
Appeal Decision

Site visit made on 11 May 2015

by **Anne Jordan BA (Hons) MRTPI**

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

Decision date: 24th June 2015

Appeal Ref: APP/L3245/W/15/3005642

Land west of Mountfield, Dovaston, Oswestry, Shropshire

- 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 K C Brown against the decision of Shropshire Council.
 - The application Ref 14/02634/OUT, dated 12 June 2014, was refused by notice dated 28 November 2014.
 - The development proposed is outline application for a single detached residential dwelling and garage to include means of access.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is made in outline form with all matters, other than access, reserved.

Main Issues

3. The main issues for this appeal are:
 - Whether a 5 year supply of deliverable housing sites can be demonstrated;
 - The effect of the proposal on the character and appearance of the countryside;
 - Whether the proposal makes adequate provision for protected species; and
 - If any harm arises in respect of this, whether it is outweighed by housing land supply or other considerations.

Reasons

Housing Land Supply

4. The parties dispute whether a five year supply of housing is available. The Council have put forward policies from the *Shropshire Adopted Core Strategy* (Core Strategy), the *Oswestry Borough Local Plan (1999)* and the emerging *Shropshire Site Allocations and Management of Development Document* (SAMDEV).
5. Policies CS4 and CS5 of the CS seek to direct rural development to within "Community Hubs and Clusters" at locations and at a scale to be identified in

the SAMDEV, and to restrict development outside them. The SAMDEV will therefore give effect to the Core Strategy. It is, at present, under examination and the Council refer to significant unresolved objections. Although it is at an advanced stage I cannot be sure that the policies and site allocations within it will be adopted in their current form. From the evidence put before me I therefore have no firm basis for reaching the conclusion that the Council has demonstrated a five year housing land supply. It would also be inappropriate to prejudge the findings of the Inspector examining the SAMDEV.

6. Policy H5 of the Local Plan identifies locations for housing development. Policy CS4 seeks to direct new development, including housing, to identified settlements or groups of settlements in the rural area. Furthermore, with the exception of specific categories of development to meet local needs, CS5 seeks to prevent new residential development within open countryside. Having regard to relevant case law¹, I consider that Policy H5 of the Local Plan and Policies CS4 and CS5 of the Core Strategy are policies which make provision for the supply of housing. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered up to date if a five year supply of housing sites cannot be demonstrated.
7. The Framework also advises that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 states that where relevant policies are out of date, planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits. In the absence of a demonstrable five year housing land supply the modest contribution the development would make to housing in the County weighs in favour of the proposal.

Character and Appearance of the Countryside

8. The appeal site lies on the edge of the village, immediately adjacent to the existing dwelling and opposite a large, recently constructed bungalow. It comprises part of an open field which provides a natural break between Dovaston and Mountfield, a cluster of properties which lie on the edge of nearby Kinnerley. Dovaston is largely linear in pattern, with dwellings of varying ages and styles forming a sporadic and stretched out frontage. In contrast, Kinnerley, is larger in size, and a more distinct, nucleated settlement. The two villages are separated by a short stretch of open fields.
9. The development site lies within the natural gap which separates the two settlements. I note that the site is relatively small and that any dwelling on it could be relatively modest in size and could be designed to reflect the prevailing architectural style. Nevertheless, the open field fulfils an important function in distinguishing Dovaston from the adjoining settlement. The site is clearly visible from the road and even if screened it would detract from the open appearance of the site. Even modest built form in this location would have an urbanising effect which would erode the open gap and lead to the coalescence of the two distinct settlements. This would be at odds with the intrinsic character of the countryside and its open appearance in this location.
10. The Council have put forward a number of policies of which I consider CS6 and CS17 of the CS to be most relevant. The proposal would conflict with Policy

¹ South Northamptonshire Council v SSCLG & Robert Plummer [2013] and Cheshire East Council V SSCLG & Richborough Estates Partnership [2015]

CS6 of the Core Strategy which seeks to maintain and enhance the vitality and character of the countryside, and with Policy CS17 which seeks to protect Shropshire's environmental assets, and its local character and distinctiveness. These aims are consistent with those of the Framework, expressed within paragraph 17 – Core Planning Principles.

Protected Species

11. During the application process the Council's Biodiversity Officer identified the site as being within 110m of a pond which may have the potential for Great Crested Newts to be present. As such she recommended that an ecological assessment be carried out to assess the potential impact of the proposal on protected species, prior to the application being determined.
12. Circular 06/05² advises in paragraph 99 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. Although the presence of Great Crested Newts has not been identified, the site lies within a short distance of the pond across open farmland. Given the position and open nature of the site, and its proximity to the potential habitat, the potential impact of the proposal upon protected species is a material consideration to which I must have regard.
13. The appellant has indicated that based on standing advice from Natural England (Rapid Risk Assessment Tool) the potential effect of developing the whole of the site (0.10 hectares), in the event that Great Crested Newts were present, would be unlikely to be harmful. However, this tool is not intended to replace a habitat survey, which should nonetheless be undertaken as a first step to determining risk to protected species. Based on the information before me I am not aware of any circumstances which would negate the need to address this issue as a material consideration. The failure to do so runs contrary to national policy in relation to protected species and must be given significant weight.
14. I am aware that the Council did not raise this issue as a concern. I am also advised that other developments in the area have not been subject to the requirement for a habitat survey. I am not aware of the circumstances of these developments, and am therefore unable to say whether they are directly comparable. Nevertheless, they would not lessen the potential for harm that would arise in this case.
15. On the second matter I therefore conclude that the proposal would fail to take appropriate account of the impact of the development on protected species and would thereby conflict with guidance contained within the Framework and Circular 06/05 which seeks to implement a precautionary approach in relation to developments which may impact upon the habitats of protected species.

Other Considerations/Balancing Exercise

16. Notwithstanding the encouragement in the Framework to respond to opportunities for growth, a single additional dwelling would make a very small contribution to housing provision within the Borough. Although residents would

² Circular 06/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System.

be dependent upon the private car to access some services, a reasonable level of services would be available locally in Kinnerley, and in this regard, by rural standards, it would be in a relatively accessible location and could be constructed sustainably. It would also play a small part in sustaining local services. I also attribute this matter some weight.

17. I note the absence of harm to flooding, but this absence of harm is a neutral factor that does not weigh in favour of the proposal. I also note that another housing scheme has recently been approved in the village. I am not aware of the circumstances which led to this approval, which in any case, do not alter my views in relation to the proposal before me.
18. The development would provide 2 construction jobs, which would be temporary. The appellant has also provided figures relating to the contribution the development, and future residents, would make to the local economy, including CIL, the New Homes Bonus, Council Tax and the spending power of future residents. However, these figures are based on a number of assumptions which may, or may not apply to the future proposal, which is currently in outline form only. There is also no clear indication that such receipts would be used in a way that would be directly related to the development proposed. This limits the weight I can attribute to them.
19. The appellant has indicated his willingness to provide a S106, in line with requirements contained within the submitted Supplementary Planning Document³. However recent Planning Policy Guidance⁴ is a material consideration to which I must have regard. It states that affordable housing contributions should not be sought from developments of 10 or less dwellings, or 5 or less dwellings in designated rural areas. In the light of this change to national policy, such a contribution would fail to meet all the tests of paragraph 204 of the Framework in relation to planning obligations as it would not be necessary in this case. As a consequence, although the appellant's offer to provide an affordable housing contribution would be in line with development plan policy, it is not a matter to which I can attribute any weight.
20. The proposal would erode the established character of the countryside in this location. It would also fail to take appropriate account of the impact of the development on protected species. These are both matters to which I attribute substantial weight.

Conclusion

21. The identified harm that the proposal would cause to the character and appearance of the countryside and to protected species would significantly and demonstrably outweigh the benefit to housing supply in a relatively accessible location and its contribution to sustaining local services. I therefore conclude that the proposal would not, on balance, comprise a sustainable form of development as advocated within the Framework (paragraphs 7 and 14).

³ Shropshire Local Development Framework Type and Affordability of Housing Supplementary Planning Document (SPD) Adopted September 2012

⁴ Written Ministerial Statement of the 1st December 2014 by Brandon Lewis MP and subsequent amendments to Planning Policy Guidance in relation to Paragraph: 012 Reference ID: 23b-012-20150326 "Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?"

22. Therefore, for the reasons set out above, and having regard to all other matters raised, I dismiss the appeal,

Anne Jordan

INSPECTOR