

Appeal Decision

Site visit made on 12 April 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 8 July 2016

Appeal Ref: APP/R0660/W/16/3142447

**Land to the South of Brereton Court, Brereton Heath, Cheshire East
CW12 4TP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Stan Kennerley against the decision of Cheshire East Council.
 - The application Ref 15/2613C, dated 4 June 2015, was refused by notice dated 18 November 2015.
 - The development proposed is the erection of 4 dwellings and access works.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline with matters of access to be determined. Matters of appearance, scale, layout and landscaping are reserved for future consideration, though a plan (12/1288/6) showing an indicative layout has been provided. I have determined the appeal on that basis.

Main Issues

3. At the time the application was refused by the Council, the Brereton Neighbourhood Plan (NP) had not yet undergone examination. One of the Council's reasons for refusal related to whether the proposal should be considered as premature in light of the emerging NP. Since the Council's decision, the NP has now been made and forms part of the development plan. As a result, the issue of whether the proposal is premature to the emerging NP can no longer be a point of contention between the main parties. I have, nevertheless, had regard to the relevant NP policies in consideration of the main issues which are:
 - the effect of the proposal on nature conservation interests and biodiversity;
 - whether the proposal would be a suitable location for housing having regard to reliance on private car;
 - the effect of the proposal on the character and appearance of the open countryside.
-

Reasons

Planning Policy Context

4. The appeal site lies outside of any defined settlement boundary. Policy PS8 of the LP¹ states that in the open countryside, new dwellings will only be permitted if they accord with Policy H6 of the LP. Policy H6 states that new residential development in the open countryside will not be permitted unless it is required for an agricultural or forestry worker, it is the replacement of an existing dwelling, the conversion of a rural building, the change of use of an employment site, limited development within the infill boundary line of some settlements, or affordable housing in accordance with a rural exceptions policy.
5. The appeal proposal seeks consent for the erection of 4 new dwellings on the site. The site is open land, currently in use as a paddock. As a result, the proposal would not accord with policies PS8 and H6 of the LP.
6. The NP was made on 29 March 2016 and now forms part of the development plan. Policy HOU1 of the NP states that development not within the defined settlement boundaries of Brereton Heath and Brereton Green will not be permitted unless specific policies within the NP allow for it. Policy HOU2 of the NP states that beyond the settlement boundaries, some types of housing development may be considered acceptable as exceptions to HOU1. Those exceptions include: the redevelopment of brownfield land, conversion of existing buildings, affordable housing schemes in accordance with rural exception policies, and self build schemes in accordance with Policy HOU4.
7. Policy HOU4 states that self-build schemes will be supported where, amongst other things, the location and nature of the scheme are sympathetic to the character of the countryside, and the site immediately adjoins the settlement boundary or would represent infill development. It goes on to state dwellings can only be built by those acting on behalf of individuals or a community group, and no single individual will be granted planning permission for more than one dwelling in any scheme.
8. The proposal would not comply with Policy HOU1 unless it adheres to the criteria in HOU2 or HOU4. On the evidence before me, the proposal would not adhere to the criteria within policy HOU2. I have no evidence from the appellant that the proposal would be a self-build scheme which would meet the criteria in Policy HOU4. As a result, the proposal would not comply with the relevant NP policies.
9. However Paragraph 14 of the National Planning Policy Framework (the Framework) states that where a Council cannot demonstrate a five year supply of deliverable housing land, relevant policies for the supply of housing should not be considered up-to-date. In my view, Policies PS8 and H6 of the LP and Policies HOU1, HOU2 and HOU4 of the NP relate to the control of the location of housing and should not therefore be considered up-to-date.
10. The Council is clear that it cannot demonstrate a five year supply. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development as where the development plan is absent, silent, or, as in this case, relevant policies are out of date, decision-makers should grant

¹ Congleton Borough Local Plan First Review 2005

permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. Whilst this does not change the statutory function of the development plan, the Framework is an important consideration. In this context, I must consider the proposal against the presumption and whether or not any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits.

Nature Conservation and Biodiversity

11. An Ecological Mitigation and Enhancement Plan prepared by Arbtech divides the site into 5 compartments of grassland habitats. Compartments B and C are UK Biodiversity Action Plan (BAP) Priority Habitats. Compartments A, D and E show some characteristics of BAP Priority Habitats but are currently in a degraded condition. The Council indicates that all compartments support sufficient number of indicator species to be designated as a non-statutory Local Wildlife Site (LWS).
12. The proposal would result in the total loss of compartment C and the partial loss of compartment B. I note that the appellant has indicated that the grassland habitat can be suitably conserved through a management plan which would result in an overall net increase of 200% of total area species rich neutral grassland over a ten year period. Nevertheless, the proposal would likely result in disturbance and damage to all of the grassland habitat on the site due to the movement of vehicles, storage of materials and changes in site levels during construction. In addition, even if some grassland were retained, there would likely be pressure from future occupiers to maintain it, which could be detrimental to its ecological value.
13. The proposed mitigation does not identify a specific area of off-site habitat and the report advises that further work would be required to identify a suitable off-site area. In any case, the Council indicates that the surrounding land is likely to support wet woodland habitat and therefore would be unlikely to support grassland habitats. I have no compelling evidence to come to any alternative view.
14. I note that the appellant indicates the appeal site has undergone preparation for agricultural use through the use of pesticides and is therefore currently barren. However, the evidence of the Council indicates that, given the pesticide which has been used and the time of year it was used, it is unlikely that the treatment has killed the grassland habitats completely and that many species would be likely to re-grow over a period of time. As a result, on the evidence before me, I consider the proposal would result in the loss and degradation of a BAP Priority Habitat area and that insufficient mitigation has been demonstrated.
15. The appeal site lies adjacent to the locally designated Moss LWS which is a valuable wet woodland site which is within Natural England's defined Impact Risk Zone of the Bagmere Site of Scientific Importance (SSSI). It also lies close to the Midland Meres Ramsar Site.
16. In terms of the Moss LWS, the Council consider that there is the potential for adverse impacts from the proposal as a result of changes in hydrology of the site and the surrounding area. The Council consider the appellant's drainage assessment unduly brief. However, the appellant has provided subsequent

information regarding the drainage of the site. It indicates that no groundwater drainage will drain towards the LWS. Moreover, there is a large man made pond between the site and the LWS which would act as a barrier to any groundwater.

