

Appeal Decision

Site visit made on 19 April 2016

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 04 August 2016

Appeal Ref: APP/L3245/W/16/3141890

Land Rear of Whixall Social Centre and Bowling Club, Church Lane, Whixall, Whitchurch SY13 2NA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrew Jones Chartland Developments LLP against the decision of Shropshire Council.
 - The application Ref 14/05007/OUT, dated 7 November 2014, was refused by notice dated 6 July 2015.
 - The development proposed is residential development including formation of new access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was submitted in outline with all matters reserved. I have considered the appeal on this basis, with the submitted layout plan being for indicative purposes only.
3. Since the refusal of the planning application, the Council adopted the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan on 17 December 2015. The parties have dealt with this change in the development plan in their statements.
4. The appellant has submitted late evidence bringing my attention to a recent appeal decision¹ dated 16 May 2016 for residential development at Teal Drive, Ellesmere. The parties were invited to make observations on whether the matters in this decision had a bearing on the cases they had made. I have taken these observations into account in coming to my decision.
5. I have subsequently been made aware by the Council that they have lodged a statutory challenge under s288 of the Planning Act against this decision in the High Court. A High Court Order has been granted for the case to proceed to an oral hearing.
6. In addition the Council has since published a revised assessment of Full Objectively Assessment Need (FOAN) and the appellant has again been given

¹ Appeal Ref APP/L3245/W/15/3067596

the opportunity to provide comments. I have had regard to these in my decision.

Main Issues

7. The main issues are:

- whether the proposal would represent a sustainable form of development within the countryside;
- the effect of the development on protected species and habitats.

Reasons

Sustainable development

8. The appeal site forms a 0.23 hectare plot of unmanaged grassland located to the north of Whixall Social Centre and Bowling Green. Policy CS1 of the adopted Shropshire Core Strategy (CS) 2011, sets down a strategic approach, concentrating development in market towns and other key service centres. In terms of housing provision in rural areas the policy aims to provide 'rural rebalance' ensuring rural areas become more sustainable accommodating around 35% of Shropshire's residential development. Such development is to predominantly take place in community hubs and clusters to be identified in the SAMDev. Whixall is not identified as being a community hub or cluster. The appeal site is therefore located outside any settlement identified for residential development in an area defined as countryside.
9. Policy CS4 of the CS allows development outside a community hub or cluster providing that the proposal meets the requirements of CS Policy CS5. Policy CS5 states that new development in the countryside will be strictly controlled in accordance with national policies protecting the countryside. The policy allows for exceptions where a development would improve the sustainability of rural communities by bringing local economic and community benefits. The policy lists a number of development types that would be considered acceptable. However, the appeal proposal would not relate to any of the types of development listed.
10. The appellant has argued that Policy CS5 is not a restrictive policy in that the developments listed as acceptable in the countryside do not form an exclusive list. My attention is brought to a recent appeal decision² where this interpretation was made. I consider that this policy does not exclude other development types, provided that a proposal brings local economic and community benefits and in line with CS Policies CS6 and CS17 would achieve high quality sustainable development which would not erode the character of the countryside. This is a matter which, in relation to the appeal site, I will consider in detail later in this decision.
11. The Framework in paragraph 48 recognises the importance of windfall sites in contributing to housing supply. SAMDev Policy MD3, in addition to the allocated housing sites identified in Policies S1-S18, allows for windfall sites both within settlements and in the countryside, providing that the development would be sustainable in line with the presumption in favour of sustainable

