
Appeal Decision

Site visit made on 27 September 2016

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 17 November 2016

Appeal Ref: APP/L3245/W/16/3152344

Land in Middleton, Ludlow, Shropshire SY8 3 EP

- 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 Mark Wiggin against the decision of Shropshire Council.
 - The application Ref 14/02442/OUT, dated 20 May 2014, was refused by notice dated 14 December 2015.
 - The development proposed is erection of 6 No open market dwellings and 7 No 2 bed dwellings to rent, traffic calming and estate road.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mark Wiggin against Shropshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline with all matters reserved for subsequent approval.
 4. The Council's decision alleges conflicts with the South Shropshire Local Plan, which has now been superseded by the adoption of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) and no longer forms part of the statutory development plan. Both parties have made submissions as to the application of the relevant SAMDev policies to the appeal proposal and there is, therefore, no disadvantage to either party in my considering the proposal on the basis of those policies and the relevant policies in the adopted Shropshire Core Strategy (Core Strategy) which also forms part of the development plan for the Council's area.
 5. The appellant has referred to an appeal decision concerning a site at Teal Drive in Ellesmere (APP/L3245/W/15/3067596) in which the Inspector concluded that the Council was unable to demonstrate a 5 year forward Housing Land Supply (HLS) as required by paragraph 49 of the National Planning Policy Framework (Framework). The Council lodged a legal challenge to that decision and it has subsequently been quashed in the High Court. I have no other evidence before me that the Council is unable to demonstrate a 5 year HLS and have, therefore, considered the appeal on the basis that it is able to do so.
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Main Issues

6. The main issues in the appeal are: (a) whether the site is a suitable location for residential development having regard to the Council's approved spatial strategy, and (b) whether sufficient information has been made available to demonstrate that the proposal would not give rise to unacceptable effects with regard to the risk of flooding.

Reasons

Suitability of the site

7. The spatial strategy underpinning the Core Strategy steers the majority of new housing development to sites in Shrewsbury, the market towns, other key centres and named villages which have been designated as Community Hubs or Community Clusters. Policy CS4 states that, in the rural areas, communities will become more sustainable by focusing investment in designated hubs and clusters and not allowing development outside of these settlements unless it meets Policy CS5.
8. The appellant is critical of the spatial strategy and questions whether it is capable of meeting the district's development needs. However, the strategy is comprised in the two parts of the Council's Local Development Framework which have been subject to examination and been found to be sound. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 (2004 Act) the appeal must be determined in accordance with any relevant policies of the adopted development plan until other material considerations indicate otherwise.
9. The Core Strategy identifies Ludlow as a market town and the focus for the development of services and facilities for its wider hinterland with a balance between employment and housing growth. Middleton has not been designated either as a community hub or community cluster. It has, therefore, to be treated as being within the open countryside and subject to Core Strategy Policy CS5 which states that new development will be strictly controlled in accordance with national planning policies protecting the countryside other than in a limited number of circumstances where new development will be permitted.
10. The appellant questions the basis on which community hubs and clusters were designated and argues that these designations, together with the site allocations made in the SAMDev plan, provide insufficient capacity to meet the level of development proposed in the rural areas. The SAMDev Examining Inspector commented on the heavy reliance on windfall sites. However, she found the Council's expectation that 35% of the overall residential development will be provided in rural areas to be realistic, given the past record of completions and that some 67% of the assumed windfall dwellings would be needed to achieve the development guidelines for the designated hubs and clusters. She also concluded that Council's approach of relying on windfalls rather than site allocations in the hubs and clusters is consistent with the higher proportion of windfall sites needed in the rural areas. The Inspector found the SAMDev Plan to be sound and I must consider the proposal in light of the relevant policies of that recently adopted plan.

