
Appeal Decision

Site visit made on 17 November 2015

by Beverley Doward BSc BTP MRTPI

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

Decision date: 21 September 2016

Appeal Ref: APP/L3245/W/15/3131686

Crawfortan, Shrewsbury Road, Hadnall, Shropshire, SY4 4AN

- 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 Malcolm Davies & Mrs Jean Davies against the decision of Shropshire Council.
 - The application Ref 14/05639/OUT, dated 12 December 2014, was refused by notice dated 3 July 2015.
 - The development proposed is the erection of 4 dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters reserved. I have dealt with the appeal on this basis. A layout plan was submitted with the planning application. However, I have taken this as being for indicative purposes only.
 3. The Council's reason for refusal refers to policies of the Shropshire Local Development Framework: Adopted Core Strategy March 2011 (Core Strategy), the emerging Shropshire Site Allocations and Management of Development (SAMDev) Plan. During the course of the appeal the Inspector's Report on the examination into the SAMDev Plan was published. The Examining Inspector concluded that subject to the modifications set out in her report the SAMDev Plan was legally compliant and met the criteria for soundness in the National Planning Policy Framework (the Framework). The SAMDev Plan has now been adopted and together with the Core Strategy forms the statutory development plan for the area. Accordingly, I have considered the appeal on this basis.
 4. The appellant was afforded the opportunity to comment on the implications for the appeal of the Inspector's Report on the examination into the SAMDev Plan. Accordingly, it has not been necessary to seek further comments on the adopted SAMDev Plan. The appellant was also afforded the opportunity to comment on the Council's Five Year Housing Land Supply Statement which was updated following receipt of the Inspector's report on the examination into the SAMDev Plan. I have taken into account the comments received from the appellant on these matters as well as the Council's response in my consideration of the appeal.
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5. During my consideration of this appeal I was made aware of an appeal decision elsewhere in Shropshire in which the Inspector considered that the Council could not demonstrate a 5 year supply of housing land because it did not have a robust housing requirement based on an up-to-date Full Objectively Assessed Need for housing (FOAHN). The appeal decision dated 16 May 2016 relates to a site at Teal Drive, Ellesmere¹. In the interests of fairness and natural justice I considered it appropriate to seek the comments of the main parties as to whether the appeal decision had any bearing on this appeal and I have had regard to the various responses and information submitted by the parties in relation to this matter. I return to this matter below.
6. In addition the Council published a further update to its Five Year Housing Land Supply Statement on 26 August 2016 which indicates that for the 5 year period starting on 1 April 2016 it can demonstrate a 5.97 year supply of housing. The appellant has been afforded the opportunity to comment on this and I have had regard to the response received.

Main Issue

7. The main issue in this appeal is whether or not the appeal proposal for housing in this location would be a sustainable form of development having particular regard to the overall development strategy for the area in the development plan and the effect on the character and appearance of the area.

Reasons

Development Strategy

8. Policy CS1 of the Core Strategy sets out the strategic approach to development in Shropshire. It indicates that approximately 25% of housing development over the plan period 2006-2026 will be accommodated in Shrewsbury, 40% will be accommodated in the Market Towns and other Key Centres and 35% will be accommodated elsewhere as part of a 'rural rebalance' process to enhance the sustainability of rural areas. In achieving this 'rural rebalance' development and investment will be located predominantly in Community Hubs and Community Clusters. Outside these settlements, the policy indicates that development will primarily be for economic diversification and to meet the needs of the local communities for affordable housing.
9. Policy CS4 of the Core Strategy indicates that in the rural area, communities will become more sustainable by, amongst other things, focusing investment into Community Hubs and Community Clusters and not allowing development outside these settlements unless it meets policy CS5 of the Core Strategy. It also indicates that Community Hubs and Community Clusters are identified in the SAMDev Plan.
10. Policy CS5 of the Core Strategy indicates that new development in the countryside will be strictly controlled in accordance with national planning policies protecting the countryside. It indicates that development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic benefits, particularly where they relate to certain identified types of development including rural workers dwellings, affordable housing to meet a local need and the conversion of rural buildings.

¹ APP/L3245/W/15/3067596

Although the list is not exhaustive, market housing, other than conversions of rural buildings is not identified as being permitted in the countryside.

11. Policy MD1 of the recently adopted SAMDev Plan relates to the scale and distribution of development. It indicates that, further to the policies of the Core Strategy, sufficient land will be made available to meet the Core Strategy housing requirements; sustainable development will be supported in Shrewsbury, the Market Towns and Key Centres and the identified Community Hubs and Community Cluster settlements, having regard respectively to policies CS2, CS3 and CS4 of the Core Strategy and to the principles and development guidelines in settlement policies S1-S18 and policies MD3 and MD4 of the SAMDev Plan and that additional Community Hubs and Community Cluster settlements will be formally considered for designation as part of a Local Plan review.
12. Policy MD7a of the SAMDev Plan indicates, amongst other things, that further to Core Strategy policy CS5, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns and Community Hubs and Cluster. Suitably designed and located exception site dwellings and residential conversions will be considered where they meet evidenced local housing needs and other policy requirements.
13. Hadnall is not identified as a Community Hub or Community Cluster within the SAMDev Plan. I note the appellant's concerns about the manner in which the Community Hubs and Community Clusters in the SAMDev Plan were identified. However, I am mindful that the Inspector examining the plan found that, subject to the modifications set out in her report, it was legally compliant and sound. Therefore, I give the appellant's views in the above respect little weight.
14. The appeal site lying outside of a Community Hub or Community Clusters is within the countryside for planning policy purposes. Accordingly, the proposed development for new market housing would not satisfy policies CS4 and CS5 of the Core Strategy or policy MD7a of the SAMDev Plan.
15. Policy MD3 of the SAMDev Plan indicates that in addition to the development of the allocated housing sites set out in the Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development subject to the policies of the Local Plan, particularly policies CS2, CS3, CS4, CS5, MD1 and MD7a.
16. The appellant indicates that Hadnall was considered a key main settlement within the former local plan and contends that unless windfall development such as the appeal proposal is allowed in such places, the SAMDev Plan will not deliver the level of housing development envisaged within Core Strategy policy CS1, as necessary as part of the 'rural rebalance' process. He also refers to the supporting text to policy MD3 of the SAMDev Plan. This indicates that a key component of the housing land supply is the allocated sites with related guidelines. It then goes on to indicate that 'windfall' development on other sites is also important, both within settlements and in the countryside, including both brownfield and, where sustainable, greenfield sites, having due regard to the policies of the Local Plan.
17. I am mindful that in her report on the Examination of the SAMDev Plan, the Inspector conducting the examination indicates that she is aware that the

localism approach adopted in the SAMDev Plan to the identification of Community Hubs and Community Clusters means that other larger rural settlements, which have in the past traditionally been considered as suitable for development, are now, in some cases, to be regarded as countryside for policy purposes. I also note that she considers the issue of windfall development and makes a clear distinction between the implications for windfall development on Community Hubs and Community Clusters and the wider countryside.

18. In relation to Community Hubs and Clusters the Inspector states in her report that *'whilst some small sites have been allocated, in many cases, the small scale development is to come forward as windfall development on sites of less than five dwellings which fall under the SHLAA threshold of identified sites. This approach in many Community Hubs and Clusters is consistent with the higher proportion of windfall development needed in the rural areas.'* She then goes on to state that *'affordable housing exception schemes and the conversion of rural buildings are significant sources of windfall supply in the rural areas'* before concluding that in such circumstances the reliance on windfall development is proportionate and justified.
19. In the context of this therefore, my reading of policy MD3 of the SAMDev Plan together with its supporting text lead me to the view that windfall developments within the countryside, such as the appeal proposal, need to be considered against the relevant Local Plan policies, namely policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan. These policies seek to strictly control new market housing in the countryside but are permissive of rural workers' dwellings, affordable housing to meet a local need and the conversion of rural buildings. As indicated above, the appeal proposal for market housing would not satisfy policy CS5 of the Core Strategy or policy MD7a of the SAMDev Plan. Accordingly, having regard to the policies of the Local Plan as required by policy MD3, it would not be an appropriate windfall development.
20. I have had regard to the appeal decision at Ludlow² which the appellant considers provides support for his case. In this decision which pre-dates the adoption of the SAMDev Plan the Inspector concluded that, given the number of dwellings that had been delivered in the first nine years of the Core Strategy and the number that remained to be found across the County in the next 11 years to meet the Core Strategy requirement, there was a current need to boost the supply of housing in Shropshire, including by way of greenfield windfall sites, where these are sustainable in planning terms.
21. Each case needs to be judged on its own merits, on the basis of the evidence before the Inspector. I note that the Council did not advance any evidence in support of its reason for refusal at the Inquiry into the Ludlow appeal and that the Council indicates that the position stated in the decision did not take into account committed sites with planning permission that have not yet been developed and that if these had been included the amount of dwellings to be found would have been considerably less than that stated. Accordingly, it would seem to me that the position now is somewhat different to that which the Inspector considered it to be at the time of the appeal. In any event as I find below, the proposed development on the appeal site would not comprise sustainable development.

