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## Appeal Decision

Site visit made on 6 December 2016

**by Jonathan Tudor BA (Hons), Solicitor (non-practising)**

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

**Decision date: 31 January 2017**

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**Appeal Ref: APP/L3245/W/16/3157466**

**Land east of Bridgnorth Road, Highley, Shropshire WV16 6BX**

- 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 Maiden (FH Maiden & Sons) against the decision of Shropshire Council.
  - The application Ref15/03170/OUT, dated 23 July 2015, was refused by notice dated 1 March 2016.
  - The development proposed is residential development to include access, layout and scale on land east of Bridgnorth Road.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The proposal is in outline only with approval sought for access, layout and scale but with appearance and landscaping reserved. I have considered the appeal on that basis.

### Main Issues

3. The main issue is whether the proposed development would be in a suitable location, given that the appeal site lies outside the development boundary.

### Reasons

4. The appeal proposal is to erect nine bungalows on land to the east of Bridgnorth Road. The site is pasture land and although bounded by residential housing to the west and south it is outside, albeit adjacent to, the development boundary for the village of Highley. Further open countryside lies to the north and east. It is accessed from a track, which is also a public bridleway, off the B4555.
5. There is an up-to-date Shropshire Council Site Allocations and Management of Development (SAMDev) Plan<sup>1</sup> with, by virtue of Paragraph 15 of the National Planning Policy Framework (the Framework), policies based upon and reflecting the presumption in favour of sustainable development. It is designed to help to deliver the vision and objectives of the Shropshire Local Development Framework: Adopted Core Strategy (CS).<sup>2</sup> Amongst other things, the SAMDev

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<sup>1</sup> Adopted 17 December 2015

<sup>2</sup> March 2011

- aims to achieve a 'rural rebalance' to make rural areas more sustainable as set out in CS Policies CS4 and CS5.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says that proposals must be determined in accordance with the development plan unless material considerations indicate otherwise.<sup>3</sup> Paragraph 14 of the Framework states, therefore, that proposals which are in accord with the development plan should be approved without delay. However, the proposed development conflicts with the development plan because it is outside the development boundary for Highley.
  7. Policy CS1 of the CS adopts a strategic approach which focusses development on Shrewsbury, market towns and other key centres as well as rural areas. It is a hierarchical settlement strategy, a methodology common to many local plans. Whilst Highley is identified as a 'key centre' in Policy CS3 of the CS, the appeal site is outside the development boundary as defined in Policy S9 of the SAMDev and is, therefore, open countryside. Policy CS3 says that in market towns and other key centres balanced housing and employment development will take place within development boundaries and on sites allocated for development.
  8. Development is strictly controlled in the countryside by Policy CS5 of the CS and Policy MD7a of the SAMDev and limited to, for example, dwellings for essential rural workers, market residential conversions and affordable housing to meet a local need, none of which are applicable in this appeal.
  9. The Council advises that it has a 5.97 year housing land supply and has recently undertaken a Full Objective Assessment of Housing Need (FOAHN) as part of an upcoming Local Plan Review for the period 2016-2036. It shows that the current housing requirement set out in policy CS1 of the CS continues to meet defined needs and is up-to-date against the requirements of the Framework, a position that has not been disputed.
  10. Policy S9 of the SAMDev also details the strategy for Highley setting out a plan for its development. It anticipates some 200 dwellings being provided in the plan period of 2006 to 2026. Some have already been delivered whilst others are planned via an allocated housing site at Rhea Hall and developments at Jubilee Drive and the Cedars, alongside additional small-scale infill and windfall development within the development boundary.
  11. Notwithstanding the restrictions on development in the countryside, the appellant holds that Policy MD3 of the SAMDev provides some latitude and allows for other sustainable development both within settlements and in the countryside on greenfield sites. However, MD3 says that such windfall opportunities must still have regard to Local Plan Policies, including CS5 and MD7a, where a conflict has already been established.
  12. Point 2 of Policy MD3 states that the settlement housing guideline is a significant policy consideration. Point 3 makes clear that it is only where that housing guideline appears unlikely to be met that additional sites outside the settlement development boundary may be acceptable.

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<sup>3</sup> And s70(2) of the Town and Country Planning Act 1990 Paragraph and Paragraph 11 National Planning Policy Framework

