



Appeal Decision

Site visit made on 14 January 2015

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 5 March 2015

Appeal Ref: APP/A0665/A/14/2219790

Weaverham Bank Farm, High Street, Weaverham, Northwich, Cheshire CW8 3HA

- 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 Richard Drinkwater of Omega North West against the decision of Cheshire West & Chester Council.
 - The application Ref 13/02882/FUL, dated 29 June 2013, was refused by notice dated 25 February 2014.
 - The development proposed is 10 houses including access improvements and new accesses (demolition of redundant open barns and single storey extensions to former farmhouse).
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Procedural Matters

1. The above amended description of the proposed development was agreed between the Council and the appellant following submission of the application and I therefore deploy it in its amended form for the purposes of this decision.
2. In January 2015, shortly after my site visit, the Council adopted the 'Cheshire West and Chester Local Plan (Part One) Strategic Policies'. I therefore allowed the parties an opportunity to comment on any implications for their respective cases. Both parties indicated that, in their view, there were none; and the Council confirmed that the policies it relies upon, policies BE1 and BE10 of the Vale Royal Borough Local Plan First Review Alteration, are retained in force.
3. In February 2015, the 2012-based household projections for England 2012-2037 were released. On the basis of the position related to housing land supply set out below, I do not consider this is a matter which materially affects the appeal.

Decision

4. The appeal is dismissed.

Main Issues

5. Having visited the site and bearing in mind the council's reason for refusal and the representations of third parties, I consider the main issues to be as follows:-
 - Whether the proposed development would preserve or enhance the character or appearance of the Weaverham Village Conservation Area and whether it would conserve it adequately in terms of its significance;

- The effect of the proposed development on the living conditions of neighbouring and future occupiers having regard to privacy, outlook, sunlight, noise and disturbance;
- The effect of the proposed development on biodiversity; and
- Whether the proposed development represents sustainable development for the purposes of the National Planning Policy Framework ('the Framework').

Reasons

Background

6. The appeal site is the residual land associated with Weaverham Bank Farm beyond the confines of a range of barns, the farmyard and the farmhouse itself. It includes overgrown grassland with trees of variable quality. Outside the appeal site the barns have previously been found to be habitat for two species of bat and badgers are known to have been active on the appeal site itself, which does include evidence of a sett, albeit the submitted survey indicates that their presence may be intermittent. An abandoned open-sided metal barn dominates the southern part of the site.
7. The farmhouse and brick-built barns are an established part of the street scene in the Weaverham Village Conservation Area and these are set amidst the farmhouse garden on its east side and the open paddock or orchard area¹ to the west of the barns, through which the access road to the proposed 10 houses would run. These would be concentrated at the back of the site in the form of two terraces parallel to High Street. The southern boundary of the site corresponds with the conservation area boundary and consequently the entire site falls within it. Beyond its southern boundary and the conservation area, the site is closely hemmed in by relatively modern housing, primarily close spaced detached dwellings but including some semi-detached dwellings also.
8. The application is complicated in its relationship to an existing permission² to convert the brick-built barns associated with the long established Weaverham Bank farmhouse, by virtue of the delineation of the site boundary in manner which divides the latter two elements whilst impinging upon the existing permission to the extent that it is necessary to authorise removal of certain outbuildings to the farmhouse whilst inhibiting mitigation measures in respect of bats. These measures are required to be implemented through the construction of appropriately designed new garages authorised by the existing permission.³ Moreover, not only are the site of the farmhouse, much of its garden and the brick-built barns excluded from the site, but the same applies to the land in the appellant's ownership west of the latter, over which the access to the proposed houses would have to be constructed, apparently in accordance with the existing permission. Three of the four access works in highway land are shown as detached parts of the 'site edged red' (i.e. the application site) with 'land edged blue' (i.e. within the applicant's control) intervening. Notwithstanding the apparent agreement of the planning officer,⁴ the reason for this seemingly rather fragmented approach is not entirely clear and, perhaps unsurprisingly, third parties have expressed concern that the

¹ As described in paragraph 3.3 of Council's 2007 Conservation Area Appraisal

² Ref 08-2279-COU

³ Officer's committee report paragraph 6.28

⁴ Appellant's statement paragraph 1.5

totality of the development proposal embodied in the overlapping application sites is less easy to comprehend than would have been the case had a comprehensive single scheme been submitted.

9. Be that as it may, the sum of the parts, when dovetailed together with minor adjustment as necessary would amount to a comprehensive scheme to create four dwellings in the converted range of barns and a further 10 dwellings on the appeal site in addition to the established farmhouse and the totality of what is proposed is shown on the layout plan 07326(02)01 Revision D. However, if permission were to be granted for the scheme at issue the two permissions would be mutually exclusive in the absence of a mechanism to adequately substitute the bat mitigation measures, as is clear from the planning officer's report.⁵ Paragraphs 7.1 and 7.2 of the appellant's statement address this matter and the matter of off-site contributions for play space provision, the suggestion being that ... "*all these matters can be formalised once this Appeal has been determined*". This is a point to which I return in due course.
10. At the time the application was determined by the Council, the officer's report confirmed that the Council could not identify a five-year supply of deliverable housing sites and therefore, following paragraph 49 of the National Planning Policy Framework, relevant policies for the supply of housing land could not be considered up-to-date and the presumption in favour of sustainable development defined in paragraph 14 of the Framework was engaged. Notwithstanding the recent adoption of the Council's Core strategy, and my request to the Council for comment thereon, I have no information before me in respect of this case to suggest that the presumption should no longer apply in that context.
11. In the context of the Framework as a whole, the presumption in any event requires a planning balance to be undertaken which must necessarily include the manner in which the proposed development accords or conflicts with relevant policies in the development plan that do not concern the supply of housing land. Furthermore, there is no contention by the Council that, in principle, the site is not appropriately developed for housing. That sentiment is echoed by a number of third parties who object, not to housing per se, but to the specifics of the scheme of development proposed. The site is embedded in the settlement of Weaverham and has, I am informed,⁶ not been actively used for farming for around 15 years. Much of it visibly suffers from dilapidation, decay and abandonment. Subject to biodiversity considerations, I have no reason to take a different view. The appeal therefore turns on specifics and it is not necessary to further consider the land supply situation in any specific detail.
12. Paragraph 56 of the Framework emphasises the importance of good design and advises that it should contribute positively to making places better for people. Paragraph 60 addresses the virtue of local distinctiveness and paragraph 61 emphasises that planning decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment. Paragraph 64 says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. It is a core principle of the Framework that planning should always

⁵ Officer's committee report paragraph 6.28

⁶ Appellant's statement paragraph 3.4

seek to secure high quality of design and a good standard of amenity for all existing and future occupants of land and buildings. Conservation and enhancement of the natural environment and the conservation of heritage assets in a manner appropriate to their significance are also core principles of the Framework. National policy is therefore of central relevance to all the main issues in this case. The intentions of the Framework comprise an important material consideration alongside the development plan.

Development Plan policy

13. The retained policies of the local plan which the Council considers to be relevant are BE1 and BE10. Policy BE1 essentially promotes good design in context, including proper regard to the living conditions of nearby residents and the enhancement of wildlife potential. Policy BE10 is to the effect that development proposals in conservation areas should preserve or enhance their character or appearance. None of the intentions referred to are inconsistent with those of the Framework.
14. Neither party draws my attention to any policy of the recently adopted Core Strategy as being relevant.

Effect on conservation area

15. Westwards from St.Mary's Church itself, the Weaverham Village Conservation Area is broadly centred on the linear village arranged around Church Street and High Street, extending as far west as the junction of the latter with Sandy Lane. As the Council's 2007 appraisal document demonstrates, it contains an eclectic mix of development including modern housing and terraced housing, the latter being predominantly but not exclusively concentrated in the eastern part of the area where it tends to front onto Church Street and High Street and roads off. Many terraced houses front directly onto the streets, thereby defining their character. The western part of the area including the appeal site is noticeably more spacious, with lower density housing, although this changes again immediately west of the site, where houses are terraced. However, Weaverham Bank Farm stands out as a visible and distinctive reminder of the agricultural activity that must have been the dominant context for the settlement prior to more recent expansion.
16. While this is recognised in paragraph 1.3 of the Council's 2007 appraisal, it is also recognised at paragraph 10.2 that it is... *"probably inevitable that Weaverham Bank Farm will not remain indefinitely in agricultural use"*. Self-evidently that prediction has come to pass, but the appraisal continues with the sentiment that... *"if ever developed, great care will be needed to ensure preservation of essential agricultural characteristics"*.
17. I am obliged in any event, by virtue of the relevant provision of s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, and the Framework emphasises the care that must be taken to conserve heritage assets including conservation areas. The statutory duty embraces both character and appearance separately and the approach of the Framework is set out in paragraphs 128 – 134, amongst others.

18. Paragraph 128 makes clear the approach that applicants for planning permission should take in respect of heritage assets affected. Conservation areas, being formally designated, are self-evidently important in this context. I am not satisfied that the submitted statements, or indeed the appellant's grounds of appeal, fully address the matter of the effect of the proposal on the significance of the conservation area. The Planning Statement does little more than append a highlighted copy of the Council's 2007 appraisal and assert that the proposed buildings will blend with the retained buildings (i.e. the farmhouse and brick-built barns, the subject of the separately permitted scheme of conversion) and the wider conservation area.⁷ The Design and Access Statement is more analytical in respect of the conservation area but is largely focused on the street scene and does not in my view adequately develop understanding of the impact of the proposal on its significance as the Framework advocates.
19. Be that as it may, I am obliged to consider the merits of the proposal within the context of the statutory duty in any event and it seems to me that relatively dense development immediately around the original farmstead must inevitably affect the character of this essentially agricultural part of the conservation area. Simple replication of the terraced form of housing development elsewhere in the conservation area in a more suburban format and character with driveways and integral garages, a characteristic particularly evident in the block containing units 6-10, by virtue of design characteristics, does not, in my assessment preserve or enhance the character of this part of the conservation area, albeit I acknowledge that in terms of its appearance it would be hidden away behind the existing farmhouse and its grounds. Nevertheless, the conservation area must necessarily be considered as a whole, not just in terms of its most visible face to passers-by on High Street; and the development proposed would be experienced not only by residents of the original barn conversion and the farm house and occupiers of the proposed 10 dwellings themselves, but also by visitors for all purposes and to varying degrees by residents of the houses to the south looking into the conservation area.
20. I acknowledge that the proposed block containing units 1-5 would display architectural detailing that is perhaps reminiscent of an historic agricultural context, but the concept as applied would nevertheless bring essentially suburban characteristics typical of the surrounding area into the heart of this important part of the conservation area.
21. In criticising the appellant's current approach, I am conscious that the Council's conservation officer and English Heritage raise no formal objection notwithstanding evident reservations in the detailed comments of the former and some concerns in the case of the latter. However, I am also conscious of the wide range of relevant comment from local residents and others suggesting that a more careful approach to the development of this important site within the conservation area is warranted. I appreciate that, owing to the dilapidated state of the site, there is an urgency to achieve a solution which would improve its appearance, but this should not lower the threshold by which preservation or enhancement of character is to be judged; even if superficially an improvement in appearance could readily be achieved by a variety of forms of

⁷ Supporting Planning Statement paragraph 4.3.3

development that are vaguely reminiscent of agricultural character, but which would harm the significance of the conservation area as a whole.

22. In view of the above, I do not consider that the proposed development would preserve or enhance the character of the conservation area and, that being the case, bearing in mind the clear importance of the farmstead within the original settlement and subsequently the conservation area as designated, I do consider that the proposed development would harm the significance of the latter. However, in the absence of clear evidence to the contrary, I also consider, on the basis of my own observation of the situation, that the harm to the conservation area taken as a whole would be less than substantial, notwithstanding that there is an assertion from Leith Planning to the effect that overdevelopment of the site and poor design encapsulated in the proposals would lead to substantial harm in Framework terms. The threshold for that is not defined or precisely definable as a general rule but there is no cogent explanation from Leith Planning as to precisely why in this case, as a matter of evidenced judgement (which might include clear and outright objection from consultees with specialist knowledge, which is not the case here) the harm to the significance of the conservation area would be substantial.
23. Over and above the specific policies set out in Section 12 of the Framework, I am also conscious that its general approach set out in paragraph 64 is that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
24. In the case of this site, it seems to me, there is an opportunity to do exactly that but the principle is given added force by the location of the site within the Weaverham Village Conservation Area. Because it would fail to preserve or enhance its character and would harm its significance to some degree, the intentions of relevant national policy would be frustrated by the proposed development in a number of important respects relevant to this issue, including those set out in paragraph 64.
25. In conclusion, for the above reasons, the proposed development would fail to preserve or enhance the character of the Weaverham Village Conservation Area, contrary to the intentions of policy BE10 of the local plan, and would fail to conserve it adequately in terms of its significance. The less than substantial harm to its significance would have to be outweighed by public benefits in order for the appeal to succeed. This is a matter to which I return.

Living conditions

26. At the request of residents, I viewed the site from a number of surrounding properties with a view to assessing the impact of the proposed development on living conditions, an issue that is conceptually distinct from impact on their perceptions of the site in respect of the previous issue.
27. The position of units 6-10 was amended at the Council's request due to the overbearing impact unit 10 would have on the occupiers of 39 High Street, especially in its immediate rear garden area. The revised position is now more usual in terms of the proximity dwellings detached one from another in a conventional row. However, the positioning of the proposed unit 10, being staggered relative to no 39 High Street, would impose a gable end in a manner which is potentially overbearing, albeit there would be room for some relief in

- the form of boundary planting. As previously proposed, the position of the gable was plainly unacceptable in this context. The revised positioning represents an improvement to create a situation that would be barely acceptable. Although not decisive in itself, it therefore weighs significantly against the proposal nonetheless.
28. The rear gardens of units 1-5 would abut those of Nos. 1-3 Rutland Drive. The distance between the rear elevations of the proposed units 4 and 5 and those of Nos. 2 and 3 Rutland Drive generally falls below the Council's 22 metre minimum guideline for privacy, significantly so at some points. The planning officer's report suggests that the design of the units mitigates this by minimising fenestration and obscure glazing one of the windows in each case. However, this would reduce rather than resolve the problem of overlooking.
29. Appendix 5 to the Planning statement submitted with the application suggests that the change of level between the existing and proposed housing would help mitigate overlooking but privacy is a two-way matter and the occupiers of the proposed dwellings would suffer from being at a lower level. Appendix 5 also suggests that there will be substantial planting on the boundary to further screen the new development. However, I am conscious that the compact rear gardens of the proposed units 1-5 would be south facing and hence any substantial tall planting would be likely to shade them in a manner which their occupiers could well find unacceptable for much of the day. High and dense vegetative screening for privacy in such circumstances is a poor means of mitigation. The failure to meet the Council's privacy guidelines comprehensively would have a distinctly negative impact on the living conditions of both existing and future residents.
30. The compact rear gardens of Nos. 22-26 Bank Side lie hard against the site boundary and the rear elevations of the semi-detached houses 24 and 26 would face the front elevations, including first floor bedroom windows of the proposed units 7-9 at around 22 metres and the immediate juxtaposition of the proposed 'access core' roadway with the rear boundaries of these properties would leave little scope for effective screening for privacy. Moreover, the proximity of the access core, upon which manoeuvres in and out of individual driveways and the communal parking area shown to the east of the proposed unit 5 could be frequently performed, would lead to a sense of intrusive disturbance in the rear gardens of 24 and 26 Bank Side. The latter property would in my estimation be particularly badly affected.
31. All in all, the likely effect on the living conditions of both occupiers of certain existing houses and also future occupiers of certain of the proposed houses, by reason of overlooking, loss of outlook in garden areas, potentially unacceptable shading and closely experienced noise and disturbance emphasises the appellant's evident ambition to maximise the density of development on the site.
32. The consequence, bearing in mind the site-specific circumstances, would be a development that would sit uncomfortably, and in some respects unacceptably, close to neighbouring development, with permanent harm in the case of a limited number of properties to the living conditions of both existing and future residents. That would be contrary to intentions embodied in the fourth core principle of the Framework and policy BE1 of the local plan. The harmful conflict with those intentions weighs heavily against the current proposals.

Biodiversity

33. The application is supported by specialist survey information which identifies the presence or potential presence of protected species and which makes practical recommendations to mitigate potential harm including, if necessary, licensed disturbance⁸ of any badgers which may be present and the advance creation of an artificial sett if so required for this purpose.
34. The survey's consideration of bats (c/f planning officer's report paragraph 6.28) appears restricted in practice to the application site as it does not fully take into account the interaction with the existing permission for the barn conversion which requires bat mitigation measures that would be prevented by the implementation of the instant proposals as currently conceived.
35. The officer's report recommends approval subject to a planning obligation to address this, amongst other matters. The appellant's statement suggests, as previously noted, that this could be formalised after this appeal has been determined. I disagree. I am unable to place any weight whatsoever on a non-existent planning obligation and no obligation has been put before me.
36. I have considered whether the matter could, in the alternative, be addressed by the imposition of a planning condition; but neither party has suggested a condition to address this matter and, bearing in mind my overall conclusions on the proposed development, it is not for me to consider in detail as to how such a condition might be framed so as to prevent the identified harm in a manner which would be enforceable.
37. On the basis of what is before me, the proposed development poses an indirect threat to protected species with no clarity as to how the permission for the adjacent barn conversion could be implemented alongside it. The potential consequences of such a situation are wholly undesirable in planning terms, it being implicit that the barns would have to remain as they are or else the mitigation measures previously identified would have to be dispensed with in favour of an alternative solution which has not yet been identified as achievable.
38. That of itself is sufficient to justify planning permission being withheld. Quite apart from statutory considerations in respect of particular species, the Framework makes very clear the weight that is to be accorded to conserving and enhancing the natural environment whilst halting the overall decline in biodiversity.

Other matters

39. The planning officer's report refers to a need for a financial contribution towards off-site play space. Such a contribution may only be effected through a suitable planning obligation. No such obligation has been put before me in the appeal process and I am unable to require by condition that an obligation be subsequently entered into.
40. The appellant suggests that the appeal should be allowed because the officer recommendation was in favour. However, elected councillors are not bound to follow such recommendations and in this case their judgement was clearly centred on material planning considerations. I am in any event obliged to

⁸ i.e. with specific consent from Natural England

consider the proposed development on its own merits having appropriate regard to the development plan and other material considerations including national policy as set down in the Framework.

Overall conclusion - the planning balance

41. The presumption in favour of sustainable development set out in paragraph 14 of the Framework, if engaged by reason of inadequate housing land supply, or for any other reason, requires a planning balance in the context of the Framework as a whole, having regard to its economic, social and environmental dimensions.
42. The Framework's intention to boost the supply of housing would, in a small way, be served by the ten dwellings proposed, with associated economic and social benefits. Removal of the metal barn structure and other symptoms of decay and dilapidation of the site would also be of benefit. However, these public benefits would in this instance fail to outweigh the less than substantial harm to the Weaverham Village Conservation Area I have identified. My conclusion in that respect in any event sits alongside my conclusions on the other substantive issues I have identified. For the reasons I have given, the development as proposed would give rise to unacceptable conflict with the intentions not only of the development plan but also those of the Framework in respect of those issues also.
43. Overall, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, which include the intention that development should be plan-led. For these reasons, the proposal does not represent sustainable development and accordingly, having taken into account all other material matters raised, I am clear in concluding that the appeal should be dismissed.

Keith Manning

Inspector