
Appeal Decision

Site visit made on 6 July 2015

by Alwyn B Nixon BSc(Hons) MRTPI

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

Decision date: 13 July 2015

Appeal Ref: APP/L3245/W/14/3002052

Land north-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 failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Andrew Maiden against Shropshire Council.
 - The application Ref 14/02129/OUT, is dated 12 May 2014.
 - The development proposed is the erection of 9 No. 2 bedroom bungalows.
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Decision

1. The appeal is dismissed and planning permission for the erection of 9 No. 2 bedroom bungalows is refused.

Procedural Matters

2. The application is in outline, with some matters reserved. Access, layout and scale are indicated as matters for approval at this time; details of appearance and landscaping are reserved for later consideration. Notwithstanding the slightly contradictory reference on the application form to all matters being reserved except access and number of dwellings, I have dealt with the appeal on this basis.
3. The appeal is made following the Council's failure to determine the application within the prescribed period. Since the appeal the Council has determined that in the absence of an agreement to make a contribution towards affordable housing provision in line with the Council's adopted policies and guidance the proposal is unacceptable. On this basis it considers that the appeal should not succeed. It puts forward no other reason why permission should be refused.
4. An application for costs was made by Mr Andrew Maiden against Shropshire Council. This application is the subject of a separate Decision.

Main Issues

5. I consider that the main issues in this appeal are: first, whether the proposal is acceptable in principle, having regard to the current development plan context and the presumption in the National Planning Policy Framework (NPPF) concerning sustainable development; and second, whether the proposal is acceptable in relation to prevailing requirements concerning provision of affordable housing.

Reasons

Development plan and sustainability

6. The proposal to erect 9 dwellings relates to an area of about 0.79ha on the eastern edge of the settlement of Highley (population around 4,500). The land is mainly pasture and is bounded to the west by dwellings fronting Bridgnorth Road and to the south by residential development off Vicarage Lane.
7. I am required to have regard to the development plan in considering this appeal, and to make my determination in accordance with the plan unless material considerations indicate otherwise. In this regard the Council draws attention to policies of the Shropshire Core Strategy (adopted in February 2011) and saved policies of the earlier Bridgnorth District Council Local Plan (BDCLP).
8. Core Strategy policies seek to locate new housing on sites within and adjoining market towns, key centres and certain other settlements as identified in the emerging Site Allocations and Management of Development (SAMDev) Plan (currently undergoing examination). Highley is identified as a key centre and is seen as the focus for the development of services and facilities for the wider hinterland, with balanced housing and employment growth. The Core Strategy also, through policy CS5, strictly controls new development in the countryside. The appeal site is outside (but adjacent to) the development boundary for Highley as identified in saved policy S1 of the BDCLP, and similarly located in relation to the development boundary proposed in the emerging SAMDev Plan (policy S9).
9. The Council recognises the requirement to deliver an adequate supply of housing in order to meet existing and anticipated needs. Core Strategy policy CS3 identifies that over the 2006-2026 plan period Highley will have development that balances environmental constraints with meeting local needs and includes an indicative level of residential development of up to 500 houses. The residential growth requirement for Highley identified in the submitted SAMDev Plan is for around 200 dwellings over the same period, although this figure is at this stage subject to the conclusions of the current examination.
10. From the information provided by the Council in its appeal statement it appears that the currently-identified residential growth requirement for Highley is well on the way to being met. The proposed development would narrowly take completions, commitments and allocations beyond 200 dwellings. Nonetheless, the Council is clear that the requirement is for "around" 200 dwellings, and moreover that this is not considered a cap on development, in the light of the considerations identified in emerging SAMDev policy MD3 including the presumption in favour of sustainable development. Furthermore, the Council acknowledges that it is also necessary to have regard to the provisions of the NPPF, in particular in this case the presumption in favour of sustainable development, which should be seen as a "golden thread" running through both plan-making and decision-taking, and the aim to boost significantly the supply of housing.
11. Taking all of the foregoing into account, the Council has rightly gone on to consider the sustainability credentials of the proposed development. Highley is a key centre and focus for development. The site is adjacent to the development boundary, relates well to the existing built form and would not

represent significant encroachment into the surrounding countryside. Although the eastern settlement edge is elevated above the Severn Valley the proposed low form of development would sit comfortably alongside the existing built form and would not harm the character or appearance of the Severn Valley. The scale and density of the proposal is appropriate for the site and its edge of settlement location.

12. The site is within walking distance (about 500m) of town centre facilities and services, and is closer still to the community facilities of the Severn Centre. The development can be accommodated without adverse implications for flooding ecology or other environmental considerations; there are no significant issues in terms of access and highway safety.
13. I find no reason to disagree with the Council's overall assessment, having regard to the development plan and other material considerations, that development of the site to accommodate 9 bungalows would be acceptable in principle.

Affordable housing contribution

14. Core Strategy policy CS11 requires all new open market housing developments to make appropriate contributions to the provision of local need affordable housing having regard to the current prevailing target rate, set using the Shropshire Viability Index. For sites of 5 dwellings and above the provision of affordable housing is expected on site. As the application is outline and the Council's policy requires the number of affordable dwellings to be set at the reserved matters stage the Council's approach is to require a section 106 agreement to be entered into before planning permission is granted which establishes the commitment to provide affordable housing by reference to the formula figure. The Council adopted its Type and Affordability of Housing Supplementary Planning Document (SPD) in September 2012 as part of the Shropshire Local Development Framework, which provides detailed guidance as to the Council's requirements. It makes clear that a standard section 106 legal agreement will be required and provides model agreements in connection with this.
15. In this case the appeal is against the Council's failure to determine the application within the prescribed period. The Council says in its appeal statement that it requires the applicant/agent to complete and submit an Affordable Housing Contribution Pro-forma, which acts as an agreement to make the required contribution, albeit to be secured via a section 106 agreement. The appellant has subsequently responded by providing a completed pro-forma in March 2015 as part of the final comments on the appeal.
16. However, the completion and submission of the pro-forma at this stage does not remove any impediment to the grant of planning permission. For the commitment to contribute to affordable housing provision as part of the development to have proper effect in line with the Council's adopted policies, a section 106 obligation must be in place prior to the grant of planning permission. When determination of the application lies with the Council, it is able to make a resolution to grant planning permission upon completion of the required section 106 agreement, and then grant permission once the required legal agreement is in place. However, my decision must be either to grant or refuse permission, on the basis of the documents and evidence before me.

There is no section 106 obligation in place, either by way of agreement entered into with the Council or alternatively by way of unilateral undertaking, providing the necessary legal commitment to appropriate affordable housing provision, which would be triggered by the grant of planning permission. I find this to be a fundamental obstacle to allowing the appeal and granting permission for the development at this point in time.

17. It does not form part of the appellant's case that, in the light of the Written Ministerial Statement of November 2014 (WMS) and associated amendment to the National Planning Practice Guidance (NPPG), an affordable housing contribution should not be sought because the number of dwellings proposed is below the 10 dwelling threshold referred to in those documents. Nevertheless, I have had regard to the WMS and the NPPG, which carry significant weight, in reaching my decision. However, the Council has addressed this matter fully in its statement of case. Following these changes to national guidance the Council has reviewed how the changes would affect its ability to deliver much needed rural affordable housing in its area. In January 2015 it placed a report before the Council's Cabinet outlining the consequences of applying the 10 dwelling threshold in relation to affordable housing provision on open market developments in Shropshire. In the light of that report the Council has determined that it will continue to give full weight to Core Strategy policy CS11 and continue to apply its adopted Type and Affordability of Housing SPD.
18. Given the review which the Council has undertaken of the effect of the new guidance on affordable housing delivery in its area and in the circumstances of this case, including the scale of market housing developments likely to come forward in Highley and the marginal difference between the number of dwellings proposed here and the 10 dwelling threshold, I share the Council's view that its adopted policy approach should take precedence over the guidance in the WMS and NPPG in this instance.
19. Accordingly, I conclude on this issue that the absence of a completed legal agreement to secure appropriate affordable housing provision as part of the development in line with the Council's adopted development plan policies renders the proposal in conflict with the requirements of Core Strategy CS11 and the Type and Affordability of Housing SPD. Notwithstanding the WMS and NPPG, and despite the acceptability of the proposal and its sustainability credentials in other respects, I consider that this represents an overriding reason why planning permission should not be granted.

Other matters

20. I have considered all other matters raised, including representations by some neighbouring residents and the views of the Parish Council. I consider that the position and orientation of the proposed bungalows would be such that, given the levels of the site relative to adjoining dwellings and subject to appropriate handling of boundary screening and the design of the external elevations at the reserved matters stage, the development could be accommodated so as to avoid harm to the living conditions of neighbouring occupiers. For this reason I do not consider that the proposal would cause undue loss of privacy or overlooking. While such occupiers naturally value the existing view over an open field, and this would inevitably be lost, this does not alter my conclusion that neighbouring occupiers would continue to enjoy adequate levels of amenity.

21. The highway authority considers that acceptable access can be provided and that no harm to highway safety would result. Nor does the balance of evidence show, having regard to the responses of other statutory consultees and the Council's submissions, that there are significant objections to the proposal in terms of provision of infrastructure, adequacy of local amenities, interference with rights of way or the effects of past mining activity. I have dealt with points raised by the Parish Council concerning the site's location outside the development boundary on the east side of the settlement and its effect on the Severn Valley landscape building as part of my consideration of the first main issue above.
22. Consequently, none of these matters in my opinion comprise good reasons for refusing permission. However, this does not disturb my conclusion that the lack of a completed legal agreement concerning affordable housing provision constitutes a compelling reason why planning permission should not be granted.
23. Accordingly, and for the reasons given, the appeal fails and planning permission is refused.

Alwyn B Nixon

Inspector