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# Appeal Decision

Site visit made on 26 April 2016

**by Roy Merrett BSc(Hons) DipTP MRTPI**

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

**Decision date: 16 November 2016**

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**Appeal Ref: APP/L3245/W/16/3143041**

**Land South of Clifton Villas, Queens Head, Oswestry, Shropshire SY11 4EF**

- 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 & Mrs Peter Lawrence against the decision of Shropshire Council.
  - The application Ref 14/03953/OUT, dated 24 February 2015, was refused by notice dated 22 July 2015.
  - The development proposed is the erection of 4 dwellings (1 affordable).
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## Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 4 dwellings at Land South of Clifton Villas, Queens Head, Oswestry, Shropshire SY11 4EF in accordance with the terms of the application Ref 14/03953/OUT, dated 24 February 2015 subject to the conditions in the attached schedule.

## Procedural Matters

2. The planning application is in outline. I have specified the date of the amended application above. However, the parties dispute the level of detail in the scheme submitted for consideration. I cannot be certain, on the evidence before me, including consultation responses received, that interested parties would not be prejudiced were I to decide the appeal based on the details submitted by the appellants with their appeal submissions. I have therefore determined the appeal on the basis that all matters are reserved and have treated the plan which shows the site layout as illustrative.
  3. In December 2015, the Council adopted its Site Allocations and Management of Development Plan (SAMDev). Relevant policies within this document therefore now carry full weight.
  4. The Council has been provided with information explaining how drainage would serve the development, which has resolved its concerns in this regard subject to the imposition of a condition. Consequently the Council is no longer pursuing Refusal Reason No 2 and this is not therefore an issue in this appeal.
  5. The appellants have submitted a signed and dated Unilateral Undertaking (UU) which would secure one of the dwellings as an affordable unit. This is a material consideration which I deal with below.
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6. Notwithstanding the wording of the application, on the basis of my conclusions on the UU I have omitted the reference to '1 affordable' from the description of the development allowed.

### **Main Issues**

7. The main issues are i) whether the development would have acceptable access to services and its effect on the character and appearance of the countryside and ii) whether a planning obligation to secure one of the dwellings as an affordable housing unit is justified.

### **Reasons**

#### *Access to services and effect on countryside appearance*

8. Queens Head essentially comprises a short linear group of dwellings along a main road. The appeal site, part of an open field, constitutes a gap in this group.
9. From my visit I noted that, with the exception of a public house, Queens Head lacks a range of essential facilities that might potentially be utilised by future occupiers of the dwellings. However, it is located on a bus route connecting the main towns of Oswestry and Shrewsbury and is well served, compared to many rural settlements, by a half hourly service in either direction (excluding Sundays). Furthermore, bus stops are within reasonable walking distance of the site.
10. The nearby neighbouring settlement of West Felton, to the south, contains a village shop and primary school. There is a roadside path connecting the two settlements which makes it possible to walk from one to the other in around 10-15 minutes. Although the route is unlit and would not be universally regarded as safe and convenient at all times, the two places are linked by the same aforementioned bus route. I accept that the convenience of private car use will always be an attraction. However I consider that the appeal site is in a location where realistic sustainable transport choices are available which would allow for access to a range of essential services without needing to be dependent on a private car. In addition the development would bring some limited benefits in terms of investment in the local economy.
11. In terms of visual impact the proposal would infill a gap in the line of dwellings fronting the main road and would be situated opposite other houses. The retention of hedge planting along part of the site boundary would further help to assimilate the site into its surroundings. The proposal would not therefore appear as an obtrusive encroachment into open countryside but rather as consolidating the settlement form. Whilst there would be some loss of open and long range views over the site from the highway to the front and from the public footpath which passes immediately to the north, the visual impact of this small development on these receptors would be limited and fleeting. In any event the countryside does not have a special landscape designation in this area.
12. Policy MD1 of the SAMDev establishes a settlement hierarchy within Shropshire and deals with the proposed scale and distribution of development. Queens Head is not recognised as a settlement within the hierarchy and consequently forms part of the countryside.

13. Policies CS5 of the Shropshire Local Development Framework Core Strategy 2011 (CS) and MD7a of the SAMDev state that open market housing will be strictly controlled within the countryside with certain exceptions cited including the provision of rural worker housing, the conversion of an existing building or replacement of a dwelling subject to various provisos.
14. Policy CS5 does state however 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. Furthermore Policy MD3 of the SAMDev, which is concerned with delivery of housing development, states that in addition to allocated housing sites planning permission will be granted for other sustainable housing development whilst having regard to other relevant policies in the Local Plan. The explanatory text to this policy goes on to explain that windfall development on non-allocated sites is important and that this may include sustainable greenfield sites in the countryside.
15. Drawing the above considerations together, I conclude that future occupiers of the development proposed would have acceptable access to services and would improve, albeit modestly, the sustainability of the wider rural community without, due to its limited scale and respect for the existing settlement pattern, causing harm to the vitality, appearance and character of the countryside. Accordingly, I conclude that it would be consistent with Policies CS5 and CS6 of the CS and with Policies MD2, MD3 and MD7a of the SAMDev insofar as they seek to control development in the countryside and create sustainable places.
16. In coming to this view, I have had regard to various recent appeal decisions submitted that relate to sites elsewhere in Shropshire, where proposals have been dismissed on the basis of being found to be in unsustainable locations. However from the limited information I have been given, these cases appear to have been in different parts of the county and / or are characterised by different site circumstances. It has not therefore been possible to draw a reasonable parallel between those cases and the current appeal, which I have determined on its own merits.

#### *Affordable Housing*

17. Policy CS11 of the CS and the associated Shropshire Type and Affordability of Housing Supplementary Planning Document 2012 (SPD) set out the Council's strategy for securing affordable housing from new residential development.
18. Policy CS11 seeks to meet the diverse housing needs of Shropshire residents and to create mixed, balanced and inclusive communities including through the contribution from all new open market housing development to the provision of local needs affordable housing.
19. However the Government's Planning Practice Guidance confirms that following the order of the Court of Appeal dated 13 May 2016 giving legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014, there are specific circumstances where contributions for affordable housing should not be sought from small scale development<sup>1</sup>. These circumstances include developments of 10-units or less and which have a maximum combined gross floorspace of no more than 1000 sqm.

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<sup>1</sup> Paragraph: 031 Reference ID: 23b-031-20160519

20. Policy CS11 is not therefore consistent with current national policy and accordingly should not be regarded as up to date insofar as it relates to affordable housing contributions from small scale development.
21. Regulation 122 of the Community Infrastructure Levy Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 204 of the Framework are as follows:
  - Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
22. The appellants have submitted a UU committing to restrict one of the dwellings as an affordable unit either through discounted rent or sale arrangements. The form of the undertaking has not been disputed by the Council. Whilst it states that the single unit contribution would be an overprovision in relation to target proportions, this is inevitable given the limited scale of the development.
23. However in light of national policy and the lack of evidence, taking into account the illustrative drawings provided, that the units would have a combined gross floorspace in excess of the threshold specified above, a planning obligation to secure an affordable housing unit would neither be necessary nor fairly and reasonably related in scale to the development.
24. I therefore conclude that the principle of securing an affordable housing unit from the scheme would not meet the relevant Regulation 122 and Framework tests and is not, therefore, justifiable. Whilst the UU would accord with the requirements of Policy CS11 of the CS, which seeks to make appropriate provision for affordable housing in the area, it would be in conflict with current national planning policy, which states that affordable housing contributions should not be sought from small scale developments and to which I must give substantial weight.

#### *Other Matters*

25. There is a dispute between the parties as to whether the Council can demonstrate a five year supply of housing land. I am mindful, in this regard that the Council has successfully challenged an appeal decision (Ref: APP/L3245/W/15/3067596) in the High Court, the effect of which is that it cannot be assumed that the Council does not have in place a five year supply of housing land. However, I have found no material harm as a consequence of the development proposed. In such circumstances, paragraph 14 of the Framework indicates that permission should be granted. There is no need, therefore, for me to come to a view on the Council's housing land supply position.
26. A number of objections to the proposal were raised by local residents. With regard to concerns about the detail of sewerage arrangements, the potential for contamination and impact on the water table from raising the finished floor level of the dwellings I have not been presented with any compelling evidence that a problem would result. Furthermore, with specific regard to drainage, I have taken into account that the Council no longer objects in principle, subject to a suitable condition.

27. With regard to concerns that the pond would pose a danger, this would be no more so than exists because of the general close proximity between public areas and water bodies. It would not be reasonable to withhold planning permission on such grounds. Concern that the houses would not sell, is a matter for the developer and not for my deliberations in this appeal.
28. The suitability of the layout in terms of impact on adjacent land users would be a matter for detailed consideration, required as a separate application to the Council. I am, however, satisfied that it would be possible to secure a layout that would not result in harm to the living conditions of existing residents.

### **Conditions**

29. I have considered the conditions suggested by the Council. Conditions requiring submission of all reserved matters, time limits for commencement of the scheme and compliance with approved plans are required to protect the character and appearance of the area and to secure a satisfactory form of development. I have set the time allowed to submit reserved matters to 12 months from the date of this decision considering that the appellants are at an advanced stage of finalising details and that this would encourage commencement of the development. Conditions are required with regard to details of drainage and external lighting in order to protect the environment and to minimise disturbance to bats.
30. I have made alterations to the wording of some of the suggested conditions for clarification and to ensure they meet the tests for conditions as specified in Planning Practice Guidance. The condition concerning drainage is specified as a pre-commencement condition as this is considered fundamental to the development permitted.
31. Conditions requiring habitat improvements for bats and birds would be unnecessary and unreasonable given that it is undisputed that the site is of low ecological value and can be carried out without loss of valued habitat and harm to protected species. In any event, landscaping improvements together with the drainage pond are likely to result in ecological benefits to the locality. A specific condition requiring landscaping details to be included with the first submission of reserved matters would be unnecessary.

### **Conclusion**

32. For the above reasons I conclude that the proposal would amount to the sustainable development for which there is a presumption in favour as set out in the Framework.
33. For the aforementioned reasons, and having had regard to all other matters raised, I conclude that the appeal should succeed and planning permission be granted.

*Roy Merrett*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Details of the access, appearance, landscaping (including boundary treatments), layout, and scale , (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 12 months from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 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. This excludes the layout shown which is for illustrative purposes only.
- 5) Prior to any development taking place details of the package sewage treatment plant to meet the 3960 litre/day flow rate shall be submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until the works for the disposal of foul and surface water drainage have been provided in accordance with the approved plans and specifications. The works shall thereafter be retained.
- 6) 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.