17. I note the concerns regarding the potential effects of foul drainage on the Moss LWS, however, the appellant has indicated that foul water would connect with the foul drainage in the adjoining site. I consider that could be suitably controlled by condition. As a result, in the absence of any contrary evidence from the Council, the proposal would therefore be unlikely to have a detrimental effect on the LWS.
18. Nevertheless, whilst the proposal would be unlikely to have a harmful effect on the Moss LWS, Bagmere SSSI and the Midland Meres Ramsar Site, I consider that the proposal would have a harmful effect on nature conservation interests and biodiversity through the loss of and degradation of the grassland habitats on the appeal site. The proposal would therefore conflict with the nature conservation and biodiversity preservation and enhancement aims of Policies NR2, NR3, NR4 and NR5 of the LP. The proposal would also conflict with the natural environment aims of the Framework.

Location

19. There are relatively few facilities within walking distance of the appeal site. Indeed there are no local shops or services. Whilst Congleton town centre is less than 5km away and within reasonable cycling distance of the site, given the high speed nature of the A54, the lack of cycle lanes and its largely unlit nature, I consider it unlikely that future occupiers would to travel to Congleton via bicycle.
20. There are bus stops located on the A54 Homes Chapel Road which are accessible by walking a short distance along lit footpaths. These stops offer services between Congleton, Homes Chapel, Northwich and Altrincham which have various services and facilities. However, the bus stops adjoin the A54 with only an unlit verge upon which to wait. The bus stops are in close proximity to the high speed carriageway and without sheltered waiting areas. As a result, I consider this would be a reasonable deterrent to their use, particularly in dark evenings or during periods of inclement weather and therefore consider that future residents of the appeal proposal would have not have satisfactory opportunities to access the nearest services and facilities by public transport, walking or cycling.
21. I have had regard to the findings of the Inspector in a recent nearby appeal². However, it is clear that the Inspector in that case considered that future occupiers of the appeal site on Moss Lane would likely prefer the use of private vehicle. On the evidence before me, I have concluded similarly here. I have also had regard to the findings of the Inspector in another recent appeal decision³. However, the circumstances of that case do not appear to be directly comparable to the case before me here. In that instance the appeal site was within the infill boundary line for Brereton Heath and the Inspector found the proposal accorded with Policy H6. That is not the case here. In any event, both Inspectors came to similar conclusions as I have done here,

² APP/R0660/A/14/2226315

³ APP/R0660/A/13/2205566

in that reliance on private car would increase, albeit I see no reason to disagree with both Inspectors that accessibility factors are only one facet of sustainability to weigh in the balance.

22. I conclude, therefore, that the proposal would not be a suitable location for housing having regard to reliance on private car, contrary to the aims of the Framework.

Character and Appearance

23. The appeal site is an irregular shaped plot of land, located to the south of the cul-de-sac of Brereton Court. It is currently grassland used for horse grazing with some tree and scrub cover, particularly towards the south and east where there is a wooded area. The site lies within the open countryside, however, it is largely screened by vegetation from Brereton Court and Moss Lane. The appeal site lies at a significantly lower level than the surrounding housing.
24. Whilst the proposals would be visible from some vantage points within Brereton Court, the site is relatively well contained by the woodland, its lower land levels and the existing property to the west known as Lincluden. As a result, the proposal would not result in a significant incursion into the open countryside and it would not have a harmful visual impact.
25. I conclude, therefore, that the proposal would not have a harmful effect on the character and appearance of the open countryside. As a result, the proposal would not conflict with the design aims of Policy GR2 of the LP.

Benefits

26. The proposal would make a small but, nevertheless, important contribution towards meeting the shortfall in housing land supply within the area. This is a matter to be afforded significant weight. Moreover, the proposal would also support jobs during construction and would support the local economy through increased spending from future residents within the local area. As a result, the proposal would have some economic and social benefits.

Planning Balance

27. I conclude that the proposal would be contrary to Policies PS8 and H6 of the LP. However, the Council does not have a five year supply of housing land. In such circumstances Policies PS8 and H6 should not be considered to be up-to-date.
28. The proposal would contribute towards addressing the undersupply of housing in the District and would have some economic and social benefits. In addition, the proposal would not have a harmful effect on the character and appearance of the area. However, those benefits would be relatively modest given the overall scale of the scheme and the limited contribution it would make towards reducing the undersupply. Moreover, the proposal would have a significant harmful effect on nature conservation interests and biodiversity and would not be a suitable location for housing having regard to reliance on private car. This, in my view, would significantly and demonstrably outweigh the limited benefits of the proposal.

Conclusion

29. In the context of the presumption in favour of sustainable development set out in Paragraph 14 of the Framework, I have found that the adverse impacts would significantly and demonstrably outweigh the benefits of the proposal. The proposed development cannot, therefore, be considered to constitute sustainable development and for the reasons given above I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR