



Appeal Decision

Site visit made on 28 March 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 May 2017

Appeal Ref: APP/W1850/W/16/3161030

Land adjoining Kingsleane, Kingsland, Leominster, Herefordshire

- 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 Glynn Schenke against the decision of Herefordshire Council.
 - The application Ref 143252, dated 28 October 2014, was refused by notice dated 13 July 2016.
 - The development proposed is development of 12 nos dwellings consisting of 4 nos affordable and 8 nos open market. Works to include new road and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details before me that the development comprises of 12 dwellings consisting of 5 affordable and 7 open market homes. The Council dealt with it on this basis and so shall I.
 3. The planning application that is the subject of this appeal was originally considered by the Council in January 2015. This decision approved the planning application subject to a legal agreement, prepared under the provisions of Section 106 of the Town and Country Planning Act 1990, (S106 Agreement) and conditions. The decision notice was issued on the 1 October 2015. However, this decision was challenged through Judicial Review in the High Court. In February 2016 the decision of October 2015 was quashed due to the failure of the Council to discharge its 'heritage' duties under Sections 66 and 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990.
 4. The planning application was re-determined by the Council in July 2016 and at that stage the Council refused planning permission for the scheme before me. I acknowledge that there is a significant amount of evidence in relation to the Judicial Review and the procedures undertaken by the Council in determining the planning application. However, these matters have been dealt with through the separate Judicial Review process and are not therefore matters for my consideration in the context of this appeal decision. The appeal relates to the refusal of planning permission for the development and it is this matter which is the focus of this decision.
 5. The main parties have submitted a signed and completed S106 Agreement and I will return to this matter below.
-

Application for costs

6. An application for costs was made by Mr & Mrs Glynne Schenke against Herefordshire Council. This application is the subject of a separate decision.

Main Issue

7. The main issue is the effect on the character and appearance of the area having regard to the location of the site within Kingsland Conservation Area (KCA) and within the setting of neighbouring listed buildings.

Reasons

Policy context

8. The Council adopted the Herefordshire Local Plan Core Strategy (CS) on the 16th October 2015. The CS has superseded the relevant policies of the Unitary Development Plan. There is nothing before me that leads me to an alternative view in this respect and, as a result, I must consider the appeal in light of the CS policies. I deal with the policies within that document below.
9. Kingsland Neighbourhood Development Plan – Resubmission Draft July 2016 (KNDP) has been submitted for examination under regulation 17 and is therefore at an advanced stage of preparation. However, I am aware that there are a number of unresolved objections to the settlement boundaries and the housing policies within it.
10. The appellants have drawn my attention to questions raised by the Examiner of the KNDP in relation to the settlement boundaries and housing policies that are within the KNDP. I acknowledge that the KNDP does not allocate sites for housing and that any sites within the settlement boundary would be within or adjacent to KCA. I recognise that concerns have been raised as to whether the housing policies will enable sufficient housing development to come forward to meet the Parish's minimum requirement over the Plan period. Consequently, and having regard to paragraph 216 of the National Planning Policy Framework (Framework) I consider that only moderate weight can be given to the policies within the KNDP.

Character and appearance

11. The appeal site comprises part of a field/paddock adjacent to a modern housing development known as Kingsleane. There are hedgerows on the northern, eastern and southern boundaries of the site. The appeal site is within the central part of KCA and it is within the Principal Settled Farmland landscape character area. The southern boundary of the site fronts Arbour Lane which turns through approximately 90 degrees adjacent to Kingsleane.
12. On the opposite side of the road to Kingsleane are Kingsland House a grade II* listed building and The Lees a grade II listed building. There is a fire station on the opposite side of Arbour Lane to the appeal site. The Arbour and its attached barn (the Arbour) is also grade II listed and it is located at the junction of Arbour Lane and the A4110 (shown as Harbour Farm on Ordnance Survey maps).
13. The appeal proposal would involve the construction of 12 dwellings served off a new road that would run mainly parallel to Arbour Lane and would be accessed from the Kingsleane development.
14. S.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or

