
Appeal Decision

Site visit made on 10 August 2016

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 26 September 2016

Appeal Ref: APP/Y3940/W/15/3141391

Land off Flisteridge Road, Upper Minety, Wiltshire SN16 9PS

- 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 M Hutchings against the decision of Wiltshire Council.
 - The application ref: 15/08465/OUT, dated 24 August 2015, was refused by notice dated 21 October 2015.
 - The development proposed is the erection of 4 dwellings and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline with all matters reserved. I have had regard to the indicative street scene and various layout plans (including an indicative landscape strategy and tree protection measures) as being for illustration only. I note also the revised indicative layout plan submitted at the appeal stage to demonstrate that the site could accommodate four dwellings without affecting the legal line of public footpath MINE11.

Reasons

3. The appeal site is an open field on the south-west side of Flisteridge Road, separated from the highway by a roadside ditch and then a hedgerow which includes some mature trees. It is not disputed that the site is outside the settlement boundary¹ but it does directly abut existing residential properties to the south-east and there are also existing houses on the opposite side of the road (to the north-east).
4. The **main issue** in this case is whether the site is an appropriate location for the proposed dwellings, having regard to development plan policy, the *National Planning Policy Framework* and any other planning considerations. Those considerations include, in particular, housing land supply and accessibility to services and facilities.

Policy context and housing land supply

5. Policy guidance in the *National Planning Policy Framework* is a key material consideration but it does not change the statutory status of the development plan as the starting point for decision making². Core Policies 1 and 2 of the

¹ Albeit there is no plan before me to illustrate a village boundary

² Paragraph 12 of the *Framework*

Wiltshire Core Strategy (CS) (2015) set out a hierarchical settlement strategy, with provision for most new development in larger settlements with good accessibility, services and facilities. Such a strategy is a commonly-used approach in seeking to achieve sustainable development, in part because it helps to maximise the use of sustainable transport modes and minimise both journey lengths and the need to travel. In those respects the CS strategy is consistent with the *Framework*.

6. In Core Policy 13 (relating to the Malmesbury Community Area) both Minety and Upper Minety are identified as 'small villages'. As part of the CS strategy, development in small villages will be limited to infill within the existing built area, where proposals should 'seek to meet housing needs of settlements'. The appeal scheme would not be infill or within the existing built-up area, and nor would it accord with any CS 'exception policies'. It would therefore conflict with development plan policy³, and this is not disputed by the appellant.
7. However the Council now accepts it cannot currently demonstrate a five-year supply of deliverable housing sites. Paragraphs 14 and 49 of the *Framework* are therefore engaged, relevant policies for the supply of housing should not be considered up-to-date and there is a presumption in favour of sustainable development. Thus it is reasonable to treat Core Policy 2 as a housing supply policy inasmuch as it generally seeks to restrict housing development to locations within built-up areas and settlement boundaries⁴. Given the extent to which Core Policies 1 and 13 are inter-linked with Core Policy 2, it is not unreasonable that they should be similarly treated.
8. In any event, the effect of the current absence of a five-year housing land supply is that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole, unless material considerations indicate otherwise⁵.
9. The inability to demonstrate a five-year housing land supply stems primarily from suspension of the examination into the Chippenham Site Allocations DPD⁶. Upper Minety is in same Housing Market Area (North and West) as Chippenham and the Council has provided some additional information about housing supply and delivery in this area. It mentions that the current shortfall is only around 36 dwellings, a figure which is not disputed by the appellant.
10. The Council's statement also refers to other appeal decisions and, in particular, to a recent Court of Appeal judgment⁷ relating to the interpretation of Framework paragraph 49 and associated matters. It is apparent from that judgment that policies which are not up-to-date (pursuant to paragraph 49) should not necessarily be discounted altogether: it is for the decision-maker to determine what if any weight they should be given according to the particular circumstances in each case. Moreover the amount of any shortfall in supply, the measures being taken to address it and the number of dwellings in a proposed scheme are all matters that may be relevant in undertaking the

³ Including saved Policy H4 of the North Wiltshire Local Plan 2011 (LP) which seeks to restrict development in the countryside outside settlement boundaries other than in specified circumstances, none of which apply in this case

⁴ At least until such time as settlement limits are reviewed in a Site Allocations DPD or Neighbourhood Plan

⁵ And unless specific *Framework* policies indicate development should be restricted, albeit no such policies apply in this case

⁶ In full, Development Plan Document

⁷ In full, Suffolk Coastal District Council and Hopkins Homes Limited and SSCLG, Richborough Estates Partnership LLP and Cheshire East Borough Council and SSCLG, 17 March 2016 [2016] EWCA Civ 168

balancing exercise required by paragraph 14 of the Framework. I therefore return to such matters later in this decision.

Location and accessibility to services

11. A theme running through the *Framework*, and included in its core planning principles, is the need to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and to focus significant development in locations which are or can be made sustainable. This is reflected in all three dimensions of sustainable development⁸ in that it has implications for the coordination of development (the economic role); it has a bearing on communities' needs for accessible local services (the social role); it is relevant in moving to a low carbon economy (the environmental role).
12. Section 4 of the *Framework* includes more detailed advice relating to transport and patterns of development and, as the appellant has noted, that includes giving people a real choice about how they travel. In this case however the appeal site adjoins a small village in the countryside with few facilities and limited public transport⁹. Thus most everyday facilities, such as employment, shopping and healthcare for example, would be accessed by car because there would be little choice of travel modes.
13. The only community facility/service in Upper Minety itself is the parish church but facilities in nearby Minety include a primary school and pre-school, a weekly post office service, a village hall, two pubs and various sports and leisure facilities. The Council considered it reasonable to assess the housing needs of the two villages together in a 2013 report¹⁰ relating to an application for ten affordable dwellings in Upper Minety. Permission was granted on the basis that the scheme, as a rural exception site, would meet identified local housing needs for both villages, in accordance with development plan policy. In relation to that scheme it was accepted that local amenities were limited; that the road between the two villages was used by cyclists but walking, along an unlit rural road with no footpaths, was not ideal on safety grounds; that the site was accessible to work opportunities in various larger settlements, albeit primarily by car.
14. A key part of the appellant's case is that the appeal site, only some 200m or so from the affordable housing site and adjoining existing housing development, is no less accessible than the adjacent dwellings or the affordable housing on the exception site, and it would also be well related to the existing settlement. Be that as it may, the much more significant point is that the affordable housing scheme was permitted as an exception to the overall development plan strategy, specifically to meet an identified and genuine local need. I note also firstly that although CS Core Policy 44 (Rural exceptions sites) is referenced in the 2013 report, it was not adopted policy at that time. Secondly, it appears the development plan policy at that time (LP Policy H7) did not require that employment and services be accessible from a rural exception site (which is now one of eight criteria in Core Policy 44 that should all be satisfied).
15. Moreover it is clear that the now adopted Core Policy 44 takes a proactive approach to providing affordable housing, largely because of the difficulties in meeting local needs in rural areas. As the appeal scheme would not provide affordable housing, and because no genuine local need for it has been

⁸ As described in paragraph 7 of the *Framework*

⁹ As demonstrated by the bus timetables appended to the Highway Authority's statement

¹⁰ Which included detailed comments from the Parish Council

demonstrated, the criteria in Core Policy 44 cannot provide any sound justification for allowing it. It is possible that occupiers of the proposed dwellings would help to support existing facilities in Minety, but given the small scale of the scheme it seems unlikely any such benefit would enhance or maintain the vitality of the village communities to any significant degree¹¹. Moreover any such benefits are unlikely to be comparable with those resulting from ten affordable dwellings for people with local connections.

16. Considering the appeal scheme on its own merits, in terms of accessibility and the likelihood that key facilities and services would be accessed by car, it is relevant in the light of *Framework* paragraph 37 to consider the likely length of those car journeys. The appellant's times of less than 15 minutes to Cricklade and around 20 minutes to Malmesbury (the nearest towns) appear reasonable estimates. They do however suggest journeys by cycle would not be a realistic option and car journeys would be longer than those described as likely to be 'short' in an appeal decision for a site elsewhere¹². Moreover it is apparent from that appeal decision that it concerned a larger scheme (45 dwellings) which together with another, permitted, scheme was expected to result in improved local services and facilities and, significantly, to provide for additional bus services to a nearby town.
17. In another appeal case¹³ cited by the appellant it appears from that decision that distances to the nearest centres were shorter and bus services were better than is case at Upper Minety. Thus neither decision supports the appellant's case to any significant degree. These decisions do however highlight both the need to consider accessibility 'in the round' and recognition in the *Framework* that account should be taken of the differences between urban and rural areas, because opportunities for sustainable transport solutions will vary from the one to the other. As the Inspector in the 2015 decision noted: "the *Framework* does not seek to prevent car use but requires a balanced approach, depending on the context and scale of development proposed"¹⁴. Wiltshire Council's own CS Core Policies 60 and 61 refer to reducing the need to travel rather than precluding development which would involve reliance on private car travel.
18. Having taken a balanced approach to the specific combination of circumstances in this case¹⁵, I conclude the site scores poorly in terms of local services and facilities, including public transport. Thus it is likely that occupiers of the proposed dwellings would rely heavily on travel by car because, realistically, there would be little choice of transport mode for accessing service and facilities elsewhere. Moreover those car journeys would not be particularly short. Occupiers of the proposed dwellings would not therefore have the benefit of accessible local services and the appeal scheme would increase rather than minimise the need to travel (irrespective of the site's location outside the village's current built-up area). The scheme would conflict with the *Framework*, with elements of all three dimensions of sustainable development, and with CS Core Policies 60 and 61.

¹¹ This features in paragraph 55 of the *Framework*, in relation to promoting sustainable development in rural areas

¹² Appeal ref: APP/G1630/A/14/2223858, dated 22 January 2015, relating to a site near Tewkesbury, appended to the appellant's statement of case

¹³ Appeal ref: APP/X1545/A/14/2222965, dated 6 November 2014, relating to a site in the district of Maldon

¹⁴ In paragraph 31 of appeal decision ref: APP/G1630/A/14/2223858

¹⁵ Without giving any weight to the Council and Highway Authority position that 'reliance on private vehicles is inherently unsustainable and contrary to local and national planning policies' because, for the reasons set out in my paragraph 17, that position does not stand up to scrutiny.

Other considerations

19. The provision of four new dwellings would help to boost the supply of housing, albeit in a very minor way, and in that respect it would have some social and economic benefits. However those benefits would be limited due to the small number of dwellings, which would not address any specific identified local need.
20. The Council's refusal reasons do not raise concerns about the scheme's impacts in terms of landscape, character, appearance or ecological value. There are however suggestions in its appeal representations that some adverse impacts would result from the extension of built form into the undeveloped countryside, reflecting concerns in local residents' responses to the application and appeal.
21. The development would of course fundamentally alter the character and appearance of the site itself, but most of the frontage hedge and trees would be retained and an additional short run of housing along the south-west side of the road would more or less match the extent of existing housing along the opposite side of the road. Moreover the linear layout pattern would reflect the linear layout of development along the northerly side of Flisteridge Road and the north-west side of Hankerton Road.
22. Public rights of way are subject to separate legislation and there would be scope to impose planning conditions to protect existing trees, provide additional landscaping and improve biodiversity for example. Taking account of all such matters, I find no compelling grounds to conclude the scheme would have any serious adverse impacts in terms of landscape, character, appearance or ecological value or that they would set any precedent for harmful urbanisation of the countryside. It would not conflict in these respects with the environmental dimension of sustainable development. Nor have I found any other matters, such as concerns about neighbouring occupiers' living conditions, traffic, drainage and flooding for example, to be so significant as to weigh against the proposals.
23. I have had regard to all other matters raised, including in particular the information submitted by the Council relating to the shortfall in housing land supply and to larger schemes in more accessible locations that it has recently approved (subject to the completion of Section 106 agreements). The limited nature of that information and the appellant's point that implementation of those larger schemes may be some way off¹⁶ reduce the weight I can give it. Even so, to the extent that the information indicates the likelihood of an improving housing supply position, I give it a degree of weight.

The planning balance and conclusions

24. Due to the appeal site's location associated with a 'small' rural village the proposed dwellings would not accord with the development plan strategy for the location of new housing. However relevant CS policies for the supply of housing cannot be considered up-to-date because the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Even so, as a recent Court of Appeal judgment establishes, the absence of a five-year supply does not necessarily mean such policies should not carry any weight at all.
25. CS Core Policies 1, 2 and 13 are all part of a settlement strategy which seeks to achieve sustainable development in the Malmesbury Community Area and in Wiltshire. The strategy, adopted relatively recently, accords in many respects

¹⁶ Because of the time likely to be needed to conclude Section 106 agreements and, for outline permissions, to secure approval of reserved matters

with policies in the *Framework*, and efforts are being made to remedy a small shortfall in housing supply. I therefore find it reasonable to give significant weight to the CS policies insofar as they seek to actively manage patterns of growth to contribute to the achievement of sustainable development. I have found that the appeal scheme would conflict with the development plan and with the *Framework* in those respects.

26. I conclude overall that the adverse impacts of allowing the appeal scheme, as a result of those policy conflicts, would significantly and demonstrably outweigh the benefits of adding just four dwellings to the housing supply, when assessed against the policies in the *Framework* taken as a whole. Thus I further conclude the appeal site is not an appropriate location for the proposed dwellings and the scheme would not achieve sustainable development. It follows therefore that the appeal must fail.

Jane Miles

INSPECTOR