelling and detached double garage and garden store in an L shaped arrangement. The dwelling would be positioned more centrally in the site with an area of soft landscaping along the roadside.
23. There would be an increase in footprint and the two-storey height of the dwelling would be much greater than the static caravan. It would appear as an unduly prominent and large dwelling with a significant mass and scale resulting in the erosion of the sense of openness on the edge of the village.

24. Whilst dwellings are located nearby the encroachment of residential development onto a largely open site would result in an unduly urbanising effect eroding the rural edge to the settlement.
25. I note the use of traditional architecture, sympathetic materials and soft landscaping, however, I am not persuaded that this would ameliorate the harm that I have identified. The existing appearance and condition of the site is not sufficient justification for a scheme that I have found to be harmful.
26. As such, the proposed development would adversely affect the character and appearance of the area contrary to part ii, iii and vi of CS Core Policy 51; part ii and iii of Core Policy 57 and Policy D1 of the NDP which, amongst other things, require high quality design, developments to conserve and where possible enhance the locally distinctive character of settlements and their landscape setting, that pay regard to the transition between man-made and natural landscapes and effectively integrate into its setting.

Flood risk

27. The site is located within Flood Zones 2 and 3. The Planning Practice Guidance (PPG) states that Flood Zone 2 has a 'medium probability' of flooding and Flood Zone 3 has a 'high probability' of flooding.
28. The National Planning Policy Framework (the Framework), at paragraph 165, states that inappropriate development in areas at risk of flooding should be avoided by directing development away from such areas. To achieve this, the Framework seeks to steer new development to areas with the lowest risk of flooding through a sequential approach. It goes on to say development should not be permitted in areas of high risk of flooding if there are reasonably available sites appropriate for the proposed development with a lower risk of flooding.
29. I note that the appellant's Flood Risk Assessment contends that as the proposal is for a replacement dwelling a Sequential Test is not valid as such schemes are not conducive with other sites being reasonably available. However, the PPG sets out that a Sequential Test will be required unless the development type is exempt, specified in footnote 60 of the Framework. These exemptions include householder development, small non-residential extensions and some changes of use. Thus, a new dwelling whether a replacement one or not is not exempt from the requirement for a Sequential Test.
30. Consequently, and irrespective of the response from the Environment Agency, in the absence of a Sequential Test the proposal fails to demonstrate that there are no other sequentially preferable alternative sites for the proposed development. As it does not pass the sequential test there is no need for me to consider flood risk in this regard any further.
31. As such, the proposed development does not accord with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. It would therefore be contrary to CS Core Policy 67.

Other Matters

32. I note the appellant's personal circumstances and have given it careful consideration. I am mindful of the advice contained in the PPG that in general planning is concerned with land use in the public interest. It is also probable that the proposed development would remain long after the current personal circumstances cease to be material. For these reasons, I find that this factor is not sufficient to outweigh the harm that I have identified.
33. The appellant has referred to a number of appeal decisions which he considers relevant. However, based on the limited evidence before me I am not satisfied that they are comparable to the appeal scheme. In any event every application and appeal must be considered on its own merits, as I have done. These decisions do not lead me to reach a different conclusion in respect of the appeal.
34. The appellant contends that the site would qualify for a Certificate of Lawful Development for use as a dwellinghouse under section 171B of the Town and Country Planning Act 1990 (as amended). It is not for me in consideration of a section 78 appeal to determine such a matter.

Planning Balance

35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
36. On account of the emerging local plan having reached Regulation 19 stage, including both a policies map and site allocations, the Council is required to demonstrate a 4-year housing land supply as set out in paragraphs 77 and 226 of the Framework. The Council advise that they can demonstrate a housing land supply in the region of 4.60 years.
37. Whilst the planning application subject of this appeal pre-dates the latest version of the Framework there is nothing before me to indicate that any transitional arrangements exist. The appellant has referred me to paragraph 224 and footnote 79 of the Framework, however, this refers to transitional arrangements in respect of paragraph 76 and is not applicable in this particular case.
38. Consequently, as the Council can demonstrate a 4-year supply of deliverable housing land paragraph 11(d) of the Framework is not engaged.
39. Even if the Council was unable to demonstrate a deliverable supply of housing land footnote 7 of paragraph 11 d) protects areas of particular importance including areas at risk of flooding. As set out above there is clear reason for refusing the development in respect of flood risk. Consequently, paragraph 11 d) is not engaged.
40. I acknowledge that the deliverable housing land figure is not an upper limit, and the proposed development would make a contribution to housing supply locally. However, given the local planning authority are meeting its responsibilities in terms of overall housing supply I afford this limited weight in the overall balance.

41. The construction of the dwelling would provide jobs, albeit this would be largely limited to the construction phase. However, this benefit would be limited in the overall balance. As the proposal is intended for the current occupier of the site the degree to which they would use local services and facilities would largely remain the same. As such, this is of neutral consequence.
42. Any net gain in biodiversity and the absence of harm in respect of protected species weighs neither for nor against the proposal.
43. On the other hand, I have found that the proposed development would not be an appropriate location for new housing having regard to the development strategy for the area and in terms of flooding. It would also adversely affect the character and appearance of the area. Even taking into account the objective to significantly boost the supply of housing, the conflict between the proposal and the most relevant policies in the Core Strategy and NDP should be given very significant weight in this appeal.
44. In the context of the above I find that the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the proposal. Consequently, the presumption in favour of sustainable development therefore does not apply in this case.
45. I conclude that the proposal conflicts with the development plan, when read as a whole. There are no other considerations that outweigh that harm. The appeal is therefore dismissed.

Conclusion

46. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR