
Appeal Decision

Site visit made on 20 November 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 12th December 2017

Appeal Ref: APP/L3245/W/17/3180278

12 Pound Lane From Track at Gypsy Coppice to Junction With Shrewsbury Road, Arscott, Pontesbury SY5 0XP

- 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 Ian Groves against the decision of Shropshire Council.
 - The application Ref 17/01510/OUT, dated 24 March 2017, was refused by notice dated 9 June 2017.
 - The development proposed is the erection a single residential dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with all matters reserved. I have dealt with the appeal on this basis.
3. Both parties have had the opportunity to comment on the recent judgement of *Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)*. I will address this letter in this decision.

Main Issues

4. The main issues are whether the proposal accords with the Council's housing strategy, with particular regard to its location, and its effect on biodiversity.

Reasons

Housing Strategy

5. Policy CS1 of the Shropshire Council Adopted Core Strategy (CS) 2011 sets a target of delivering a minimum of 27,500 dwellings over the plan period of 2006-2026 with 35% of these being within the rural area, provided through a sustainable "rural rebalance" approach. The policy goes on to state that development in rural areas will be predominantly in Community Hubs and Community Clusters.
6. Policy S10 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015 identifies Ludlow as the largest market town in southern Shropshire and that new housing development will be delivered primarily on the allocated housing sites east of the A49 alongside additional

infill and windfall development within the town's development boundary. The proposal does not fall within the settlement boundary of Ludlow.

7. Policy MD1 of the SAMDev identifies those settlements that fall within a Community Hub or Community Cluster. The appeal site lies within the hamlet of Arscott, which comprises a small collection of sporadic dwellings and farmsteads. Arscott is approximately 1.5 miles from the nearest Community Cluster settlement of Hanwood and Hanwood Bank. Accordingly, for the purposes of the development plan, the appeal site is considered to be located within the open countryside.
8. Policy CS5 of the CS allows new development in the open countryside only where it maintains and enhances countryside vitality and character and improves the sustainability of rural communities. It also provides a list of particular development that it relates to including dwellings for essential countryside workers and conversion of rural buildings. There is no evidence before me to suggest that the proposal falls within any of the development listed in Policy CS5.
9. In support of Policy CS5, Policy MD7a of the SAMDev states that new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Centres and Community Hubs and Clusters. It sets out various types of residential development that would be permitted in the countryside, including exception site dwellings, residential conversions and essential rural workers' dwellings. As the proposal is for an open market dwelling in the open countryside it would fail to satisfy Policies CS5 and MD7a.
10. The Council confirms that they have a five year supply of deliverable housing land. The appellants state that some of the sites with permission have since expired. However, there is no substantive evidence to support this assertion. Therefore, based on the evidence before me, I am satisfied that the Council do have a five year supply of deliverable housing land and paragraph 49 of the National Planning Policy Framework (the Framework) is not engaged. The SAMDev has relatively recently been adopted and found to be in accordance with the Framework. In addition, I find no inconsistency between the relevant policies within the CS and the Framework. The development plan has policies that are relevant to the supply and location of housing against which the appeal proposal can be considered. Accordingly, the relevant policies are considered to be up to date and consistent with the Framework. As such, bullet point 4 of paragraph 14 of the Framework is also not engaged.
11. The proposal is for an open market dwelling outside any settlement identified for housing growth. I find therefore that the proposal would fail to accord with the Council's housing strategy, as embodied in Policies CS1 and CS5 of the CS and Policies MD1, MD7a and S10 of the SAMDev. Furthermore, it would fail to accord with the housing supply objectives of the Framework.

Biodiversity

12. Paragraph 99 of Circular 06/2005 'Biodiversity and Geological Conservation-statutory obligations and their impact within the planning system' ODPM states that developers should not be required to carry out surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in

place, through conditions and/or planning obligations, before the permission is granted.

13. The Council contend that the proposal has the potential to affect Great Crested Newts due to the presence of a pond on the site and three other ponds between 130m and 150m of the site. Accordingly, there is a reasonable likelihood of the protected species being present and affected by the development. As such, I consider that an Ecological Assessment is required. No such assessment has been submitted.
14. I note the appellant's contention that an assessment could be the subject of a condition if I was minded to allow the appeal. However, such conditions should only be imposed in exceptional circumstances. There is no evidence before me to suggest that there are any such exceptional circumstances in this instance.
15. I find therefore that in the absence of an ecological assessment of the appeal site it is not possible to ascertain the effect the dwelling would have on protected species. Therefore, the proposal would fail to comply with Policy CS17 of the CS, which, amongst other matters, seeks to protect the ecological value of the area. Similarly, it would fail to accord with paragraph 109 of the Framework, which states that development should conserve and enhance biodiversity.

Other Matters

16. In their reason for refusal the Council cite Policy MD13 of the SAMDev. This policy relates to the historic environment. There is no evidence before me that the proposal would have any effect on the historic environment and therefore I do not consider this policy to be relevant.
17. I appreciate the appellant's personal circumstances and the reason for the dwelling in order to care for his father and to stay in their local community. However, there is no substantive evidence before me to demonstrate that these represent exceptional circumstances that would outweigh the harm the proposal would have by virtue of undermining the Council's housing strategy and the potential harm it would have on biodiversity.
18. I have had regard to the dwellings granted planning permission referred to me by the appellant. There is no evidence before me regarding the details of these schemes or whether the policy context in which they were considered was reflective of the current policy context. Accordingly, I can only attribute these matters very limited weight.
19. I have also had regard to the concerns raised regarding the access to the site. However, there is no substantive evidence before me that the proposal would result in any severe harm to highway safety.

Conclusion

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The statutory primacy of the development plan is reinforced in paragraphs 196 and 210 of the Framework and its first core principle is that planning should... "be genuinely plan-led."

21. The proposal would provide some economic benefit, albeit limited, by creating construction jobs and using local materials. Furthermore, it would make a positive contribution, again albeit limited, to the supply of housing and would likely be developed in the short-term. However, as I have found that the development plan is not absent or silent, or the relevant policies out of date, the presumption in favour of sustainable development in paragraph 14 of the Framework does not apply. Whilst these benefits weigh in favour of the proposal, I do not find that, individually or cumulatively, they outweigh the harm it would have by virtue of it undermining the Council's housing strategy.
22. I have had regard to the recent judgment of 15 November 2017, concerning the interpretation of the term "isolated homes in the countryside" within paragraph 55 of the Framework. However, at that instance the Council could not demonstrate a five year supply of deliverable housing land and accordingly bullet point 4 of paragraph 14 of the Framework was engaged. As I have found that the Council can demonstrate a five year supply of deliverable housing land and bullet point 4 of paragraph 14 of the Framework is not engaged, in this instance, whether or not the proposal would be considered an isolated dwelling is not relevant.
23. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR