
Appeal Decision

Site visit made on 12 May 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/14/3001829

Land west of Lavender Park, Bishops Castle, Shropshire (Grid Reference: Easting 331803 Northing 288680)

- 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 Trustees of Old-De-Leys - Miss M W Watson & Mr C I J Bevan against the decision of Shropshire Council.
 - The application Ref 14/02632/OUT, dated 12 June 2014, was refused by notice dated 27 October 2014.
 - The development proposed is a mixed use residential development on land off Lavender Bank, Bishops Castle, Shropshire.
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Decision

1. The appeal is allowed and planning permission is granted for a mixed use residential development on land west of Lavender Bank, Bishops Castle, Shropshire (Grid Reference: Easting 331803 Northing 288680) in accordance with the terms of the application, Ref 14/02632/OUT, dated 12 June 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. For ecological reasons, 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 site visit was scheduled to take place on 14 April 2015. However, as Shropshire Council failed to attend it was carried out on the basis of an unaccompanied visit. This prevented those present from drawing to my attention to features of interest. In the interests of fairness, an accompanied site visit was arranged for 12 May 2015. Shropshire Council attended this site visit. This allowed the Town Council, Shropshire Council, the appellant and a local resident present to draw my attention to features in support of their cases. It is this site visit that has informed this decision.
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 has been submitted which I have considered as part of the appeal. It secures a contribution towards the provision of off site affordable housing. 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.

Planning Policy

8. The development plan for the area includes the South Shropshire District Local Plan and the Shropshire Core Strategy. The National Planning Policy Framework is 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.
9. 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.
10. 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.
11. 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

12. The main issues in this appeal are;

- the effects of the proposed development on the free flow of traffic and highway safety; 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

13. The proposed access to the site would be created by connecting the carriageway and footway to the turning head serving Lavender Bank. The Highway Authority has no objection to its design. I agree with their assessment. On the basis of the submitted information I therefore find that a safe and suitable site access would be created.
14. The appeal site is located on the south western edge of Bishops Castle to the north of the site for which an appeal has been lodged for 9 houses off Woodbatch Road¹. The route for vehicles from the appeal site and a significant number of houses to exit the town, or access the town centre, is via Kerry Lane. In design terms the Council's highway officers accept that the local highway network has sufficient capacity for the proposed development, along with the proposed dwellings off Woodbatch Road. On the basis of all that I have read and seen I agree with that assessment. Reference has been made to the possibility of a further housing scheme to the west of the Woodbatch Road site. 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 for that development would be refused.
15. Vehicles proceeding along Kerry Lane could either turn left along Corporation Street to the centre of the settlement and beyond, or continue along Kerry Lane towards the southern end of the village and the A488. Visibility of oncoming traffic at the junction of Lavender Bank with Kerry Lane in all directions is good. 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.
16. The appellant indicated he would be willing to offer a unilateral undertaking towards highway improvements, but has not submitted an agreement to that effect. However, for the reasons I have given above such an undertaking would not be necessary to make the proposed development acceptable in planning terms. I recognise that there are peaks in traffic flow at school and Sure Start centre opening and closing times, and that agricultural traffic uses the Lane. Nevertheless, these peaks are short lived and assessing the capacity of the Lane includes taking into account agricultural traffic. As a result, these considerations do not alter my overall assessment.

¹ Appeal reference APP/L3245/W/14/3001799

17. 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, amongst other matters, the preservation of good access to services and facilities.

Sustainable development

18. 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.
19. In terms of the environmental role, Bishops Castle is identified by the Core Strategy as a town where owing to its range of services and facilities some development is supported. The centre of Bishops Castle is within reasonable walking and easy cycling distance of the appeal site via Corporation Street. This route avoids the narrow section of Kerry Lane that does not have a footway. The facilities and services that this market town has to offer are therefore readily accessible from the appeal site. In terms of highway safety, traffic generated by the proposal would not result in harm. In relation to highway capacity, the increase in traffic as a result of the proposed development would be small and the nearby highway network has sufficient capacity to cater for the traffic it would generate.
20. The findings of the ecological survey of the site accepted by the Council found that no protected species resided on the site and that its flora was of low ecological value. Its development would not adversely affect the Clun Catchment, part of which is located within a Special Area of Conservation. Whilst the water course at the southern end of the site can overflow the site is not at risk of flooding and a sustainable drainage system would reduce surface water flow off the site to green field rates. The proposal therefore would not increase the risk of flooding elsewhere. Adequate sewerage treatment could be provided either by connection to the public sewer or by on site treatment.
21. The appeal site is just visible from the Area of Outstanding Natural Beauty in the distance. In my assessment, the proposal would be sufficiently far away so as not to impinge upon it. A green field within the countryside visible from surrounding land, including nearby houses, as well as from the footpath that cuts across part of the site would be developed. However, given that the site is bound on its southern and eastern sides by development the proposed development would appear as a natural extension of the town. The footpath could also be diverted so that users would continue to walk through open countryside, rather than through the housing proposed for the site. 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 has not objected in its officer report or appeal statement 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.
22. Turning to the economic aspects of sustainability, the construction of the houses proposed would generate employment. Post completion the spending of the additional households created 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, having regard to 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.
23. 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.
24. 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

