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## Appeal Decision

Site visit made on 15 June 2015

by **G D Jones BSc(Hons) DMS DipTP MRTPI**

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

Decision date: 7 July 2015

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**Appeal Ref: APP/Y3425/W/15/3003745**

**Shenley Cottage, Main Road, Little Haywood, Stafford ST18 0TR**

- 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 Moore Family Trust against the decision of Stafford Borough Council.
  - The application Ref 14/20477/OUT, dated 16 May 2014, was refused by notice dated 1 December 2014.
  - The development proposed is residential development of 60-65 dwellings to include provision of 3.27 hectares of public open space and networks - details of access only.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Moore Family Trust against Stafford Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. I have amended the description of the development because the proposed quantum of public open space increased from 2.79 to 3.27 hectares during the consideration of the application and prior to its determination.
4. The Council has advised that it has withdrawn its first and third refusal reasons regarding the agricultural value of the land concerned and the development's potential effect on remnants of ridge and furrow ploughing. I have, therefore, dealt with the appeal on this basis.
5. The proposal is for outline planning permission. The material submitted with the application contains details of how the site might be developed including reference to layout, scale and landscaping. However, the application form and appeal statement make clear that approval is sought at this stage for access only, and appearance, landscaping, layout and scale are reserved for future approval. Whilst not formally part of the scheme, I have nevertheless treated the details submitted as a useful guide as to how the site could be developed.
6. The evidence refers to the emerging Colwich and Haywood Neighbourhood Plan (the eC&HNP). I note that it is at a reasonably early stage and will be subject to consultation and examination such that it may be amended. With reference to paragraph 216 of the Framework, I am therefore able to attribute only limited weight to the eC&HNP.

## Main Issues

7. The main issues are:

- Whether or not any impact of the development on local infrastructure would be adequately offset; and
- The effect of the proposal on the setting of the Colwich and Little Haywood and the Great Haywood and Shugborough Conservation Areas.

## Reasons

### *Local Infrastructure*

8. It appears to be common ground between the main parties that in order to adequately offset the impacts of the development a number of mitigation measures would be required. These include the provision of 30% affordable housing; appropriate arrangements for the provision and maintenance of on-site open space; and payments for education, for the enhancement/maintenance of off-site open space facilities, for off-site sports facilities and for the mitigation of impact on the Cannock Chase Special Area of Conservation (CCSAC).
9. I have considered these matters in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. The provision of affordable homes at a rate of 30% would be in line with Policy C2 (Affordable Housing) of the Plan for Stafford Borough June 2014 (the PSB) as well as the objectives of paragraph 50 of the National Planning Policy Framework (the Framework).
10. Furthermore, the proposed education contribution would be necessary to ensure that primary school aged residents of the development would be provided with adequate school facilities in accordance with the requirements of PSB Policy I1 (Infrastructure Delivery Policy). The proposed open space provisions would be necessary to ensure that residents of the proposed development would have access to well-maintained public open space and play equipment in accordance with PSB Policy C7 (Open Space, Sport and Recreation). The proposed CCSAC contribution would provide mitigation for the development's effect on this Special Area of Conservation in accordance with PSB Policy N6 (Cannock Chase Special Area of Conservation).
11. I am satisfied that all of these matters are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms. The Council's evidence also indicates that none of the proposed payments would result in the pooling of more than five obligations for any one infrastructure project or type of infrastructure through a Section 106 agreement.
12. A Unilateral Undertaking, dated 20 May 2015, made under Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted (the UU), which the appellant has stated supersedes an earlier legal agreement that had been made with the Council and the County Council. The principal reason why the UU was prepared and submitted in place of the earlier legal agreement appears to be that the mortgagee of part of the land, being a person interested in the land, would not join in the legal agreement.
13. In summary, the Council say that this omission is unacceptable as the obligations, which are of considerable value in total, could be lost in the event of the mortgagee gaining possession. On that basis, the mortgage company would have

no liability as successor in title to fulfil the obligations and would be able to implement the planning permission free of the obligations. The appellant maintains that the UU is satisfactory without the mortgage company joining in as a party because the appellant has an option to purchase that part of the land, or possibly redeem the mortgage, which it says would happen immediately upon issue of the planning permission.

14. I cannot come to any conclusions about property transactions being negotiated outside the appeal process. Even if such transactions might seem firm and secure at the appeal stage, there is no guarantee that they will not change after the appeal has ended. This is why it is important that all parties who need to join into a Deed made under Section 106 of the Act do so in order that the land is bound from the outset. I recognise that the land effected is somewhat removed from the proposed vehicular access and the public highway such that it might be difficult to develop alone. Nonetheless, in the circumstances I consider that without all of the necessary parties, including the mortgagee, joining into the legal agreement prior to planning permission being issued such that the obligations therein bind the land for both existing owners and their successors, there is an unacceptable risk that the obligations may not be secured.
15. In lieu of the UU, I consider that affordable housing provision in line with the Council's adopted policy could be secured via a suitably worded planning condition. The provision of the proposed open space and associated equipment could also be secured by planning condition. However, due to the long term nature of the requirement, provisions for its on-going management and maintenance would need to be secured via planning obligation. The CCSAC mitigation and the education contribution would also require planning obligations.
16. The UU is also intended to secure contributions for provision/enhancement of swimming pool provision at Stafford Leisure Centre, sports courts/halls provision at Staffordshire University Sport Campus Indoor Facilities and artificial turf pitches at any of three exciting facilities. However, there is little information before me to indicate how these matters would be directly related to the proposed development, fairly and reasonably related to it or necessary to make it acceptable in planning terms. Therefore, I have not accorded them any weight in my decision.
17. Nonetheless, in the absence of planning obligations to deliver the requisite education and open space facilities and CCSAC mitigation, I am not satisfied that the effect of the development on local infrastructure would be adequately offset. Consequently, in this regard, the proposed development would conflict with Policies I1, C7 and N6 of the PSB and with the Framework.

#### *Setting of the Conservation Areas*

18. The remaining reason for refusal relates only to the effect of the appeal development on the setting of both the Colwich and Little Haywood Conservation Area (the CLHCA) and the Great Haywood and Shugborough Conservation Area (the GHSCA). Council's appeal statement sets out that its heritage concerns do not relate to specific individual buildings but are wider scale, relating to the group character and impact on the Conservation Areas.
19. The CLHCA and the GHSCA together wrap around the appeal site particularly to the west, south and east. Part of the CLHCA is located to the east of the site such that a length of its boundary to the rear of properties in Coley Lane is adjacent to the site. The GHSCA within the village of Great Haywood is more distance from the site, located beyond the dwellings clustered around The Ring, a cul-de-sac to the

- west of Shenley Cottage. Nonetheless, the boundary of the GHSCA extends along the southern side of Main Road opposite the site.
20. In considering proposals affecting a Conservation Area there is a statutory duty to pay special attention to the desirability of preserving or enhancing its character or appearance. Although close to and in parts adjoining the CLHCA and the GHSCA, the application site stands beyond the boundaries of both Conservation Areas. The indicative layout drawing also shows the bulk of the proposed development as being sited well-in from the site boundary, away from the Conservation Areas. Nonetheless, given its proximity, the site does form part of the setting of both Conservation Areas.
  21. While the concept of the setting of a Conservation Area is not enshrined in legislation the Framework states that the setting of a heritage asset can contribute to its significance. Opportunities should be sought for new development within the setting of heritage assets that would enhance or better reveal the significance of the heritage asset. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.
  22. Within Great Haywood the Conservation Area has the character of a linear village with historic buildings focused around the Main Road, creating a strong building line, an enclosed setting and inviting views. Outside the village the Conservation Area is largely surrounded by open fields including to the east in the vicinity of the appeal site. There is a strong physical connection between the village and the Shugborough estate, with historic routes into Shugborough preserved. Shugborough is a very attractive parkland, with an abundance of mature trees, which provides a setting for the Grade I listed 17th century Shugborough Hall and a collection of monuments and structures, many of which are listed at Grade I and II\* in their own right.
  23. The CLHCA has a reasonably well-preserved street pattern, with ancient lanes and a greenway still in existence, and a range of attractive buildings from several eras reflecting the development of the villages through time. These include numerous farm buildings, which provide a visual connection to the agricultural roots of the villages. There are also pleasant views of Cannock Chase, an Area of Outstanding Beauty (AONB), available from the Conservation Area. The AONB extends up to Main Road to the south of the appeal site.
  24. The boundary of the CLHCA was enlarged in 2014 to include Anson's Row a range of 18th-19th century cottages and a 16th century former long house. These cottages are connected to Little Haywood by Back Lane, and an ancient greenway runs to the west of Anson's Row into the adjacent field a little to the north of the appeal site. The setting and the character of the buildings themselves have been retained, adding further architectural and historic interest to the Conservation Area.
  25. The principal significance of both Conservation Areas lies in the core areas of the villages. The proposed development would be sufficiently removed from these parts of the villages that they would be unaffected. Nonetheless, I recognise that the agricultural, open countryside that surrounds both Conservation Areas plays a role in their setting and thereby contributes to their significance as heritage assets.
  26. However, having considered all of the evidence before me and having visited the area, I am satisfied that subject to careful consideration of the matters that would be reserved for future determination, the proposed development would not have a significant effect in this regard. There are a number of reasons for this. The site

- itself is limited in scale such that a substantial area of open land around the Conservation Areas, including between the two villages, would remain open or undeveloped. In making this assessment I have taken into account the other development in the area identified in the evidence that has been granted planning permission, including at the land between Great Haywood and The Ring<sup>1</sup>.
27. Based on the indicative layout drawing, substantial portions of the site would also remain open or undeveloped and could be laid out to retain their existing rural character. Given the proposed development's scale and location along with the site's relatively elevated ground level, I recognise that the development would be apparent, at least in part, from within the Conservation Areas and from elsewhere. Nonetheless, views into the development would, to a large extent, be screen or filtered by existing mature planting which could be supplemented as proposed.
28. For these reasons the development would not harm the setting of either Conservation Area. I would stress, however, that great care would need to be taken at the reserved matters stage regarding the detail of the development, particularly in the vicinity of Coley Lane, Back Lane and Anson's Row due mainly to their proximity to the site.
29. The Council's appeal statement also refers to the potential effect of the proposed development on a Grade I Listed wall to the Shugborough Estate which forms a continuous feature to a large part of Main Road and which also forms part of the Conservation Area boundary with the Registered Park and beyond. The Council has subsequently advised that the wall is listed as part of the curtilage to the Shugborough Hall rather than being listed in its own right. On that basis the site would form part of the setting of this wall.
30. The wall in question is faced with red brick with an ashlar sandstone plinth and a sandstone coping. It follows the back of the pavement to Main Road opposite the appeal site forming a well-defined boundary to the park. In parts it is backed by a bank within the park and along most of its length there is a dense belt of tree cover. The Heritage Assessment submitted by the appellant states that 'the wall was built as, and remains, a boundary and a barrier between the park and the outside world; its setting is, therefore, associated intimately with the park it protects rather than the village'. From the evidence and having viewed it from Main Road and within the park, I have found no reason to disagree with this assessment.
31. On this basis, given the considerations outlined above regarding the setting of the Conservation Areas, the proposed development would have no significant effect on the setting of the wall as a listed building. In making this assessment I have had special regard to the statutory duty to pay special attention to the desirability of preserving the setting of the wall as a listed building. For the reasons identified, I find that the appeal development would preserve the setting of the listed building and, consequently, would not conflict with the Framework in this regard.
32. Although not cited in the reason for refusal, the Council's evidence also refers to the effect that the development would have on Shenley Cottage, a house located within the site. The front section for this building is of some visual character, presenting an arts and crafts villa style appearance, with the earlier 19th century cottage behind this frontage. Having considered all of the evidence it is reasonable to treat Shenley Cottage as a non designated heritage asset bearing in mind its relevance to the history of the local area and its architectural attributes, albeit that it is of moderate significance.

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<sup>1</sup> Planning permission Ref – 13/19535/OUT

33. The Framework states that in weighing applications that affect non designated heritage assets, a balanced judgement is required having regard to the scale of any harm or loss and the significance of the heritage asset. The main Shenley Cottage building is proposed to be demolished as part of the appeal development. It is the appellant's largely uncontested evidence that this building has become derelict and heavily vandalised to a point that it is beyond economic repair. On this basis and given its modest level of significance as a non-designated heritage asset, subject to the measures proposed in the Heritage Assessment including its recording and the retention of ancillary structures, on balance the loss of this building would not warrant the withholding of planning permission bearing in mind the benefits offered by the proposed development.
34. For the reasons outlined above the appeal development would not have a significant effect on the setting of either the Colwich and Little Haywood or the Great Haywood and Shugborough Conservation Areas. Consequently, in this regard, it would not conflict with Policies SP7(f), N1(h), N8(a&c) and N9 of the PSB.

### **Other Matters**

35. There are several other heritage assets identified in the evidence located in the area surrounding the appeal site. Details of these were before the Council when it determined the planning application and it found that the development would not have an effect on any of them such as to warrant refusal of planning permission. I have found no reason to disagree. I also note that English Heritage does not object to the proposal. In making this assessment I have again had special regard to the statutory duty to pay special attention to the desirability of preserving the setting of listed buildings.
36. In addition to the foregoing matters, concern has been expressed locally and by some consultees regarding a number of considerations. These include the effect of the proposed development on the character and appearance of the area, including in respect to the potential reduction/loss of separation between Great Haywood and Little Haywood; on highway safety, congestion and rights of way; on climate change; on existing services, utilities and the adequacy of infrastructure, including shops, medical services, drains and sewage treatment capacity and public transport; on the living conditions of neighbouring occupiers; on wildlife; on flooding and drainage; and on trees, including those protected by tree preservation order.
37. Other issues raised concern the adequacy of employment opportunities in the area; lack of housing need; that development should not be permitted in advance of the Neighbourhood Plan; the loss of agricultural land; landscape and visual impact including in respect to Cannock Chase AONB, field patterns and boundary hedges; planning policy conflict; and that the appeal development might act as a precursor or precedent for further development elsewhere including neighbouring land in the appellant's control.
38. These matters are largely considered within the reports prepared for the Council's Planning Committee. They were also before the Council when it prepared its evidence. The Council did not conclude that they would amount to reasons to justify withholding planning permission. Other than as identified above, I see no good reasons to disagree. While I note the concerns regard precedent and the appeal scheme potentially acting as a 'bridgehead' for further development, any future proposals would need to be assessed on their own merits.

39. I also note the concerns raised in respect to how landscape and visual impact are assessed in the first Committee report. However, having visited the area and considered all of the evidence I have found no reason not to broadly agree with the assessment of both landscape and visual impact in the submitted Landscape and Visual Significance Appraisal insofar as it relates to the appeal site.
40. Following the determination of the planning application, the Staffordshire Wildlife Trust submitted a detailed letter of objection to the proposal. Nonetheless, with reference to the appellant's response and the wider evidence, including the comments of Natural England and the Council Biodiversity Officer, I am satisfied that the proposed development would not cause any significant harm to protected species or their habitat, subject to controls and mitigation that could be secured via planning conditions.
41. My attention has also been drawn to other proposals and development in the area. Although I have taken this other development into account insofar as it would influence the character and appearance of the area, including the setting of heritage assets, each proposal falls to be assessed primarily on its own merits and, in any event, I am unaware of the full circumstances associated with any of those other cases.

### **Conclusion**

42. I recognise that the proposed development would offer benefits that weigh in its favour. These include the provision of additional market and affordable housing, as well as the economic and social benefits that the development would bring such as to the construction industry during the building phase and the support that additional residents would offer to sustain local services.
43. There is, however, an unacceptable risk that important obligations within the UU may not be secured. On that basis sufficient measures have not been put in place to adequately offset the effect of the development on local infrastructure in conflict with development plan policies and with the Framework. The resulting harm would outweigh the benefits of the proposal.
44. For all of the reasons given, I conclude that the appeal should be dismissed.

*G D Jones*

INSPECTOR