- enhancing the character or appearance of that area. S.66(1) of the Act requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
15. Paragraph 132 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different elements of that setting may either make a positive, negative or neutral contribution to its significance.
 16. There is no adopted conservation area appraisal or management plan for KCA but the '*proposed KCA*' document (1975) states that because of its linear shape, Kingsland rarely offers any settlement in depth; it appears to have developed as a mixed community of farms and houses for about one mile along the orientation of the main B4360 route through it. I acknowledge that this document is of limited use due to its age and that the only copies available are marked 'draft'. However, it is a useful tool in understanding the reasoning behind the designation of KCA. Despite the contents of Support Document Folder 5 there is no other evidence disputing the status of KCA which was designated over 40 years ago. Consequently, I will determine the appeal on the basis that KCA is a designated heritage asset.
 17. KCA covers quite an extensive area which includes the main part of the village that is orientated along the B4360, West Town on the A4110, the cluster of dwellings at the 90 degree bend at Kingsleane and large areas of open land to the south of the B4360 that include the Motte and Bailey castle site. I acknowledge that the main part of Kingsland forms a tight nucleus and that there is a much looser transition area into the open countryside beyond. From the details provided and my observations on the site visit I consider that the significance of KCA is mainly drawn from its mixed character, the extent of open space and range of built development within it, including the number and quality of historic buildings and monuments and the relationship of the buildings to each other and the spaces between and around them.
 18. Both main parties and others have addressed what they regard as the contribution made by the appeal site to the significance of KCA. In this regard, as one would expect, opinions differ. The appellants' heritage advisor has stated that '*the application site is not unique or critical to the maintenance of this landscape character as it is all around and the area is a composite of fields and housing juxtaposed in haphazard form becoming more densely built up close to the village centre.*'
 19. I also note that the Summary Report of Landscape Design Proposals with Outline Landscape Assessment (Landscape Report) considers that the key to preserving the character and appearance of KCA is to protect the centrally located open space farmland which forms the heart of land between West Town and Kingsland, enclosed by a perimeter of settlement plots and built form along the '*local road circuit*' highlighted in Diagram 1 of the report.

20. The appeal site forms part of an open field that is between Kingsleane and Harbour House. Harbour House is on the edge of West Town which has a distinct character and appearance that contrasts to the main part of the village. Within West Town the strong linear pattern of development seen along the B4360 is not evident with individual dwellings and farm complexes at varying distances to the highway and having little formal relationship to each other. Consequently, this distinct character and appearance and its visual and spatial separation from Kingsleane/Kingsland forms an integral part of the significance of KCA.
21. I acknowledge that the importance of the separation is not specifically mentioned in the '*proposed KCA*' document but it does state that there is a break in development to West Town and that it maintains a distinct character. Furthermore, the rural landscape areas alongside the road frontages between West Town and the remainder of the village are the areas which are most apparent to users of those roads. Consequently, even though a linear settlement pattern is a characteristic of Principal Settled Farmland, the development of these areas and the retention of only the central area of open space, as advocated in the Landscape Report, would not preserve the visual and spatial separation of West Town.
22. The site is undeveloped and, due to its location and physical and visual relationship with the land and buildings around it, as part of the rural landscape that separates Kingsleane/Kingsland and West Town it currently makes a strong positive contribution to the significance of KCA and the setting of the village. Roadside hedges do provide screening along much of Arbour Lane and the hedges to the appeal site would be retained with the development being contained within part of the existing field.
23. However, the hedge on the frontage to Arbour Lane would be reduced to 3.4 metres in height and the dwellings would be clearly visible above it. Furthermore, the dwellings would be visible from the public footpath to the north west of the appeal site, the public footpath to the south of the site and in views from the A4110. I acknowledge that these views would be filtered by hedges and trees dependant on the time of year.
24. Nevertheless, the introduction of houses on the appeal site would have an inherent urbanising impact on this part of the rural landscape that would erode the spatial and visual separation between West Town and Kingsleane/Kingsland.
25. Moreover, the layout of the development with the dwellings all facing an internal cul-de-sac would have the appearance of a modern form of suburban housing. I acknowledge that there are examples of cul-de-sac developments within the main village and the architectural design of the dwellings would appear to be sympathetic to the local vernacular. Furthermore, the inward looking nature of the development would enable the retention of the frontage hedge and car parking would be mainly screened from Arbour Lane.
26. However, the dwellings to the south of the cul-de-sac would have their rear elevations towards Arbour Lane and this would not reflect the predominant patterns of development in West Town or Kingsland. Whilst the proposed landscaping within the site would eventually reduce the visual impact of the development on views from the junction of Kingsleane and Arbour Lane and on views from the footpath to the north-west it would not fully address the harm identified above.

27. Both main parties have referred to the planning permission (2012) to extend the fire station. I do not have the full details of the scheme before me but it is clear from the Council's Officer Reports, submitted as part of Support Document 14, that it was a finely balanced decision. It was determined before the CS was adopted and due to the nature of the proposal I do not consider that it is directly comparable to this appeal case. As such, I give the planning permission little weight.
28. I note that the setting of the neighbouring listed buildings is not cited in the reasons for refusal. However, as stated above, I have a duty under S66(1) of the Act and this matter was covered within the Council's Officer Report. Moreover, it has been raised by a neighbouring occupier. From the evidence before me, including the listing descriptions, I consider that the significance of the listed buildings nearby is largely derived from their form, historic fabric and particular architectural features.
29. The Arbour is on the edge of West Town and there is an outbuilding adjacent to Arbour Lane to the east of this listed building. The significance of the Arbour is mainly experienced from within its curtilage. However due to its proximity to the A4110 and Arbour Lane junction its significance is also experienced in views from these roads. I have no evidence before me as to whether the listed building is still associated with an agricultural use. However, due to the layout of the buildings and their physical form the perception of the original function remains. The visual link of the farmhouse to the surrounding rural landscape therefore makes a contribution to its significance.
30. Kingsland House and The Lees are in close proximity to each other and it would appear that the latter was an outbuilding associated with the former and has subsequently been converted to residential use. Consequently, the setting of The Lees is linked with that of Kingsland House as the former's significance partly derives from its association with the latter. There is tall dense planting within the grounds of Kingsland House and The Lees. As a result, the primary context in which these buildings and their significance is experienced is within their grounds themselves and this constitutes their immediate setting.
31. Kingsland House was the Rectory to the nearby church and there is a public footpath from the church to Arbour Lane. There is a clear functional and historic link between Kingsland House and the church and this contributes to their significance. Furthermore, in the winter months it may be possible to see views of the church, Kingsland House and the appeal site together from the footpath to the north west of the site. Kingsland House and The Lees are located on the edge of Kingsland/Kingsleane and their relative isolation within a pastoral setting contributes to their significance.
32. Taking into account all of the above I consider that the appeal site can be treated as being within the settings of the Arbour, Kingsland House and The Lees.
33. Due to intervening vegetation and the outbuilding near to the Arbour there are only views of the upper floors of Kingsland House and the Arbour from parts of the appeal site. As such, there is some intervisibility between the appeal site and Kingsland House and the Arbour. In such views the appeal site provides an open rural area that establishes a clear separation of Kingsleane/Kingsland from West Town and illustrates the relative isolation of Kingsland House and The Lees. The proposal would, as stated above, have an inherent urbanising

- impact on this part of the rural landscape and it would erode the spatial and visual separation between West Town and Kingsleane/Kingsland.
34. However, the relative isolation of Kingsland House and The Lees has been eroded in the recent past by the development of Kingsleane. I consider that due to the close proximity of parts of the Kingsleane development to the proposal that parts of Kingsleane could also be visible from the upper floors of Kingsland House. The proposal would also be seen against the backdrop of Kingsleane in views from the Arbour. Furthermore, no evidence has been produced to suggest any functional or historic connection between the appeal site and the listed buildings.
35. Moreover, the level of intervisibility would alter during the year due to the intervening vegetation. I acknowledge that the vegetation is not permanent and that views to and from the listed buildings could be increased or decreased in the future. Nevertheless, there is no firm evidence before me to suggest that the existing situation is likely to change in the near future.
36. Hence, although the presence of additional built form would diminish the undeveloped character of the setting of the listed buildings as experienced from the Arbour and Kingsland House, the visual impact of this would be fairly limited. Furthermore, even though it may be possible at certain times of the year to see the development, the church and Kingsland House together in views from the footpath to the north-west these views would be filtered by the intervening vegetation. Moreover, whilst the development would introduce additional built form into those views I do not consider that the development would totally block possible views of the church with Kingsland House.
37. For these reasons, it seems to me that the proposal would have a slight adverse impact on the settings of the neighbouring listed buildings and as such the setting of these buildings would not be preserved. As stated above, I recognise that additional planting and landscaping would help to eventually reduce the visual impact of the development but I am not satisfied that it would mitigate the harm altogether.
38. Taking into account all of the above, the development of the site would have a materially detrimental effect on the character and appearance of the area as it would lead to a marked extension of the settlement and an intrusion of built development into the rural landscape between West Town and Kingsland/Kingsleane that positively contributes to the significance of KCA. As such, the development of the site would cause significant harm to the character and appearance of KCA and there would be a slight adverse impact on the settings of the listed buildings. Nevertheless, in the language of the Framework, these would result in less than substantial harm to the significance of the heritage assets.
39. It follows that the proposal would conflict with CS Policies LD1 and LD4 which, amongst other things, seek development proposals to conserve and enhance the natural, historic and scenic beauty of conservation areas; through the protection of the area's character and to protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance. The Inspector and Secretary of State attributed full weight to CS Policies LD1 and LD4 within the report and decision in relation to the Bartestree appeal¹ and I consider these findings persuasive in this case.