² APP/L3245/W/15/3003171

- development in the Framework. However, as referred to above Whixall is not identified as a sustainable settlement.
12. Paragraph 7 of the Framework states that there are three dimensions to sustainable development, economic, social and environmental. In terms of the economic strand, the construction of the dwellings would support jobs in the local construction industry and the need for building materials would benefit local suppliers. Future residents of the development would spend locally and make use of local services and facilities. Some could work from home. However this is a small development and I am mindful that any contributions it would make in economic terms would be modest.
 13. In terms of the social dimension to sustainability, the Framework advises that this relates to supporting communities by providing a supply of housing to meet the needs of present and future generations and by creating a high quality built environment with accessible services. The development would contribute to and boost the supply of housing in the Borough. Future residents would support local facilities such as the neighbouring social centre and bowling club, as well as shops and the local primary school.
 14. In terms of accessibility to local services, Whixall itself offers very limited facilities. I note that the Social Centre and Bowling Club next to the appeal site provide many social and community events. Whixall Primary School, which I am advised also has a nursery, is approximately 1.2 kilometres from the appeal site. I observed on my site visit that the route to the school is along narrow rural roads with no continuous footpath or lighting. Whilst it may be possible to walk or cycle to the school, I consider that parents with young children would be discouraged from doing so particularly in the winter months and would therefore be more likely to use the private car.
 15. I am informed that there is no public transport serving the site though the North Salop Wheelers Community Bus Service operates in the area. Whilst additional residents would clearly support the viability of this service, from the evidence before me, this provision appears to be very limited with a weekly bus service to each of Market Drayton, Wem and Whitchurch and a fortnightly service to Ellesmere. It would not provide a regular service giving good access to shops, health provision or employment opportunities. Future residents would therefore be largely dependent on the private car to access such services.
 16. The environmental dimension of sustainability relates amongst other things to protecting and enhancing the natural and built environment. The appeal site currently forms an area of overgrown unmanaged grassland. I acknowledge that there is a small derelict brick building and other structures on the site which would be removed should the development proceed and that much of the mature planting on the site boundaries could be retained as part of any development. Whilst the site would not be isolated from development to the south, it is largely surrounded by agricultural and open land on its remaining boundaries. The development of the site would therefore result in encroachment of built form into the countryside, particularly evident when viewed from Church Lane to the north.
 17. The Framework states in paragraph 8 that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously. The appeal proposal would provide economic and social

benefits. However, having regard to the potential number of dwellings on the site, these would be fairly limited. In terms of the environmental gains, the development would result in a negative impact, with built development encroaching in to the countryside and altering the character and appearance of the site and surrounding area.

18. The Council and the appellant have drawn my attention to a number of appeal decisions for housing development outside settlements in the Borough, some of which have been dismissed, some allowed. I have also noted the most recent of these appeal decisions which have been made since the adoption of the SAMDev in December 2015. Whilst I do not have full details of these cases, I note the similarities to the appeal scheme, being located on the edge of existing settlements and I also note the differences. Where housing development has been allowed in the open countryside, the locations of these appear to me to have been considered to be sustainable for a variety of reasons, either because they were close to Key Service Centres³ or in reasonable walking distance to shops and public transport⁴. Accordingly, each development needs to be considered on its own merits and it is on this basis that I have determined this appeal.
19. The appeal site is located in the open countryside outside any settlement identified for residential development. In terms of factors weighing in favour of the development, the proposal would provide social and economic benefits and would contribute to boosting the supply of housing in the Borough. However I have found that the site would not generally be accessible to local services and facilities other than by the use of the private car and that its development would result in harmful encroachment of the countryside.
20. Overall I conclude that the proposal would not represent a sustainable form of development in the countryside and would conflict with CS Policies CS1, CS4, CS5, CS9 and SAMDev Policies MD1 and MD3 which set out the development strategy for the area strictly controlling new development in the countryside. The scheme would also conflict with CS Policies CS6 and CS17 which aim to protect, conserve and enhance the natural environment and local character.