² APP/L3245/W/15/3001117

22. I have also had regard to the appeal decision at West Felton³ referred to by the appellant which, as with the Ludlow decision, also pre-dates the adoption of the SAMDev Plan. As indicated above, the developments listed within policy CS5 of the Core Strategy as acceptable within the countryside is not exhaustive. However, policy MD7a of the recently adopted SAMDev Plan relates to managing housing development in the countryside and complements Core Strategy policy CS5. It is clear in indicating that new market housing will be strictly controlled outside of Shrewsbury, the Market Towns and Community Hubs and Cluster. Furthermore, given that the SAMDev Plan has been found to be sound, I am satisfied that the approach adopted within both policy MD7A of the SAMDev Plan and policy CS5 of the Core Strategy with regard to development within the countryside can be considered consistent with national policy.
23. Whilst the Core Strategy pre-dates the publication of the Framework I consider that the Core Strategy policies and the policies of the SAMDev Plan referred to above are broadly consistent with the Framework, specifically the advice contained at paragraph 55 that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan are also broadly consistent with the core planning principle of the Framework that planning should recognise the intrinsic character and beauty of the countryside.
24. Drawing together all of the above therefore to conclude on this issue, the proposed development of the appeal site for open market housing in the countryside would be contrary to the overall development strategy for the area and would fail to satisfy policies CS1, CS4 and CS5 of the Core Strategy and Policies MD3 and MD7a of the SAMDev Plan.

Character and appearance

25. The appeal site comprises a field located on the eastern side of Shrewsbury Road (A49) to the north of Hadnall. It is generally flat and forms part of an extensive area of attractive countryside around the settlement of Hadnall which is characterised by small irregular shaped fields, hedgerows and hedgerow trees.
26. The site is tree lined along the road frontage with trees protected by a Tree Preservation Order. I note that the Council's Tree Officer does not object to the removal of two mature lime trees from the frontage to create an access point.
27. Although the appeal site has no specific ecological, landscape or heritage designation it is important to the setting of Hadnall as part of the wider area of countryside around the settlement. The appeal proposal would result in the encroachment of built development into this area of countryside on a site which is separate from the main built up area of Hadnall, albeit adjacent to two existing properties in extensive grounds. The addition of 4 detached dwellings would result in the urbanisation of the appeal site to the detriment of its rural character and appearance and would cause harm to the intrinsic character and beauty of the wider area of countryside in which the appeal site is situated.

³ APP/L3245/W/15/3003171

28. To conclude on this issue therefore, the proposed development would harm the character and appearance of the area and conflict with policies CS5, CS6 and CS17 of the Core Strategy which are consistent with the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.

Other Material considerations

29. In relation to the Teal Drive decision referred to above, the Inspector considered that the Council did not have a robust housing requirement based on an up-to-date FOAHN and that consequently it could not demonstrate a five year supply of deliverable sites in accordance with paragraph 47 of the Framework and that paragraphs 49 and 14 of the Framework were therefore engaged.
30. I note that the Council is in the process of challenging that decision and that the Secretary of State has concurred that the decision should be quashed. I appreciate that other parties are also involved in the Teal Drive case and that at the present moment the permission remains extant. However, in the light of the Secretary of State's decision to concede that the decision should be quashed I consider, as did the Inspector in the recent Pulley Lane decision⁴ to which I have been referred, that I am not able to place any meaningful weight on any precedent which may be considered to be created by that decision. Accordingly, on the basis of the evidence before me I have no reason to regard the relevant policies for the supply of housing as being not up-to-date having regard to the advice at paragraph 49 of the Framework.
31. As indicated above the latest update of the Council's Five Year Housing Land Supply Statement indicates that Shropshire currently has a 5.97 year supply of deliverable housing land. The appellant has not provided any detailed housing land supply evidence in this case and contends that irrespective of the position in relation to the five year supply of housing land having regard to the Wychavon⁵ case the presumption in favour of sustainable development exists outside of paragraph 14 of the Framework and therefore does not only apply where the development plan is absent, silent or relevant policies are out of date.
32. However, the remarks of the judge in the Wychavon case on that matter were made in obiter and there is no requirement that a decision maker should follow them. The judgment of the Court of Appeal in the case of Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East⁶ confirmed that paragraph 14 explains how the presumption in favour of development is to be applied. It follows from this, that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date and the adverse impacts do not significantly and demonstrably outweigh the benefits. This is supported by the approach advocated in the Cheshire East judgment⁷. As indicated above in this case I have no reason to regard the relevant policies for the supply of housing as

