
Appeal Decision

Site visit made on 14 April 2015

by I Radcliffe BSc(Hons) MCIEH DMS

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

Decision date: 10 June 2015

Appeal Ref: APP/L3245/W/14/3001799

Land south of Woodbatch Road, Bishops Castle, Shropshire (Grid Reference: Easting 331702, Northing 288466)

- 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 J M Jones against the decision of Shropshire Council.
 - The application Ref 14/00885/OUT, dated 27 February 2014, was refused by notice dated 27 October 2014.
 - The development proposed is use of land for residential development and formation of a vehicular and pedestrian access.
-

Decision

1. The appeal is allowed and planning permission is granted for use of land for residential development and formation of a vehicular and pedestrian access on land south of Woodbatch Road, Bishops Castle, Shropshire (Grid Reference: Easting 331702, Northing 288466) in accordance with the terms of the application, Ref 14/00885/OUT, dated 27 February 2014, subject to the conditions in the schedule at the end of this decision.

Procedural matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on that basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site.
3. In order to ensure appropriate sewage treatment and protect the river Clun the application was determined on the basis that there would be no more than 9 dwellings on the appeal site. The appellant is content that the appeal is dealt with on this basis. Accordingly, I have also taken this approach.
4. The Town Council suggests that the appellant might not have legal control over all the land required to facilitate the proposed access, alleging that some of the necessary land belongs to the adjoining landowner. However, whilst the adjoining land owner has made written representations on the proposal, no written objection was made by the owner on those particular grounds. The Certificates accompanying the application indicate that the appellant has control over all the land the subject of this appeal and, in the absence of any definitive evidence to the contrary I shall proceed on that basis. If it transpires, in the event, that the appellant does not control all the land, whilst that may have implications for implementation were the appeal scheme to go ahead, that would be a matter for the parties in the first instance.

5. The Town Council has advised that it has made a complaint to the Council about the administration of the planning application. This is a separate matter to the appeal and does not have any bearing on my assessment of the planning merits of the case.
6. A Unilateral Undertaking was submitted with the appeal which I have considered as part of the appeal. It secures a financial contribution towards highway improvements and provides for a proportion of the dwellings to be developed on the site as affordable dwellings. Its terms are addressed in more detail within the decision.
7. In November 2014, after the appeal was lodged, the Government announced changes to its Planning Practice Guidance (PPG). Among other things, those changes indicated that the contribution of affordable housing should not be sought from small-scale developments of ten units or less, where the maximum combined gross floor area is no more than 1000sqm. The parties were given the opportunity to provide further comments on the changes. I have taken the comments received into account in coming to my decision, as well as the amended guidance itself. Further updates on 27 February 2015 make clear that the changes to the planning guidance were changes to national policy.

Application for costs

8. An application for costs was made by Mr J M Jones against Shropshire Council. This application will be the subject of a separate Decision.

Planning Policy

9. The development plan for the area includes the South Shropshire District Local Plan and the Shropshire Core Strategy. The National Planning Policy Framework is also an important consideration. The Local Plan identifies a settlement boundary for the town. Policies CS3 and CS5 of the Core Strategy seek to restrict new open market housing development to within the town's settlement boundary and on sites allocated for development.
10. The appeal site is located adjacent to, but outside, the settlement boundary to the town defined by the Local Plan. As a result, it is located within the countryside, contrary to policies CS3 and CS5 of the Core Strategy. The location of the proposal would therefore be contrary to the development plan.
11. The emerging 'Site Allocations and Management of Development Plan' (SAMDev) has been prepared following public consultation. It provides detail as to the development that the Core Strategy supports in Bishops Castle. The document, strongly supported by the local community, proposes a green field site for new housing development on a different side of the town to the appeal site. No new housing is proposed on the south western side of the town where the appeal site is located. In terms of the number of houses proposed on the appeal site, this would be well below the housing target contained within the SAMDev for the town.
12. The SAMDev is currently the subject of public examination. As a result, the view of the Council is that more than limited weight should be attached to it. The view of the Town Council is that considerable weight should be attached. However, the appellant states that this document is the subject of significant unresolved objections in relation to the location and quantity of housing proposed in the County. Evidence to that effect has been produced. This has not been disputed by the Council. On balance therefore, having regard to

paragraph 216 of the Framework, I attach little weight to this document and its policies. For this reason, and the minimal effect such a small scale of the development proposed would have on the spatial strategy of the SAMDev, the proposal would not prejudice the plan making process. As a result, in accordance with Planning Practice Guidance, the objection from interested parties to the proposal on the basis of prematurity are not justified.

Main Issues

13. The main issues in this appeal are

- the effects of the proposed development on the free flow of traffic and highway safety;
- whether it is necessary for the development to make provision for affordable housing; and,
- whether the proposal would constitute sustainable development within the meaning of the National Planning Policy Framework ('the Framework').

Reasons

Free flow of traffic and highway safety

14. The proposed access to the site would be provided off Woodbatch Road. Having viewed the submitted plans and the site it would provide exiting vehicles with satisfactory visibility of oncoming vehicles along the road. The Highway Authority has not objected to the access and I agree with that position. The footway, which currently terminates by the eastern edge of the proposed development, would be extended across the front of the site and provide pedestrian access to it. Taking all these matters into account, I therefore find that a safe and suitable access would be created.
15. The appeal site is located on the south western edge of Bishops Castle. The highway route into and out of the town via Kerry Lane serves a significant number of dwellings. In design terms the Council's highway officers accept that it has sufficient capacity for the proposed development, along with the proposed scheme for 9 dwellings at Lavender Bank¹. On the basis of what I have read and seen I agree with that assessment.
16. The most direct route for vehicles from the appeal site to exit the town, or access the town centre, is via the Woodbatch Road/ Kerry Lane junction. Vehicles proceeding across the junction would travel along Corporation Street to the centre of the settlement and beyond, or turn right along Kerry Lane towards the southern end of the village and the A488. Visibility at this junction for vehicles travelling away from the appeal site in relation to oncoming traffic from the right is poor. However, the appellant proposes to provide an improved visibility splay in this direction. This would improve highway safety by allowing vehicles travelling along Kerry Lane towards the junction to be seen earlier thereby reducing the risk of accidents. By reducing the hesitation of drivers at this junction it would also improve traffic flow. An alternative route, albeit more minor, also exists out of the town or towards its centre along Kerry Green.
17. To address problems with this junction the appellant has submitted a unilateral undertaking contributing £10,000 towards its improvement. This would be a specific scheme that the proposed development would help fund. As a

¹ Appeal reference APP/L3245/W/14/3001829

consequence, it does not constitute a tariff style contribution, or fall foul of regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended). Highway improvement works are also identified as a priority in the Bishop Castle Place Plan which informs infrastructure investment. The sum provided for in the undertaking, supplemented if needs be as the officer report notes by Community Infrastructure Levy monies, would be sufficient to improve visibility at this junction. In my judgement, the highway contribution is necessary to make the development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind.

18. Sections of the route, particularly along Kerry Lane, are narrow in width and have a number of accesses that join it. However, such features can have a calming effect on the speed of traffic. I note in this regard, in support of this view, the absence of data indicating that accidents are commonplace or prevalent along the road. In my assessment, for cars driving along Kerry Lane towards its narrow section, sufficient forward visibility exists to allow oncoming cars to see each other and for one to give way to the other. The other improvements recommended by the appellant's highway report, whilst desirable, are therefore not necessary to make the development acceptable in terms of highway safety or the free flow of traffic.
19. As a result, the contribution towards improving the Kerry Lane / Woodbatch Road junction would pass the tests of paragraph 204 of the Framework and regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). I have therefore taken it into account this provision of the submitted section 106 agreement.
20. I recognise that there are peaks in traffic flow at school and Sure Start opening and closing times, and that agricultural traffic uses the Lane. Nevertheless, these peaks are short lived and all traffic types are taken into account when assessing highway capacity. As a result, these considerations do not alter my overall assessment.
21. Reference has been made to the possibility of a further housing scheme to the west of the appeal site and that if the scheme before me is found to be acceptable in highway terms a precedent could be set for further development. However, each application is assessed on its merits. If a point is reached where a proposed development would have an unacceptable adverse effect on the local highway network permission would be refused.
22. Taking all these matters into account, I therefore find that the proposal would not result in the free flow of traffic being impeded, and that the proposed access and routes to and from the appeal site would be safe. As a consequence, the standard of amenity for residents in the area would not be materially harmed and there would be no conflict with policies CS7 and CS8 of the Core Strategy. These policies seek safe transport infrastructure and improvements to the local highway network.

Affordable housing

23. In order to increase the provision of affordable housing the Council has requested contributions secured by a section 106 agreement. The provisions of the submitted agreement in relation to this matter have been assessed having regard to the tests in paragraph 204 of the Framework and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

24. The undertaking has been drawn up having regard to policy CS11 of the Core Strategy and the Council's supplementary planning document 'Type and Affordability of Housing' (SPD). Policy CS11 and the SPD seek that some of the new houses that would be built contribute to the local stock of affordable housing.
25. In relation to affordable housing, as I explained as a procedural matter, circumstances are materially different in relation to small housing schemes to when the application was determined by the Council. In relation to housing schemes of 10 units or fewer, which have a maximum combined floor space of no more than 1000sqm, it is national policy that contributions for affordable housing should not be sought.
26. The appellant submitted a plan with the application illustrating how the site could be developed for housing. As the application is in outline the appellant is not tied to the detail shown on this plan. However, given that it shows houses with an average floor space of 125sqm I have treated this as indicative of the appellant's intentions and have assessed the application on this basis. As the appellant notes, the proposed development of 9 houses on the site would therefore result in a combined floor space in excess of 1000sqm. As a result, the restrictions in national policy on affordable housing contributions do not apply to the proposed development. In accordance with national policy and the development plan, I therefore find that the affordable housing contribution is necessary to make the development acceptable in planning terms. As the affordable housing would be provided on site in accordance with the development plan and the SPD it would also be directly related to the development and fairly related in scale and kind.
27. As a result, the obligation would pass the tests of paragraph 204 of the Framework and regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). I have therefore taken into account the affordable housing provision of the submitted section 106 agreement.

Sustainable development

28. The Framework is an important material consideration. Paragraph 49 of the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development, a consideration that lies at the heart of national planning policy. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. There are three dimensions to sustainable development: environmental, economic and social.
29. In terms of the environmental role, Bishops Castle is identified by the Core Strategy as a settlement where owing to its range of services and facilities some development is supported. The centre of Bishops Castle is within reasonable walking distance of the appeal site by a variety of routes that avoid using the section of Kerry Lane that does not have a footway. It is also within comfortable cycling distance with routes available that avoid the narrow section of Kerry Lane. The facilities and services that this market town has to offer are therefore readily accessible from the appeal site. In terms of highway safety and the free flow of traffic, as I have already noted, the proposal would result in improvements to a junction and the increase in traffic would be small. The site has limited habitat interest for wildlife and its development would not adversely affect the Clun Catchment, part of which is located within a Special Area of Conservation. The site is not within an area at risk of flooding and a

- sustainable drainage system would reduce surface water flow off the site to green field rates. The risk of flooding off site therefore would not be increased by the proposed development. Adequate sewerage treatment could be provided either by connection to the public sewer or by on site treatment.
30. The appeal site is not visible from the Area of Outstanding Natural Beauty and so the proposed development would not impinge upon it. A green field within the countryside visible from surrounding land, including nearby houses would be developed. However, given that the site is bound on its northern and eastern sides by development the proposed development would appear as a natural extension of the town. Therefore whilst some harm would be caused to the character and appearance of the countryside through the loss of the field to development this harm would be limited. In support of this view I note that the Council does not object to the proposed development in terms of its effect on the landscape and the character and appearance of the area. Subject to the control that would be exerted at reserved matters stage, in terms of layout, scale, appearance and landscaping an attractively designed scheme could be delivered.
31. Turning to the economic aspects of sustainability, the construction of the houses proposed would generate employment. Post completion the spending of the additional households living in the proposed development would benefit the economy of the area. The development of agricultural land, some of which may be of the best and most versatile quality and protected by the Framework, would result in its loss for farming use. However, the site is relatively steeply sloping and so not ideal for modern farming. Having regard to this consideration, paragraph 112 of the Framework and the relatively small size of the site, I therefore find that the loss economically to agricultural production would not be significant.
32. In terms of the social aspect of sustainability, the proposed development would contribute towards meet housing need in the area, including helping address the need for affordable housing. An increase in population would also help social vitality and support a strong community.
33. Taking all these factors into account, I conclude, based upon the overall balance of considerations, that the proposal would be a sustainable development. As a result, it would comply with the objectives of policy CS6 of the Core Strategy which requires that new development is designed in accordance with such principles.

Other matters

Housing land supply

34. The Council's position is that it has 5.47 years of housing land supply. The appellant is of the view that it has a 3.37 year supply. In support of this stance the appellant has submitted detailed evidence². In relation to sites with planning permissions this includes unrealistic delivery rates³, specific delivery problems⁴ and inaccuracies in the number of units left to be completed on sites under construction. Delivery issues have also been identified with sites in the emerging allocations included in the SAMDev Plan regarding, for example, flood risk and infrastructure requirements. The Council has not refuted the evidence

² Rebuttal of Shropshire Council's 5 year Housing Land Supply Statement, Berrys 19 September 2014.

³ For example on the site on land north of Haughton Road, Shifnal (ref 12/0646/OUT)

⁴ For example, the former dairy site, School Road, Ruyton which is occupied by a business. It is stated that with the value of commercial land is unlikely to be a viable site for housing.

of the appellant in its statement, other than by stating that other Inspectors had not queried the Council's supply. On the basis of the available evidence, for the purposes of this appeal, I therefore find that the Council does not have a 5 year housing land supply.

Living conditions

35. The appeal site faces houses on the other side of Woodbatch Road and abuts housing along its eastern boundary. On the basis of the illustrative plans submitted, I have no reason to doubt that there is sufficient space within the site for dwellings to be laid out without harming privacy, reducing light levels or having an overbearing effect on the outlook experienced by the occupiers of neighbouring houses.

Pressure on local services

36. The effect of the proposed development on local services has been raised. A Community Infrastructure Levy applies to new development in the County. As a result, financial contributions would be made addressing the effects of the proposed development on local services. As a consequence, I find no harm in this regard.

Overall Conclusions: The Planning Balance

37. For the reasons that I have set out earlier the proposal would be contrary to the development plan. This is because it would not comply with policies CS3 and CS5 of the Core Strategy. These policies seek to restrict new housing development to within the town's settlement boundary and on sites allocated for development.
38. Such a contravention is a consideration that normally weighs heavily against a proposal. However, I have found that the Council does not have a 5 year housing land supply. As a consequence, paragraph 49 of the Framework directs that development plan policies relevant to housing land supply should not be considered up to date. Policies CS3 and CS5 of the Core Strategy fall into this category.
39. The Framework further states that housing proposals should be considered in the context of the presumption in favour of sustainable development. I have found that the development would constitute such a development. Where relevant policies, as in this instance, are out of date paragraph 14 of the Framework is clear. It states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
40. The location of housing on the appeal site would be contrary to the development plan for the area. In terms of adverse impacts, there would be some harm to the character and appearance of the countryside through the loss of the field to development. As the land may be of the best and most versatile agricultural quality the supply of such land would also be adversely affected, albeit given its relatively small area and gradient not in a significant way.
41. In terms of benefits, the proposed development would be a sustainable development in a location with convenient access to local facilities and services. It would also help address local housing need for affordable housing and contribute towards addressing the undersupply of housing in the County.

Collectively these factors are of significant weight in favour of allowing the appeal. Funding towards improving a junction within the local highway network is also a benefit that weighs in favour of the scheme.

42. My overall conclusion in this case, having considered all the matters raised, is that the adverse impacts of the proposal are limited and they do not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. The appeal should therefore succeed.
43. There is no doubt that there is strong local feeling about this proposal, as reflected by the volume of objections received at every stage. I recognise that this decision will be disappointing for local residents and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local residents and the Town Council, very important though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan, the Framework and Planning Practice Guidance. For the reasons set out above, that balance of the various considerations leads me to conclude that the appeal should be allowed.

Conditions

44. For the avoidance of doubt and in the interests of proper planning, otherwise than as set out in this decision and conditions, the development needs to be carried out in accordance with the approved plans in respect of the matters not reserved for subsequent approval. In the interests of protecting the living conditions of neighbouring residents and ensuring that the scale of the development is in keeping with the area, the dwellings need to be restricted to two storeys in height. To protect the River Clun Special Area of Conservation and ensure appropriate sewerage treatment the number of houses on the site needs to be restricted to nine.
45. To minimise the risk of flooding elsewhere further details on sustainable surface water drainage are necessary. In the interests of public health, provision for the disposal of foul water needs to be made. In order to ensure that the development complements its surroundings further details of tree and hedge planting are required and existing hedges protected from damage during construction. To ensure that any new planting becomes well established it needs to be well maintained. In order that appropriate opportunities for inspecting archaeological remains present within the site are provided a Heritage Assessment needs to be carried out.
46. Given the potential for nuisance to nearby residents control needs to be exerted on the arrangement and management of the construction site and the hours of construction. Weekends and bank holidays are particularly valuable and construction noise on such days would be particularly intrusive. Other than on Saturday mornings I have therefore prevented construction on these days. To minimise the disturbance to bats, details of external lighting are required. The provision of facilities for charging plug-in and other ultra low emission vehicles accords with the sustainability objectives of the Framework. As a result, charging points need to be supplied to each property.
47. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.

Ian Radcliffe

Inspector

Schedule

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan ref 1649 01, Untitled plan showing the northern part of the site and the site access - scale 1:500 @ A3, but only in respect of those matters not reserved for later approval.
- 5) The outline permission hereby approved shall be for a maximum of nine dwellings, as confirmed in the e-mail from Les Stephan Partnership to Shropshire Council dated 15 May 2014.
- 6) The dwellings hereby permitted shall consist of no more than two storeys.
- 7) No building hereby permitted shall be occupied until a sustainable drainage system has been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The submitted details shall:
 - i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) The proposed foul water drainage shall be installed in accordance with the Drainage and Flood Risk Assessment by D.A. Sluce & Partners, February 2014, prior to first use of the development hereby approved.
- 9) a) Within the first planting and seeding season following the completion of the dwellings hereby permitted, a scheme of new tree and hedge planting shall be implemented within and bordering the grounds of the

dwellings, in accordance with full details to be submitted to and approved by the local planning authority.

b) Any new trees and hedges planted as part of the required planting scheme which, during a period of five years following implementation of the planting scheme, are removed without the prior written approval of the local planning authority or die, become seriously diseased or are damaged, shall be replaced during the first available planting season with others of such species and size as the Authority may specify.

- 10) Existing shrubs and hedges within the margins of the site shall be retained and protected from damage for the duration of the construction works. No such shrubs or hedges shall be removed unless this has first been approved in writing by the local planning authority.
- 11) No development shall commence at the site until a Heritage Assessment has been submitted to and approved in writing by the local planning authority. The Assessment shall take the form of a desk based assessment accompanied by the results of a walk over and a geophysical survey of the site. If the results of the heritage survey indicate that further survey work is required before the development commences then such works shall be undertaken in accordance with the recommendations of the heritage survey.
- 12) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) wheel washing facilities
 - v) measures to control the emission of dust and dirt during construction.
- 13) Demolition or construction works shall not take place outside 08:00 hours to 17:00 hours Monday to Fridays and 08:00 hours to 13:00 hours on Saturday, nor at any time on Sunday or Bank Holidays.
- 14) Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet 'Bats and Lighting in the UK'.
- 15) An independent 32 amp radial circuit isolation switch shall be supplied at each property for the purpose of future proofing the installation of an electric vehicle charging point. The charging point must comply with BS7671. A standard 3 pin, 13 amp external socket will be required. The socket shall comply with BS1363, and shall be provided with a locking weatherproof cover if located externally to the building.