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## Appeal Decision

Hearing held on 26 July 2016

Site visit made on 26 July 2016

**by David Murray BA (Hons) DMS MRTPI**

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

**Decision date: 2<sup>nd</sup> September 2016**

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**Appeal Ref: APP/L3245/W/16/3146986**

**Land to the north of Pulley Lane, Bayston Hill, Shrewsbury, Shropshire, SY3 0DW**

- 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 GH Davies Farms Ltd. against the decision of Shropshire Council.
  - The application Ref. 14/05655/OUT, dated 14 December 2014, was refused by notice dated 21 September 2015.
  - The development proposed is the erection of up to 35 dwellings.
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### Decision

1. The appeal is dismissed.

### Application for costs and preliminary matters

2. At the Hearing an application for partial costs was made by Shropshire Council against GH Davies Farms Ltd. This application is the subject of a separate Decision.
3. The proposal is in outline format with all detailed matters, other than the access to the site from Pulley Lane, reserved for subsequent consideration.
4. At the Hearing a formal Agreement made under s106 of the Act was tabled. It is dated 25 July 2016 and is signed by the main parties. In general terms, the Agreement covers the provision of affordable housing as part of the development in accordance with the Council's Supplementary Planning Document on the Type and Affordability of Housing (adopted 2012).

### Main Issues

5. The main issues are:
    - Whether the proposal accords with the housing strategy set out in the development plan;
    - The effect on a recognised gap between Shrewsbury and Bayston Hill;
    - The effect on the character of the countryside landscape;
    - Whether the Council can demonstrate a 5 year supply of new housing sites (5HLS) to meet a full objectively assessed housing need;
    - Whether the proposal constitutes sustainable development.
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## **Reasons**

### *Background*

6. The appeal site lies on the edge of the built up area of Shrewsbury although the site lies within the parish of Bayston Hill, which includes a village of that name located on higher land to the south. The appeal site extends to about 1.5ha and forms part of a much larger open field currently in cereal production. To the north of the site the land is bounded by the meanders of the Rea Brook, a tributary to the River Severn, while to the east is a relatively new residential development (now named Bestune Way) the majority of which is affordable housing. The site is at a lower level than Pulley Lane, located to the south, and generally falls away towards the brook.
7. It is proposed in outline to develop the site with up to 35 dwellings with access from Pulley Lane. A detailed plan shows that the access to the site would be a 'T' junction with visibility splays along Pulley Lane of 160m to the east and 140m to the west, and with 1m wide 'ladder' markings along the centre of the highway. At the point of access Pulley Lane has a national 60mph speed limit; the 50mph restriction applies from further east on Pulley Lane to near the junction with the A5112.

### *Policy context*

8. The development plan for the area includes the Council's Core Strategy adopted in 2011, and the Site Allocations and Management of Development Plan (SAMDev) adopted in December 2015 following an Examination into its soundness.

### *Accord with the housing strategy*

9. The overall strategy set out in the Core Strategy is for Shropshire to meet its housing needs and make its settlements more sustainable by delivering around 27,500 new homes in the period 2006 - 2026. Specific roles and housing targets are given for Shrewsbury, market towns and other key centres. Further, the Strategy says that rural areas will become more sustainable through a 'rural rebalance' approach which will allow development and investment in rural hubs and community clusters.
10. Within this strategy for sustainable development, the Council says that the appeal site should be regarded as an area of countryside to which Core Strategy policy CS5 should apply and this seeks to strictly control new development in the countryside and limits new housing development to the forms identified in the policy which include housing which has a specific need to be located there. The policy is augmented by policy MD7a of the SAMDev. The Council says that the proposal for mainly open market housing would not meet these criteria. Mrs Howie on behalf of the appellant considers the policy is of a permissive nature and that it does not solely restrict housing development to the specified categories as it refers to the categories as "particularly where" which demonstrates that it is not an exhaustive list.
11. Nevertheless, even though the site lies adjacent to built-up development, as part of an extensive open field it has a simple rural character that is quite different to the urban area. I will deal with the effect on the landscape as a separate issue, but visually and physically I do not regard the appeal site as being on the edge of the rural settlement of Bayston Hill. Further, I am not

- persuaded that the development of the appeal site will clearly improve the sustainability of this rural community as the appellant's agent suggests.
12. I am satisfied that the land should be regarded as countryside to which Policies CS5 / Policy MD7a should apply. When read together and as part of the overall strategy I do not read the policies as supporting the continued development of the village with open market housing. Although the policy was adopted prior to the issue of the National Planning Policy Framework (the Framework) I consider that the policy generally accords with the Framework which has a core principle of recognising the intrinsic character and beauty of the countryside.
  13. Turning now to policy CS4 this allows development in 'Community Hubs' and 'Community Clusters.' Bayston Hill is defined as a 'Community Hub' and SAMDev policy S16.2(ii) indicates a housing guideline of 50-60 additional dwellings over the period to 2026 where development by infilling, groups of houses and the conversions of buildings may be acceptable on suitable sites within the settlement boundary identified on the proposals map. The appeal site is clearly not within the settlement boundary of Bayston Hill which I saw at my site visit relates to the existing developed area of the village further to the south. Moreover, from the evidence put to me regarding new housing in Bayston Hill, the proposed development on the appeal site would be likely to result in the guideline for the parish being significantly exceeded in the plan period as the new housing already completed in the settlement since 2006, and with planning permission as at 2015, already exceeds the guideline for the settlement.
  14. The appellant's agent suggests that it is more appropriate to consider the appeal proposal in the context of being an addition to Shrewsbury rather than Bayston Hill. As such, she says the proposal should be regarded in relation to Core Strategy policy CS2 which sets out an additional provision for approximately 6,500 dwellings by 2026. This guideline is to comprise a combination of redevelopment of brownfield sites, and a range of new greenfield sites, both allocated land and windfall opportunities. Mrs Howie advised me that the delivery of new housing within Shrewsbury has not kept up with the trajectory set out in the Core Strategy and therefore the release of further housing land in the interim is necessary.
  15. The Council states that a five year supply of deliverable housing sites was established at the time that the SAMDev was adopted in December 2015 having been Examined and found sound. Whilst there was a record of under delivery in Shrewsbury from 2006-2013 resulting in a cumulative short fall of about 500 dwellings as at 2015, this under-delivery has been factored into the current five year requirement. Moreover, the phased trajectory approach recognises that there is a lead-in time to planned development taking place. In respect of Shrewsbury, the Council consider that the completions and commitments shown in the 5HLS statement of 2015 of 1,343 had now risen to 1,911 and was in line with the trajectory.
  16. Although Mrs Howie cast doubt over the performance of achieving the housing numbers on the allocated sites in Shrewsbury and queried the continued emergence of windfall sites, in the absence of a comprehensive assessment of the current state of delivery of allocated and windfall sites, I am unable to conclude that there is a material shortage in the delivery of allocated and windfall sites in Shrewsbury, or that the overall guideline in CS2 will not be

achieved, to the extent that other land should be considered now. I am therefore satisfied that there is not an overriding need to consider land outside a defined settlement in the context of SAMDev Policy MD3 at the moment.

17. Overall on this issue, when considered in respect of the relevant policies CS2, CS4, CS5 and MD3 and MD7a, when these policies are read together, I find that the proposal would not accord with the development strategy set out in the development plan as the housing site would involve the development of land in the countryside well beyond the settlement boundary of Bayston Hill. Nor has it been demonstrated that there is an over-riding need for additional housing at the moment as an addition to the built up area of Shrewsbury in the context of policy MD3.

*The effect on the gap*

18. SAMDev Policy S16.2(ii) refers to Bayston Hill and in addition to setting out the guideline for new housing development within the settlement says "the retention of the gap of undeveloped land between Bayston Hill and Meole Brace, Shrewsbury remains an important objective of the strategy for the village." The views expressed by local residents at the hearing and in the written representations made, stressed the importance of the gap to the local community which sees itself as visually and physically separate from Shrewsbury and with a separate identity.
19. At the accompanied site visit, I walked around the appeal site and parts of the gap leading up to Bayston Hill and via public footpaths to the western edge of Shrewsbury, the built up part of which is known locally as Meole Brace. I am satisfied that the appeal site forms part of the undeveloped gap referred to in the policy.
20. It appeared to me that the appeal site at the moment has an open boundary with the remainder of the extensive field. While the northern, eastern and southern boundaries of the site are enclosed by the Brook, the Bestune Way development and Pulley Lane respectively, there are no natural features which enclose this western side of the land. Further, my attention was drawn by local people to the rural edge of the Bestune Way development. While this is likely to have been bounded by a field hedge before construction work started, the development has resulted in high stone gabions which retain the higher raised land levels.
21. The affordable housing scheme may have been a recognised exceptional development in a countryside location, however in visual terms this new development forms a distinctive edge of the existing built up area. While the gap is bisected by the A5 cutting and Pulley Lane itself, the open gap appeared to me to be a discernable and distinct area. Although views of the appeal site are restricted by vegetation along much of Pulley Lane there are local views of the site and the contribution that the land makes to the gap is very apparent from the public footpath that crosses the appeal site.
22. The proposed development would only result in the loss of about 1.5ha of the extensive field but I consider that this loss would be significant in that it would involve a clear and established part of the gap which is clearly seen in local views from public places. As such, I conclude on this issue that the proposal materially conflicts with Policy S16.2(ii).

*Effect on character and Appearance of the area*

23. The appeal site is described generally as an 'urban area' of Shrewsbury in the Shropshire Landscape Character Assessment but it seemed to me that the physical characteristics of the field forming the site were similar to the 'Principal Settled Estate Farmlands', a term which applies to the land to the south of Pulley Lane. Whichever description is applied, the appellant's agent stressed that the land does not have a special landscape designation.
24. From points along Pulley Lane the proposed housing would be seen in gaps in the roadside hedge against the backdrop of the existing edge to the built up area. The fundamental change to the character of the land that the development would cause would also be apparent from the public footpath that crosses the site and the alignment of which the site plan shows would be incorporated into the housing layout. This footpath is part of the Shropshire Way but Mrs Howie pointing out other parts of the built up area of the town where this long distance footpath travels without, in her view, causing detriment to the footpath's setting. Nevertheless, dealing with the present open farmland form I consider that the development would have an imposing and materially harmful visual effect on the character of this landscape.
25. Further away from the site and particularly in views from roads to the south and public footpaths to the west, I conclude that the development proposed would not be noticeable in the landscape as it would be contained in the sloping land form and screened by man-made features such as the Pulley Lane embankment over the A5 cutting. The development proposed would not be prominent on the skyline from wider viewpoints.
26. Overall, on this issue I conclude that the proposed housing development would result in a significant change to the rural landscape and this impact would be moderately harmful to the present character of this area of countryside, contrary to the provisions of Policy CS5, but the area in which this harmful impact would be seen is limited in extent.

*Housing land supply and full objectively assessed need*

27. In order to boost significantly the supply of housing, paragraph 47 of the Framework indicates that Council's should use an evidence base to plan to meet the full objectively assessed needs for market and affordable housing (FOAN). Further, paragraph 49 indicates that relevant policies for the supply of housing should not be considered up to date if a five year supply of deliverable sites cannot be demonstrated.
28. In this case the appellant does not contest that the Council can demonstrate an overall five year supply at the moment but contends that the development plan does not meet the current FOAN. In support of this the appellant refers to appeal decision APP/L3245/W/3067596 where the Inspector allowed 68 houses on land at Teal Drive, Ellesmere, Shropshire in February 2016. After a detailed analysis of the issue relating to housing needs, the Inspector concluded that the Core Strategy housing requirement was now out-of-date and the Council did not have a FOAN; nor a robust housing requirement in line with the Framework and Planning Practice Guidance (PPG). On this basis he concluded that the Council could not demonstrate a five year supply of deliverable sites in accordance with paragraph 47 and that paragraph 14 was engaged. As the

adverse benefits were not judged sufficient to significantly and demonstrably outweigh the substantial benefits he allowed the appeal.

29. This decision has been challenged in the Court by the Council and Mr Justice Ouseley has given the Council permission to proceed. Further, I am advised that, by letter dated 9 August 2016 from the Government Legal Department<sup>1</sup>, it is conceded by the Secretary of State that the Inspector's decision in the Teal Drive case should be quashed although other parties are also involved in the case, and as yet no date had been set for the hearing. Nevertheless, in the light of the Secretary of State's decision to concede that the decision be quashed, I am not able to place any meaningful weight on the precedent said to be created by the APP/L3245/W/3067596 case.
30. Notwithstanding the Teal Drive decision, the Council pointed out that in terms of maintaining a housing supply that is aligned with the FOAN, the Council recognises the need to undertake a development plan review. The Council published a 'Full Objectively Assessed Housing Need Report' on the 4 July 2016. Although Mrs Howie considered that inadequate consideration had been given in the Report to address the fundamental problems with the affordability of housing or take full account of house prices and other market signals, I am clear that the proper forum in the plan-led system for such matters is the formal consultation and examination process in the Development Plan Review.
31. I have also had regard to the many other appeal decisions put forward by the main parties but I do not consider that these involve similar circumstances as the present appeal or are up to date in terms of the probable result of the legal challenge of the Teal Drive case mentioned above.
32. Overall on this issue I find that the evidence put forward at the hearing does not provide a clear case to establish that the Council cannot demonstrate a five year supply of housing sites in accordance with the strategic requirements of the current development plan. I conclude that policies in the development plan that restrict the supply of housing land are not to be considered out of date and therefore the second part of paragraph 49 of the Framework is not engaged in this case.

#### *Planning balance*

33. The proposal needs to be considered in the context that the Framework seeks to facilitate sustainable development and boost significantly the supply of housing. Within this, the Framework recognises that the economic, social and environmental dimensions to sustainable development have to be considered together as they are mutually dependent.
34. Bringing together my conclusions on the main issues, I have found that the proposed housing development would not accord with the development strategy for the parish of Bayston Hill as the site lies well away from the settlement and in the countryside. Nor has it been established that there is a material shortfall in the implementation of the development plan for new housing in and around Shrewsbury itself at the moment to justify residential development on the appeal site as an exception.
35. In addition, the appeal site forms part of the recognised open gap between Bayston Hill and Meole Brace, and its development would materially erode the

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<sup>1</sup> Ref. Z1615973/ASM/B5

visual and physical qualities of the gap contrary to SAMDev Policy S16.2(ii). Housing development on this part of the present open field would also have a moderately harmful effect on the local countryside landscape but the area of this harm would be limited in extent.

36. I have also found that the evidence submitted on this appeal does not clearly override the Council's claim that it is able to demonstrate a five year supply of deliverable sites at the moment to meet the full objectively assessed need, bearing in mind that the Secretary of State has conceded that the Teal Drive decision should be quashed.
37. These adverse effects have to be balanced with the benefits. I recognise that the proposed housing development would contribute in a meaningful way towards meeting the strategic housing needs at the moment and there is a formal agreement in place to ensure that affordable housing would be provided on site as part of the development in accordance with the Council's adopted policy on such provision. The construction of the houses and the activity of the people that would live there subsequently would also be likely to support economic activity which would be likely to benefit trade and service provision in the wider area.
38. Nevertheless, I find that the environmental cost of the proposal would be considerable and the identified adverse effects, particular the erosion of the recognised gap, are not outweighed by the benefits to a significant degree and as such I find that the proposal does not constitute sustainable development as defined by the Framework. Moreover, the development plan is not out of date and the conflict with it that I have identified is not outweighed by any other material consideration.

**Overall conclusion**

39. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mrs H Howie, MA (Hons) MCD, MRTPI. Planning Consultant, Berrys.

Mr Davies GH Davies Farms.

### FOR THE LOCAL PLANNING AUTHORITY:

Mr M Lynch, MRTPI Planning Consultant, Shrewsbury Council.

Mr E West, MCD, MRTPI. Principal Planning Officer, Policy Team, Shrewsbury Council.

### INTERESTED PERSONS:

Mrs C Higgins Parish Clerk, Bayston Hill Parish Council

Mr Goodman Local resident

Mrs Hitchcock Local resident

Mrs S Merricks Local resident

Mr A Goldsmith Local resident

Ms J Kumiega Local resident

Mr R Mayer Local resident and Shropshire Wildlife Trust

## **DOCUMENTS**

- 1 S106 Agreement dated 25 July 2016 and signed by both main parties.
- 2 Statement of Common Ground signed by both main parties.
3. Appeal decision APP/ L3245/W/15/3067596 (the Teal Drive Decision) (Mrs Howie).
- 4 Legal Challenge to Teal Drive decision as submitted by Shropshire Council and related legal documents including Application for permission to proceed (dated 13 July 2016 (Shropshire Council)).
- 5 Extract from Shrewsbury and Atcham Landscape Sensitivity and Capacity Study (2007).



- 6 Photographs and maps as referred to by Mrs Hitchcock.
- 7 Extract from Shropshire Council - Five Year Housing Land Supply Statement (2015).
- 8 Shropshire Council - Full Objectively Assessed Housing Need Report (4<sup>th</sup> July 2016) and Accompanying Note July 2016.
- 9 Council's written application for partial costs.