¹ APP/W1850/W/15/3051153

40. The proposal would also be in conflict with KNDP Policies 4, 5 and 6 which together seek, amongst other things, development proposals to not adversely affect landscape character and maintain and preferably extend tree and hedgerow cover, to protect Kingsland's heritage assets and conserve or enhance the character and appearance of KCA. Policy KNDP 6 also includes a number of conservation and environmental criteria in relation to KCA. Criterion 1 states that the key settings and characteristics include, amongst other things, the clear separation between Kingsland village and West Town. However, the policy conflict with the KNDP has reduced weight for the reasons outlined above.
41. I have attached considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Paragraph 134 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal. I will return to this matter below.

Planning obligation

42. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
43. The signed and completed S106 Agreement requires the appellants to make financial contributions of £33,466 towards education, £22,609 towards transportation, £14,278 towards neighbourhood open space, £560 per dwelling towards recycling facilities and £9,166 towards sports facilities. It also requires the provision of 5 affordable housing units of which 3 would be intermediate housing and 2 would be social rented housing.
44. The delivery of affordable homes and the need for long term arrangements to secure their continued availability for affordable housing use is necessary to make the development acceptable in planning terms. The obligations in this respect in the S106 Agreement are fairly and reasonably related to the achievement of those objectives. I am, therefore, satisfied that the obligations in relation to affordable housing included in the S106 Agreement meet the necessary tests and that they can be afforded weight.
45. In relation to the remaining financial contributions as the appeal is to be dismissed on other substantive issues, it is not necessary to look at these in detail, as a conclusion either way would not affect the overall decision. Even if these were found to meet the tests, these factors would be by way of mitigating the impact of the development and would not attract positive weight as public benefits in support of the scheme.

Other matters

46. Both parties agree that the Council cannot demonstrate a 5 year supply of housing land (HLS) as required by paragraph 47 of the Framework. The Council have stated that they can currently demonstrate 4.49 years of HLS.
47. Where the Council is unable to demonstrate a 5 year HLS, paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not

- be considered up-to-date. Furthermore, paragraph 49 of the Framework states that all housing applications should be considered in the context of the presumption in favour of sustainable development.
48. Paragraph 14 of the Framework explains that there is a presumption in favour of sustainable development at the heart of the Framework, and that this should be seen as a golden thread running through both plan-making and decision-taking. It goes on to indicate that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or unless specific policies in the Framework indicate that development should be restricted.
49. CS Policies SS2, SS3, RA1 and RA2 relate to the delivery of new homes in the County. CS Policy SS2 states that approximately 5,300 dwellings will be delivered across identified rural settlements. CS Policy RA2 would support sustainable housing growth in or adjacent to Kingsland subject to a number of criteria. However, as these CS Policies are relevant policies for the supply of housing they are considered to not be up-to-date with regard to paragraph 49 of the Framework.
50. Both main parties have brought to my attention appeal decisions² with regard to the weight that is to be given to CS policies. However, as the HLS position is constantly changing I consider that in relation to the weight to be given to the relevant policies for the supply of housing these decisions are of limited weight. Nevertheless, I note that the Secretary of State³ agreed with the Inspector's findings that '*poor delivery of housing is the root cause of the shortfall but that this could be addressed through existing policies*'.
51. Taking into account that the extent of the shortfall is reducing, that the Council has introduced an interim protocol to further reduce the shortfall, the CS has recently been adopted and I have no evidence before me to indicate that the housing strategy is flawed I consider that considerable weight can still be attributed to these policies.
52. As stated above, CS Policy RA2 would support sustainable housing growth in or adjacent to Kingsland subject to four criteria. I note that the Council considers that the development would not accord with criterion 3 and that the third party considers that it would not accord with criterion 1.
53. Even though the appeal site is adjacent to Kingsleane which is separated from the main part of Kingsland I consider that due to its proximity to the main part that it can be treated as being adjacent to the main built up area of Kingsland. As a result, I consider that the development would meet criterion 1. Taking into account my findings above in relation to the main issue above I do not consider that the third criterion would be complied with and as such the proposal would conflict with this part of CS Policy RA2. As stated above, this policy is not up-to-date but I consider that it still can be attributed considerable weight.
54. Policy KNDP 14 relates to new homes in the village and requires housing to be provided within the defined settlement boundary and to meet a number of specific criteria. The site is not within the proposed settlement boundary for

² APP/W1850/W/15/3006428 and APP/W1850/W/15/3051153

³ Paragraph 27 of the Secretary of State's decision in relation to APP/W1850/W/15/3051153

Kingsland through Policy KDNP14 and as such the proposal is in conflict with this policy. However, this policy conflict has reduced weight for the reasons outlined above.

55. I also note that a petition and numerous letters of support have been submitted in relation to this development but these do not alter my conclusions with regard to the main issue.
56. The appellants consider that the proposal would not increase traffic congestion in the settlement and that the proposal would not result in the loss of productive agricultural land. However, the lack of harm in relation to these matters is a neutral consideration and does not weigh for or against the proposal.
57. The appellants have drawn my attention to numerous planning applications determined by the Council and an appeal decision⁴ (Support Document 10). However, I do not have the full details of the schemes before me and in each case the significance of the heritage assets and the development proposals will be site specific. As a result I attribute little weight to them. In any case, I am required to determine this case on its individual merits.

The public benefits

58. It is not disputed that public benefits would arise from the appeal scheme. The development would make a material contribution towards meeting the HLS shortfall in the County. Affordable housing would be provided in line with CS Policy H1, which would also contribute towards meeting an acknowledged shortfall in the County. The appeal site is well located in respect of the settlement centre and relevant facilities and it occupies an accessible location.
59. The development as proposed would also result in support for local services and facilities, both during construction and after occupation. The proposal would also make a contribution to the local economy including the provision of construction jobs, some additional local spend and New Homes Bonus and Council Tax receipts. Given the amount of development proposed, these benefits would be likely to be modest in scale.
60. The sustainable drainage proposed for the site would also include drainage from the existing Kingsleane development. I note that the existing site is of limited ecological value and that planning conditions could ensure that there is an enhancement through landscaping and bat/bird boxes. These would provide modest weight in favour of the proposals.

Overall balance

61. Considerable importance and weight is to be given in the planning balance to any harm to the significance of a heritage asset. Even though I have found that the harm to the heritage assets is less than substantial it is not to be treated as a less than substantial objection to the proposal. The public benefits attributable to the proposal would be appreciable but in my judgement they would not outweigh the great weight to be given to the harm to the heritage assets. As such the proposal would not comply with paragraph 134 of the Framework.
62. There is no dispute between the parties that the Council cannot demonstrate a 5 year HLS and as such, as stated above the relevant policies for the supply of housing are not to be considered up-to-date. Having regard to my findings

⁴ APP/W1850/A/14/2218385

above and footnote 9 of the Framework, I find that the final bullet point of paragraph 14 of the Framework is engaged, as specific policies in the Framework indicate that development should be restricted. Therefore, the proposal would not represent sustainable development.

63. The harm that would be caused to the character and appearance of the area also leads me to conclude that the proposal would conflict with the development plan. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

64. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR

Richborough Estates