25. The Council's position based upon its Housing land Supply Statement is that it has 5.47 year 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 evidence, which includes reference to detailed rebuttals of the Council's stated supply². In relation to sites with planning permissions this includes, for example, errors in the number of sites with existing permissions, use of a non implementation rate significantly lower than the historical rate, specific delivery problems and unrealistic delivery rates. Delivery issues have also been identified with sites in the emerging allocations included in the SAMDev. The Council has not refuted the evidence 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.

Affordable housing

26. 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).
27. 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.

² <https://shropshire.gov.uk/media/1203725/matter-2-berrys-app-222-224.pdf>

28. 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 floorspace of no more than 1000sqm, it is national policy that contributions for affordable housing should not be sought.
29. 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 a sum would be provided for off site affordable housing 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.
30. 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.

Living conditions

31. The appeal site abuts the rear of houses along Lavender Bank along its eastern boundary and the rear of houses along Woodbatch Road to the south. 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

32. 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

33. 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.
34. Such a contravention is a consideration that normally weighs heavily against a proposal. However, 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.

35. 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.
36. 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 not in a significant way.
37. 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 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.
38. 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.
39. 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 the Planning Practice Guidance. For the reasons set out above, that balance of the various considerations has led me to conclude that the appeal should be allowed.

Conditions

40. 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.
41. To protect the River Clun Special Area of Conservation a buffer needs to be created to separate the water course from activity and storage on the appeal site. For the same reason and to ensure appropriate sewerage treatment the number of houses on the site needs to be restricted to nine. 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 minimise the risk of flooding elsewhere further details on surface water drainage are necessary. In the interests of public health, provision for the disposal of foul water needs to be made.

42. In order to ensure that the development complements its surroundings further details of tree and hedge planting are required and existing trees and 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. To enhance biodiversity on the site, roosting facilities for bats should be provided. To protect any wildlife that could be present within the hedged boundary of the site procedures need to be followed. On the basis of the indicative layouts the proposed houses would come into conflict with the route of the footpath. In the interests of securing the public footpath that cuts across the northern part of the site it therefore needs to be diverted.
43. Given the potential for nuisance to nearby residents control needs to be exerted on the arrangement and management of the construction site, including hours of work. 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.
44. 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. As the Council's suggested condition 16 essentially duplicates condition 8 in the attached schedule it has not been included.

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 /01, Site plan ref /02 Rev A but only in respect of those matters not reserved for later approval.
- 5) Prior to the commencement of work on site a 10m buffer shall be fenced off parallel to the banks along the length of the water course, put in place within the site to protect the watercourse during construction works. No access, material storage or ground disturbance should occur within the buffer zone.
- 6) The outline permission hereby approved shall be for a maximum of nine dwellings.

- 7) The dwellings hereby permitted shall consist of no more than two floors of living accommodation.
- 8) 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.
- 9) Details of foul water drainage shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to first use of the development hereby approved.
- 10)
 - 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.
- 11)
 - a) No ground clearance, demolition or construction work shall be commenced on the application site until a scheme of protection measures for the existing trees and hedges within and adjacent to the site has been submitted to and approved in writing by the local planning authority. The submitted tree protection scheme shall include a tree protection plan that reflects the guidance within BS5837:2012. All measures comprised in the tree and hedge protection scheme shall be implemented and retained throughout all of the clearance and construction works on the site.
 - b) Where the approved detailed plans indicate that construction work is to take place within the Root Protection Area (RPA) of any retained trees or hedges, an Arboricultural Method Statement (AMS), detailing how the approved construction works will be carried out, shall be submitted to the Local Planning Authority for approval prior to the commencement of any development works. The AMS shall include details of when and how the construction works will take place and be managed, and how the trees and hedges will be protected during the works.
- 12) 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.

- 13) As part of the reserved matters details of the location and design of bat boxes, tubes or bricks suitable for nursery or summer roosting for small crevice dwelling bat species shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full in relation to each dwelling prior to first occupation.
- 14) All development and site clearance procedures on the site shall be undertaken in line with the Ecological Assessment by Star Ecology dated 2 October 2014.
- 15) No development shall take place until an application is made which secures formal diversion of Footpath 14 Bishop's Castle which crosses the development site. The diverted footpath shall remain open and shall not be obstructed.
- 16) 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 timing of the construction works and hours of work on the site
 - ii) the location of any contractor's compound
 - iii) traffic management measures to facilitate the importation of construction materials to the site
 - iv) measures to control the emission of dust and dirt during construction
- 17) 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'.
- 18) 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.