⁴ APP/L3245/W/16/3146986

⁵ Wychavon v SSCLG and Crown House Developments Ltd [2016] EWHC 592 (Admin)

⁶ Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East, SSCLG [2016] EWCA Civ 168

⁷ Cheshire East BC v SSCLG [2016] EWHC 571 (Admin)

being not up-to-date of date. Accordingly the presumption in favour does not apply.

Sustainable development/Planning balance

33. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought.
34. In relation to the economic and social dimension the appeal proposal would result in housing development which may provide some short term employment opportunities during the construction phase and then in the longer term would provide homes whose future occupants may make some contribution to the local economy and help support the local services and facilities in Hadnall. It would also contribute towards boosting local housing supply. However, given the scale of the proposed development, any benefits in these respects would be somewhat limited.
35. The proposal would also result in a Community Infrastructure Levy (CIL) payment to be spent locally on infrastructure, additional Council Tax receipts and a New Homes Bonus although this would be a one off payment. However, any benefits in all of these respects would also be somewhat limited given the small scale of the proposed development.
36. In relation to the environmental role the appeal proposal would cause material harm to the rural character and appearance of the area and the surrounding countryside contrary to the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.
37. My attention has been drawn to the Council Officer's report on a planning application which was granted consent for two dwellings at the southern extremity of Hadnall which indicated that the site was in a sustainable location because it was within walking distance of a variety of services and facilities. However, sustainability is about more than distances to services and facilities or access to sustainable transport. The appeal site may be within walking distance of the range of services and facilities in Hadnall and to the bus stops on the A49. However, as I saw from my site visit, from the appeal site there is only one narrow footway on the other side of Shrewsbury Road up until its junction with Ladymas Road. It seems to me that this stretch of footway, which runs alongside the busy A49, would be unlikely to be attractive for pedestrians to use and for many pedestrians would be likely to be difficult to negotiate. Consequently, residents of the proposed dwellings would be likely to be reliant on the use of the car for most of their journeys. This would be contrary to the principle of promoting sustainable transport in the Framework.
38. Taking all of the above into account therefore, I consider that the adverse impacts relating to the environmental role would be significant and are not outweighed by the benefits such that the appeal proposal would not comprise sustainable development defined by the Framework. Moreover, the development plan is not out of date and the conflict that I have identified with it above is not outweighed by any other material consideration.

Other matters

39. The appellant indicates that the Council has recently approved a number of planning applications for proportionate housing developments on the outskirts of Hadnall. I am not aware of the details of these and therefore cannot be satisfied that the circumstances are the same as in this case. In any event I have determined the appeal proposal on its own merits, on the basis of the evidence before me and taking into account the specific site and current planning policy context.
40. In support of their respective cases both parties have drawn my attention to other appeal decisions in Shropshire for housing development, some of which have been allowed and others dismissed. I do not have the full details of the circumstances of these appeals. Nevertheless the decisions indicate the finely balanced nature of the cases and it is clear that each case needs to be judged on its own merits, on the basis of the evidence before the Inspector, and it is on this basis that I have determined this appeal.
41. The support of the Parish Council for the appeal proposal does not serve to outweigh the harm that I have found above.
42. A signed and dated Unilateral Undertaking (UU) in respect of a contribution towards affordable housing was submitted with the appeal. However, the Planning Practice Guidance (PPG) indicates that there are specific circumstances where contributions for affordable housing should not be sought from small scale development. This follows the order of the Court of Appeal dated 13 May 2016 which gave legal effect to Government policy as expressed in the Written Ministerial Statement dated 28 November 2014, to be read alongside the Framework. The proposed development in this case is for the erection of 4 dwellings. Accordingly, it falls within the category of small scale development indicated within the PPG for which contributions for affordable housing should not be sought. However, given my conclusions on the main issues it has not been necessary to consider this matter further.

Conclusion

43. For the reasons set out above and having regard to all other matters raised therefore, I conclude that the appeal should be dismissed.

Beverley Doward

INSPECTOR