Protected species

21. Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System*, is clear that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of species being present and affected by the development. The Council considers that insufficient information was submitted with the original planning application to assess the impact of the development on statutorily protected species and habitats.
22. The appellant has provided a copy of an ecological assessment recently submitted for a replacement dwelling approximately 100 metres north of the appeal site. This assessment considers 2 ponds close to the appeal site where a small population of Great Crested Newts have been found and appropriate mitigation measures are recommended. However, no such assessment has been provided in this case. Moreover, there is insufficient information before me on whether there would be a breach of the protection afforded to European

³ APP/L3245/W/15/3006489 and APP/L3245/W/16/314946

⁴ APP/L3245/W/15/3134152

Protected Species and the 3 tests that would be considered by the licensing authority as referred to in the above circular.

23. The Council's Ecologist states that the application site meets the trigger point for requiring a bat survey since it may involve development close to, or felling or lopping of mature trees, or removal of hedgerows. I also note that the Ecology Survey submitted for the nearby site found that there were bats in the general area. Whilst no badgers were found in this survey, the Council considers that there is potential for badger setts to be present on or close to the development site.
24. Consequently on the basis of the evidence before me I consider that there is a reasonable likelihood of protected species being present and that there would be a risk that the proposed development would have an adverse impact on such species.
25. A key objective of paragraph 109 of the Framework is to secure net gains in biodiversity. I acknowledge the appellant's submission that bat boxes could be provided to enhance their habitat and that this provision could be secured by an appropriate condition.
26. Notwithstanding the above, I have found that the development would have the potential to cause harm to protected species. The development would therefore conflict with CS Policies CS6 and CS17 which aim to ensure that development does not adversely affect the ecology of the Borough's environmental assets. It would also conflict with the aims of paragraphs 17, 117 and 118 of the Framework to contribute to conserving and enhancing the natural environment.

Other Matters

27. At the commencement of the appeal, there was no dispute between the parties that the Council could demonstrate a 5 year supply of deliverable housing land. However, the appellant has brought my attention to a more recent appeal decision dated 16 May 2016 for a residential development on Teal Drive, Ellesmere. In this case, the Inspector concluded that the Shropshire Core Strategy housing requirement was out of date, that the Council did not have a Full Objectively Assessed Need (FOAN) and therefore could not demonstrate a 5 year supply of deliverable housing land.
28. The Council has subsequently published a revised FOAN. The appellant argues that as this document has not been tested; limited weight should be attached to it in line with advice in Planning Practice Guidance (PPG) paragraph 030.
29. The appellant considers that in line with paragraph 49 of the Framework the relevant policies for the supply of housing should not be considered to be up to date. Paragraph 14 of the Framework is therefore engaged which sets out that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
30. The Council have referred to a further recent decision⁵ for development of land opposite the garage at Welshampton dated 24 May 2016 where the Inspector in paragraph 45 of his decision commented that there was nothing in the evidence in the case that would cause him to take a different view in relation to

⁵ Appeal Ref APP/L3245/W/15/3033490

the Council having a 5 year supply of deliverable sites for housing. He concluded that the relevant Council planning policies for the supply of housing were up to date.

31. Even if I were to conclude on the evidence in this case, that the Council could not demonstrate a 5 year supply of housing land as put forward by the appellant, and therefore that the relevant policies for the supply of housing should not be considered to be up to date, I consider that the adverse impacts I have identified would significantly and demonstrably outweigh the benefits.
32. The appellant has submitted a signed and dated Unilateral Undertaking which would make a financial contribution to the provision of affordable housing in accordance with CS Policy CS11. However, following an Order of the Court of Appeal on 13 May 2016, legal effect has been given to the policy set out in the Written Ministerial Statement of 28 November 2014 that off-site contributions should not be sought from schemes of less than 10 units. This Government advice is a material consideration which is likely to outweigh the requirements of the development plan policy but as I am dismissing the appeal on the substantive issues I have not considered the matter further.

Conclusion

33. I have found that the appeal proposal would not represent sustainable development and that there is the potential for the development to cause harm to protected species.
34. For the reasons given above and having regard to all other matters raised including those put forward by local residents, I dismiss this appeal.

Helen Hockenhull

INSPECTOR