11. The relevant national policy to which Policy CS5 defers is mainly comprised in paragraph 55 of the Framework. Due to the site's location within an existing village the proposal would not result in new isolated homes in the countryside and would not conflict with paragraph 55 in that regard. The policy states that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Middleton has no services or facilities of its own and the future occupiers of the proposed dwellings would need to go to Ludlow, some 4 kilometres (km) away, for the majority of the essential services that they would need and to travel over 3km to the nearest convenience store. Children from Middleton are transported by bus to the primary school in Bitterley but, with this exception, those occupying the proposed development would be dependent on car journeys to meet most of their everyday needs.
12. Paragraph 55 advises that, where there are groups of smaller settlements, development in one village may support services in a village nearby and the proposal could help to support the long term sustainability of the school in Bitterley. However, the absence of shops and other services accessible by foot or public transport weighs heavily against the proposal having regard to paragraph 55's key objective of promoting sustainable development in rural areas. Accordingly, I find that the appeal proposal is not supported by paragraph 55 and, as it would not fall within any of the categories of development which are permitted under Policy CS5, that it would conflict with that policy.
13. The proposal would conflict with SAMDev Policy MD7a which states a strong presumption against new market housing outside of Shrewsbury, the market towns, key centres and community hubs and clusters. The exceptions to that general presumption include exception site dwellings, residential conversions, essential housing for rural workers and replacement dwellings. Although the proposal would provide some homes for rent it has not been promoted as an exceptions site and the market housing component would not fit within any of the listed exceptions.
14. SAMDev Policy MD3 states that, in addition to supporting the development of the allocated sites set out in the settlement policies, planning permission will be granted for other sustainable housing development having regard to other policies of the Local Plan, particularly Policies CS2, CS3, CS4, CS5, MD1 and MD7a. The explanatory text, at paragraph 3.18 of the Plan, notes the importance of windfall development both within settlements and in the countryside and on both brownfield and greenfield sites. The policy does not give unqualified support for windfall sites in the open countryside but the words "*having regard to*" should not be taken to mean that a proposal must be in full compliance with other policies of the Plan. In my view, this part of the MD3 requires the decision maker to give consideration to the degree of consistency or conflict that the proposal would have with other relevant policies.
15. In this case I find that the proposal would conflict with Core Strategy Policy CS5 and with CS4 which presumes against development outside of the designated hubs and clusters unless it meets the exceptions within Policy CS5. I have also found that the proposal would be contrary to the provisions of SAMDev Policy MD7a. Policies CS1 and MD1 are concerned with the overall spatial strategy and settlement hierarchy; the proposal would clearly not

- support the achievement of that strategy and would be inconsistent with those policies.
16. Given the extent of conflict with the various policies which are cross referenced in SAMDev Policy MD3 the proposal would not derive any support from that policy. Due to the absence of local amenities and facilities in Middleton and the poor accessibility to essential services which future occupiers of the proposed dwellings would have, the proposal would not constitute sustainable housing development and would not be consistent with Policy MD3 in this regard.
 17. The appellant has referred to an appeal decision on a large windfall site in Ludlow (APP/L3245/W/15/3001117) in which the Inspector found that SAMDev Policy MD3 gave strong support to a proposed development for up to 215 dwellings. It is clear from my reading of that decision that the site, which is on the edge of Ludlow and is both physically and visually associated with the urban area of that market town, is in a much more sustainable location than the current appeal site. The West Felton appeal decision also referred to by the appellant (APP/L3245/W/15/3003171), was issued prior to the adoption of the SAMDev Plan and was determined in a different policy context. The appeal site in that case is close to a convenience store, public house and other businesses, with schools within walking distance, and set in a village in which the Inspector found there to be a thriving local community with numerous activities taking place in a number of locations. None of those locational sustainability credentials apply to the site in the current appeal.
 18. In the Knowbury appeal (APP/L3245/W/16/3144703, the Inspector found that the development would regenerate an unused brownfield site and improve the character of the countryside. The site also had access to some services within the village itself and was found not to be completely isolated from facilities. The development of the greenfield site in Middleton would bring no such benefits and the future residents of the proposed dwellings would be isolated from the majority of the facilities and services required to meet their everyday needs. The circumstance of the proposal and site in the Craven Arms decision (APP/L3245/W/16/3143403) relied upon by the appellant are also quite different to those in the current appeal.
 19. For the reasons set out above I find that the site would not be a suitable and sustainable location for the proposed residential development and that it would give rise to conflict with Core Strategy Policies CS1, CS4 and CS5 and with SAMDev Policies MD3 and MD7a and with the development plan as a whole. In accordance with s38(6) of the 2004 Act and paragraph 11 of the Framework planning permission should not therefore be granted unless other material considerations support such a decision contrary to the provisions of the development plan.

Flood Risk

20. The appellant's Flood Risk Assessment (FRA) (October 2014) noted two recent flooding events within the vicinity of the site and that the site was affected by flooding in the 2008 event. Having considered the possible causes of those events the FRA suggested that surface water and fluvial drainage to Dogditch Brook to the south is interrupted by the remains of a former railway embankment, with this embankment forming a barrier to flood flow and directing it west towards the site and the adjacent residential estates. The FRA proposed that new culverts be constructed beneath the former embankment to

'reinstate' the former flow paths to the brook and concluded, at paragraphs 3.8 and 4.2 that, if the flood flow was able to avoid that barrier, the probability of flooding of the site and the adjacent residential estates would be very much reduced. Point 9 of the FRA Summary (Section 5) stated that flood risk to the appeal site has been increased by the presence of the former embankment and that, with the proposed mitigation in place, the development would be in accordance with the flood risk provisions of the Framework. It is clear that the proposed mitigation is required in order to render the development acceptable in terms of flood risk, albeit that the proposed works could also help to alleviate an existing risk to adjacent dwellings in Westview and Ledwyche Close.

21. The second consultation response from the Council's Flood and Water Management (FWM) officer, dated 21 January 2015, was issued after the FRA had been received and considered by the Council. The FWM officer's response acknowledged that the FRA identified potential mitigation measures to alleviate flooding risk to existing and proposed developments. However, it clearly stated a requirement for additional modelling to ensure that flooding to properties to the south of Dogditch Brook and Ledwyche Brook would not be made worse as a result of the suggested mitigation works and for confirmation that the proposals identified in the FRA are a realistic proposition regarding land ownership, ditch depths and impact on the fields where the ditches would be installed.
22. Confirmation as to land ownership was given on 23 January 2015 in emails to the Council from the appellant and his agent. However, I have seen no evidence that the additional modelling requested by the FWM officer has been carried out or that the information needed to demonstrate that the proposed mitigation is realistic in terms of ditch depths and impact on the fields where the proposed ditches would be installed has been submitted.
23. The additional modelling and assessment requested by the officer is required to provide confirmation that the mitigation proposals represent a realistic solution to the significant flooding risk that had been identified in the FRA. That additional information would need to be available and be assessed prior to the grant of outline permission in order to confirm that there would be no residual risk to the site and adjacent properties and no increased risk of flooding elsewhere. It is not appropriate that these matters be left to be dealt with by means of a planning condition or reserved matters application.
24. As that additional information has not been provided I am unable to conclude that there would be no residual flood risk. Accordingly I find that the proposal would conflict with Core Strategy Policy CS18, which requires that all development is designed to be safe with regard to the risk of flooding, and with the provisions of paragraphs 101-103 of the Framework and its objectives of steering new development to areas with the lowest probability of flooding.

Other Matters

25. I acknowledge that the proposed flood mitigation works could be of benefit in terms of alleviating the existing flood risk to the neighbouring residential estates and helping to avoid a repeat of recent flooding events. However, as it has not been demonstrated that those works would achieve their intended purpose without increasing risks elsewhere, I am unable to give that claimed benefit any weight. The appellant contends that the proposal would be of benefit by introducing traffic calming on the main road through the village but

the mini roundabout proposed is not acceptable to the Local Highway Authority and no alternative proposals have been put forward.

26. A Unilateral Undertaking has been submitted which includes the provision of affordable housing in accordance with the prevailing rate as defined in the Council's Type and Affordability of Housing Supplementary Planning Document (SPD). At the 20% rate specified in the current SPD that commitment would secure the provision of the equivalent of 2.6 dwellings through on-site provision and/ or financial contributions to off-site provision.
27. The provision of 13 new homes would make a useful contribution to meeting overall housing needs in Shropshire and would provide a social benefit in that respect. However, only a small proportion of those new houses would be affordable homes and the evidence from the Parish Council is that the form of housing proposed would not be well matched to locally identified needs; the weight to be given to that contribution is reduced by those considerations. The proposal would provide economic benefits in terms of the investment and employment involved in its construction, New Homes Bonus and the future expenditure of the occupiers of the properties in good and services.
28. Whilst these social and economic benefits must be given some weight I do not consider them sufficient to override the conflict with the development plan that I have identified.

Conclusions

29. For the reasons set out above and having regard to all matters raised I conclude that the appeal should be dismissed.

Paul Singleton

INSPECTOR