13. The Council advise that the latest available housing figures for Highley of 86 completions, 92 commitments and a recent consent for 30 dwellings give a total of about 208 dwellings for the plan period to 2026 compared with the guideline figure of 200 dwellings. Therefore, the settlement housing guideline appears likely to be met. On that basis the windfall provision in Policy MD3 does not take effect.
14. Furthermore, whilst the housing guideline figure does not represent a maximum or a cap, the Council states that there is no reason to suppose that more infill and windfall development sites may not become available within the development boundary. In addition, the appellant accepts that the Council can demonstrate a five year housing land supply. In that context, there is not sufficient justification for a proposal beyond the development boundary on a greenfield site.
15. The appellant refers to point 3.18 of the explanatory text of Policy M3, which does refer to windfall development on other sites beyond those identified in Policy S9, both within settlements and in the countryside. However, that is still subject to the stated content of the Policy, as already described, and the explanation re-emphasises that such decisions should still have regard to the policies of the Local Plan and the settlement housing guidelines.
16. The appellant accepts that the proposal is in conflict with Policy CS5 because it is outside the settlement boundary but says that is outweighed by the need to boost the supply of housing, as set out in Paragraph 47 of the Framework. However, the method of delivery propounded by the Framework is through the local plan and as there is a demonstrable five year housing land supply, the conflict with the development plan, acknowledged by the appellant, is not outweighed by the need to boost housing supply.
17. Much reliance is placed by the appellant on a previous apparently identical planning application for the same site.<sup>4</sup> It was refused on appeal because of the lack of an affordable housing contribution. As such a contribution is now offered, though the Council accepts that it is no longer required, the appellant maintains that the appeal should be allowed. The previous appeal is also cited as confirming that the development was acceptable in principle and sustainable.
18. However, the SAMDev was not part of the development plan at the time of that appeal decision, which was in part determined on saved policies from the now replaced Bridgnorth District Council Local Plan. The SAMDev performs an important role in allocating specific sites and providing policies for future development, putting flesh on the strategic policies of the CS. Therefore, policies for the supply of housing are now comprehensive and up-to-date in contrast to the position at the time of the previous appeal.
19. The appellant suggests that the then emerging SAMDev would always have been given significant weight in that decision. However, the examining Inspector's report on the SAMDev was not published until October 2015 and at the time of the decision in July 2015, it could not, therefore, have been given the full weight that it now commands as part of the adopted development plan. Therefore, the policy context has materially changed since that previous decision was issued.

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<sup>4</sup> APP/L3245/W/14/3002052

20. The appellant also refers to a number of appeal decisions, including sites at Park View, Broseley and Teal Drive, Ellesmere.<sup>5</sup> As the parties are aware, the Teal Drive appeal decision has recently been quashed in the High Court.<sup>6</sup> Many of those decisions are in part predicated on questions about whether the Council could evidence a five year housing land supply or a sufficiently clear one. That position has changed as the Council can now demonstrate a five year housing land supply.
21. A number of recent appeal decisions, referred to by the Council, have found that proposals outside development plan boundaries conflict with the SAMDev and the CS, which has been a factor in the dismissal of some of those appeals.<sup>7</sup> I am more persuaded by the policy analysis of the hierarchical settlement strategy as a delivery mechanism for sustainable development in those recent appeal decisions than in the decisions referred to by the appellant. In any event, I have decided the appeal on its own merits.
22. Given a housing land supply of 5.97 years and that the housing settlement guideline for Highley is due to be exceeded, I find that there is no substantive basis for departing from the development plan to allow a proposal on a greenfield site. Therefore, I conclude that the proposal would not be in a suitable location, given that it is outside the development boundary.
23. It follows that it would conflict with policies CS3, CS4 and CS5 of the CS, which amongst other things seek to manage development in rural areas in a strategic manner by focussing it in market towns and other key centres, community hubs and clusters and only allow development outside settlements in limited circumstances.
24. The proposal would also be contrary to policies MD1, MD3, MD7a and S9 of the SAMDev, insofar as they deliver that strategic approach seeking to respect development boundaries and limiting new dwellings in the countryside to exceptions.

### **Other Matters**

25. The appellant has submitted a Unilateral Undertaking to make a contribution towards affordable housing. The Council considers that in light of the Court of Appeal judgement of the 11 May 2016,<sup>8</sup> which restored the status of the Written Ministerial Statement of 28 November 2014, an affordable housing contribution would not be due. I agree with that view. The appellant maintains that their continued commitment to making a contribution should be considered. I give that some weight but it is not sufficient to outweigh the conflict with the development plan that I have identified and does not lead me to alter my decision.
26. In addition to the matters already dealt with, the Parish Council and some local residents have expressed concerns including the location of the development in an area of high landscape value, incursion into the countryside, poor access, highway safety, effects on the bridleway, pressure on local amenities, loss of

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<sup>5</sup> APP/L3245/W/15/3006489 & APP/L3245/W/15/3067596

<sup>6</sup> Shropshire Council v SSCLG & BDW Trading Ltd trading as David Wilson Homes (Mercia) [2016] EWHC 2973 (Admin)

<sup>7</sup> APP/L3245/W/15/3035687, APP/L3245/W15/3127978, APP/L3245/W/15/3133018, APP/L3245/W/15/3136404, APP/L3425/W/15/3134229

<sup>8</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

privacy, overlooking, water and sewerage arrangements, poor employment opportunities and limited transport services. Whilst I have considered those matters, I note that the particular concerns are not shared by the Council, and in any event, I have dismissed the appeal on other grounds.

### **Conclusion**

27. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Jonathan Tudor*

INSPECTOR