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Your Ref: 17/08735/FUL
Our Ref: APP/Y3940/W/18/3205367

Planning Appeals
Wiltshire Council
Monkton Park Office
Chippenham
Wiltshire
SN5 1ER

09 January 2019

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by care of Agent
Site Address: Land at Church Place, Lydiard Millicent, Wiltshire, SN5 3LR

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Jasmine Rogers

Jasmine Rogers

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Appeal Decision

Site visit made on 20 November 2018

by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th January 2019

Appeal Ref: APP/Y3940/W/18/3205367

Land at Church Place, Lydiard Millicent, Swindon, Wiltshire SN5 3LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Kershaw against the decision of Wiltshire Council.
 - The application Ref 17/08735/FUL, dated 7 September 2017, was refused by notice dated 12 February 2018.
 - The development proposed is the provision of new public open space, footpath, play area, nine homes and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. Although I undertook an unaccompanied site visit, I had the appellants' permission to enter the site and I took the opportunity to do so.

Main issues

3. The Council's reasons for refusal cover a multitude of issues. This included i) whether the site is in an appropriate location for housing with regard to planning policy, ii) the effect on the character and appearance of the area including designated heritage assets and from the loss of trees, iii) archaeological concerns, iv) ecological concerns, v) the safety of the proposed access to the site and the provision of parking and manoeuvring space within the site; and vi) there not being a mechanism to secure necessary infrastructure including affordable housing, open space, and waste collection.
4. The appellant has submitted a signed Unilateral Undertaking to seek to deal with the provision of affordable housing and the open space. The Council has raised detailed concerns as to whether the size and type of affordable housing would be suitable to meet the local need and also in respect of the wording of the Undertaking.
5. At the final comments stage the appellant raised doubts as to whether the Council could demonstrate a five year supply of deliverable housing sites and has drawn attention to the Housing Delivery Test. In respect of the latter, the results of this have yet to be published. The challenge to the Council's housing supply is fairly scant and significant information has only been provided in respect of a single site. However, if I were to accept the appellant's position this would have implications for the decision making process.
6. Because of the need to consider the effect of the development on designated heritage assets and the reference to these in footnote 6 of the National Planning Policy Framework (the Framework) it would mean that the tilted

balance in paragraph 11d is not triggered unless the proposal can first pass the simple balancing exercises in paragraph 195 (in cases where harm to the significance of a designated heritage asset is judged to be substantial), or 196 (where any harm is found to be less than substantial).

7. On that basis, taking the appellant's case in respect of the housing supply situation at face value, the correct approach to decision making here would be to first assess whether any harm would be caused to the significance of the designated heritage assets affected. If any is found then the degree of that harm needs to be defined. Then, that harm needs to be balance against the public benefits of the proposal. If the public benefits do not outweigh the harm then, following the Framework's path, but having proper regard to the Development Plan and Statute, planning permission should be refused for the proposal.
8. If the public benefits outweigh the harm caused to the significance of the designated heritage assets, then the tilted balance in paragraph 11d would be re-engaged and the policies which are the most important for determining the application should be considered out-of-date. That would mean that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole. It is only if the proposal passes the tests in paragraphs 195 or 196 that any additional harm to the character and appearance of the area, any arising from the site's location, the effect on archaeology, ecology, highway safety, parking and manoeuvring, and infrastructure provision need to be considered.

Reasons

Designated heritage assets

9. The starting point for dealing with such matters is the Planning (Listed Buildings and Conservation Areas) Act 1990¹. Section 66(1) of the Act says that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
10. Section 72(1) of the Act sets out that in the exercise of planning functions, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
11. Paragraph 193 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Harm to the significance of a designated heritage asset can arise from its alteration, destruction, or from development within its setting. Any harm should require clear and convincing justification. In paragraph 200, the Framework encourages local planning authorities to look for opportunities for new development within conservation

¹ Referred to hereafter as the Act

- areas and within the setting of heritage assets to enhance or better reveal their significance.
12. The Lydiard Millicent Conservation Area (the CA) covers a fairly extensive area to the western side of the village. It includes the historic core, but the bulk of the housing in the settlement is located outside of the CA. Notably, significant areas of agricultural land are contained within the CA. The rural setting of the village, particularly the historic core, is a defining characteristic of the CA.
 13. The Church of All Saints is a Grade II* listed building. It is surrounded by a small churchyard. The Church Yard Cross, and the Lydiard Millicent War Memorial sit within it and both are Grade II listed buildings in their own right. The appeal site is located opposite, and slightly off-set from, these buildings.
 14. The appeal site is within the CA and consists of a field which is roughly rectangular in shape. A significant belt of trees sits at the northern edge and these are subject, as a group, to a Tree Preservation Order. A small paddock is located adjacent to the Parish Hall, immediately adjacent to the appeal site. To the south of this is the cemetery which incorporates Commonwealth war graves. Together, the adjacent paddock and the appeal site have provided open land which makes a very significant contribution to the rural setting of the village and allow for long views across the open countryside to the south. The appeal site contains a small building, which was in equestrian use at the time of my site visit; its scale is such that it does not significantly erode the open character of the appeal site.
 15. The church sits on an elevated position above Church Place. The access to the yard, and the main entrance, are located opposite the paddock adjacent to the appeal site. Due to the elevated position, from the church entrance the views across the paddock and the appeal site are emphasised. This is such that the rural setting of the church is greatly important to the significance of this designated heritage asset, and by extension to the setting of the listed cross and war memorial.
 16. The appeal scheme would introduce housing in the southern portion of the site. It would consist of three separate groupings of buildings. At the front there would be a two storey building, described as the long barn, containing 4 plots in a terrace form. To the rear of this there would be three houses set in a courtyard form, with a single plot further to the rear. The buildings would sit broadly in line with the extent of the house at Lydiard Farm and the associated agricultural buildings, although plot 9 would extend a little to the south. It is apparent that the design approach has taken some inspiration from traditional agricultural buildings converted to homes, but incorporating contemporary elements.
 17. The front portion of the site would be an area of open space incorporating some play equipment. The positioning of the buildings would allow for a considerable separation between them and the church. Even if the play equipment was located in a position to be largely screened by the tree belt in views from the road and the church, the open space would inevitably have a much more formal appearance than the existing field. I acknowledge that formal open spaces in the setting of a listed church or other municipal buildings are not uncommon and that a change within a conservation area, or within the setting of listed buildings, is not always harmful.

18. However, such matters are very sensitive to the site specific circumstances. In this case both the setting of the church, and the associated listed structures, as well as the character and appearance of the CA is specifically defined by the rural setting. The formalisation of the appeal site would undermine this and thereby harm the significance of these heritage assets.
19. The long barn would introduce a significant element of built form. It would close off the views of the wider countryside both from the road and, significantly, when seen from the entrance to the church and the churchyard. This would further erode the rural character and appearance of the CA and the rural setting to the listed buildings. The provision of the access would necessitate the loss of trees from the protected group. Given the contribution these make to the character and appearance of the CA their loss would also be harmful.
20. There would be views of the church from the area of open space. The existing trees and shrub planting, the majority of which would be retained, would significantly filter the views from large sections of the area. However, when stood in the western part of the space, the church would be visible. As part of the proposal the appellant suggests that a heritage information board could be placed within the area of open space containing details of the CA, the church, local history, and details of any buried heritage discovered.
21. These factors would help to better reveal the significance of the designated heritage assets to the public. However, I also observed that, in addition to views from the road, the church is visible from other land the public has access to including the cemetery. This allows for a full view of the church, relatively uninhibited by planting. The information board would be a minor benefit but I am not convinced that providing such information as part of the appeal development is the only way this could be achieved. I therefore give these benefits of the scheme limited weight.
22. Taking all these factors together I conclude that the development would have the potential to better reveal the significance of the designated heritage assets modestly. However, when viewed in the round, it would be detrimental to the setting of the listed buildings and to the character and appearance of the CA.
23. In terms of the effect on heritage assets the central policy in the development plan is Core Policy 58 of the Wiltshire Core Strategy, Adopted January 2015. This seeks to ensure that designated heritage assets and their settings is conserved and, where possible, enhanced. Also relevant is Core Policy 57 which seeks to ensure local distinctiveness is enhanced and that development is sympathetic to and conserves historic buildings and historic landscapes. For the reasons I have set out above, the proposal would be contrary to these policies.
24. To properly assess the heritage impacts of the proposal against the provisions of the Framework it is necessary to assess whether the harm caused would be substantial, or less than substantial. The Planning Practice Guidance sets out that whether a proposal causes substantial harm will be a matter for the decision maker and, in general terms, substantial harm is a high test, so it may not arise in many cases. In my judgement, the harmful impacts on the CA and to the setting of the listed buildings would not attain this high threshold. The listed buildings would survive intact and only a relatively small area of the CA would be affected. On that basis the harm would be less than substantial.

25. Nevertheless, in view of paragraph 193 of the Framework the harm that would be caused to the significance of the designated heritage assets must attract great weight on the negative side of the balance. This is bolstered by the operation of Sections 66(1) and 72(1) of the Act which creates a strong presumption against development that would fail to preserve the listed buildings or, as is the case here, their setting and fails to preserve or enhance the character or appearance of the CA.

Benefits

26. Paragraph 196 of the Framework says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

27. The development would result in the provision of 9 dwellings. As well as making a modest contribution to meeting the housing need across the county, economic benefits would be delivered in the construction period and from future residents spending within the rural, and wider, economy. There would also be social benefits through the additional support for local services and facilities that would arise.

28. Four of the dwellings are proposed to be affordable homes which equates to a policy compliant contribution. The Council has raised particular concerns with the proposed 4 bed shared ownership property, stating it would not meet a demonstrable need and that it would be unaffordable to applicants who register for this type of housing. There is no substantive evidence to contradict this position.

29. I have noted the letter of support from White Horse Housing, but this only confirms that this organisation would consider the opportunity to purchase the affordable homes. It is not a commitment to do so nor does it confirm that there is a need for the size and tenure of housing proposed. Even if I set this detailed matter aside, the development would only make a modest contribution to meeting market and affordable housing need. Therefore the benefits that would accrue, while important, would be modest and so I give these moderate positive weight.

30. A large area of open space is proposed which would incorporate a play area. The site is located between the majority of the housing and the school and pre-school, opposite the church, and adjacent to the Parish hall. It is therefore in a position which would be accessible by the community and could be utilised as part of a linked trip with a visit to other facilities. It was the appellants' desire that this area be transferred to a public body for a nominal fee. Currently, that does not seem to be achievable, however I accept that open space need not be in public ownership so that the benefits can accrue. This can be secured by other means.

31. I have no doubt that an area of open space and play facilities in this location would be a benefit to the community. The site would also be more conveniently located to allow for linked trips than the location of the existing sports fields in the village. However, I have no substantive evidence that there is a significant need for additional open/play space to serve this village. Taking these matters in the round I afford moderate positive weight to this benefit.

32. The development would include the provision of a footpath in the northern portion of the site behind the existing tree belt. This would join the existing pavement on Church Place. It is the appellant's view that this would provide a benefit as the pavement to the front of the site is narrow, and so the scheme would provide an alternative route for pedestrians. I noted that this section of pavement would be used as part of the walking route between the majority of the housing in the village and the school and pre-school as well as the Parish hall.
33. At this point the pavement is fairly narrow, although I did observe that parents with pushchairs and accompanied by young children walking were able to utilise it without difficulty. The pavement to either side of the appeal site is only marginally wider than it is to the immediate front of the site. The benefits that would arise from this small section of an alternative walking route would be very minor and so I give this factor very limited positive weight.
34. Notwithstanding the concerns the Council has raised in respect of the ecological mitigation measures proposed, I accept that there would be some scope to secure ecological enhancements as part of the scheme. This would contribute to the Government's commitment to halt the overall decline in biodiversity and so this modestly weighs in favour of the development.
35. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area. The development would meet the Framework's definition of such a site. However, I have no evidence that the Council is unduly reliant on large sites to meet its housing need and so I give this factor very limited positive weight.

Balance

36. While I have found it to be less than substantial, the requirements of the Framework and the approach of the Act compels me to attach great weight on the negative side of the scales due to the harm that would arise to the setting of the listed buildings and the CA and thereby the significance of these designated heritage assets.
37. In balancing the conflicting factors, even when I consider the totality of the public benefits, while important, these would not be sufficient to justify the harm to the significance of the designated heritage assets that would be caused.
38. I reach this conclusion largely because the benefits from the provision of the housing are generic and would be much the same for any housing scheme of the scale proposed. The benefits of the open space and play area are tempered because I have no cogent evidence that there is a significant need for additional provision in the village. The benefits from the footpath, any ecological enhancements that could be provided, and the provision of a small/medium sized housing site would only be very modest.
39. Paragraph 194 of the Framework requires clear and convincing justification for any harm or loss of significance and Sections 66(1) and 72(1) of the Act provide a strong presumption against development that would harm the CA and the setting of a listed building. To my mind, for that clear convincing justification to exist, and for that strong presumption to be set aside, it would need to be shown not only that housing and open space with the associated

social, economic and ecological enhancements is needed, but that they are needed in this particular location. There is no persuasive evidence to demonstrate that this is the case.

40. Taking the position that the Council is unable to demonstrate a five year supply of deliverable housing sites, my conclusion would mean that the tilted balance in paragraph 11d of the Framework would not be engaged. As such, the position is therefore similar to the scenario where the Council is able to demonstrate a sufficient supply: that an untilted planning balance should be applied in considering whether any material considerations indicate that planning permission should be granted.
41. On that overall basis, in the absence of any other material considerations which would weigh in favour of the development, the appeal should be dismissed.

Other matters

42. The appellant highlights that, under the adopted policies, no affordable housing would come forward in the small villages because schemes should be limited to 1-2 dwellings. Further, the generally restrictive strategy to the provision of housing in the smaller settlements across Wiltshire has been criticised including in respect of the implications this can have on existing facilities and services in rural areas. Such matters principally need to be addressed in the preparation of local plans and not through the consideration of individual planning applications or appeals. In any event, I have given positive weight to the affordable housing and the wider social and economic benefits that would arise from providing housing in a rural area.
43. I have taken account of the support for the scheme from the local Vicar and noted that the level of public objection was relatively limited. However, I must reach my own conclusion on the substantive planning merits of the case and these factors do not outweigh my findings on the main issues.

Conclusion

44. In view of my overall finding above, it is unnecessary that I consider the other matters in dispute. Even if I concluded that the site was an appropriate location for housing and that the matters relating to archaeology, ecology, highway safety as well as parking and manoeuvring, and the detailed matters in respect of the Unilateral Undertaking could be satisfactorily resolved, ultimately these would then be neutral factors in the balance.
45. The proposal would not accord with the Development Plan or the Framework when each is considered separately as a whole. I conclude that the appeal should be dismissed.

K Taylor
INSPECTOR