
Appeal Decision

Site visit made on 14 September 2016

by David M H Rose BA (Hons) MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/L3245/W/16/3150475

Land opposite North Farm, Whitcliff, Ludlow, Shropshire, SY8 2HD¹

- 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 Peter Dickin against the decision of Shropshire Council.
 - The application Ref 14/03832/FUL, dated 15 August 2014, was refused by notice dated 18 November 2015.
 - The development proposed is a dwelling and garage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Peter Dickin against Shropshire Council. This is the subject of a separate Decision.

Main Issues

3. The main issues are:- firstly, whether the proposal would be in conflict with the distribution of development set out in the development plan; secondly, whether or not the proposal would preserve or enhance the character or appearance of the Ludlow Conservation Area; thirdly, the potential effects of the proposal on ecological interests; and finally, whether sufficient information has been submitted to demonstrate that the project would not have a material adverse effect on the well-being of an existing roadside tree.²

Reasons

The development plan

4. The development plan comprises the Shropshire Council Core Strategy Policies (Core Strategy) and the Site Allocations and Management of Development Plan (SAMDev). The saved policies of the South Shropshire District Local Plan are no longer material.

The distribution of development

5. The strategic approach of the Core Strategy, expressed in Policies CS1 and CS4, outside main settlements, is to enable the rural areas to become more sustainable through a 'rural rebalance' approach, accommodating around 35% of Shropshire's residential development over the plan period. Development and investment is to be located predominantly in community hubs and community clusters with contributions to social and economic vitality.

¹ Address taken from planning application form as opposed to decision notice

² The Council refers to the tree as a Sycamore whereas Drawing No 1409/4 describes it as an Oak – nothing turns on its precise identification

6. Community hubs and community clusters are set out in detail in SAMDev Policy MD1. The appeal site falls within the open countryside, outside any defined settlement, hub or cluster and Core Strategy Policy CS4 makes plain that in such locations development will not be permitted unless it meets Core Strategy Policy CS5. In this regard, Core Strategy Policy CS4 has to be read as a whole and there is nothing to suggest that it is permissive of development in the open countryside even though the provision of market housing would trigger a payment towards the delivery of affordable housing.
7. Core Strategy Policy CS5 and SAMDev Policy MD7a relate specifically to new development in the countryside which will be strictly controlled, other than in defined circumstances, including improving the sustainability of rural communities.
8. Policy CS5 makes provision for '*..... dwellings to house agricultural, forestry or other essential countryside workers applicants will be required to demonstrate the need and benefit for the development proposed. Development will be expected to take place primarily in recognisable named settlements or be linked to other existing development and business activity where this is appropriate*'.
9. In turn, Policy MD7a confirms:- '*Dwellings to house essential rural workers will be permitted if, in the case of an additional dwelling to provide further accommodation for a worker who is required to be present at the enterprise for the majority of the time, a functional need is demonstrated and the dwelling is treated as affordable housing such dwellings will be subject to occupancy conditions* '.
10. The appellant has long-standing association with the rural economy, which he seeks to retain, and his work is formally supported by Ludlow and District Riding for the Disabled Association (RDA). In this regard, the RDA claims that the appellant needs to build a dwelling to remain close to North Farm in order to 'delegate' the family business to his daughter, and to enable him to continue his work with the RDA. Without a new dwelling, it is said that he would be forced to sell North Farm resulting in the demise of the RDA.
11. I am in no doubt that the RDA is an important and valued community asset which depends heavily on the contributions of the appellant and this is a factor of significant weight. However, no tangible evidence, beyond the apparent desire and convenience of the appellant, has been submitted to demonstrate that a new dwelling in this location would be a prerequisite to the continued operation of the RDA. In particular, the requirements of Policy CS5, relating to demonstrable need and expected location, and the terms of Policy MD7a, with particular reference to establishing a functional need, would not be fulfilled. There is also no proffered mechanism to ensure that the dwelling would be treated as affordable and restricted in occupation.
12. Overall, the benefit claimed would appear to be more in the nature of a personal advantage as opposed to a clearly evidenced need with local economic and community benefits as the development plan anticipates. Moreover, the proposed dwelling would stand in isolation and away from any recognisable settlement or established group of buildings. Its purported link to North Farm would not be apparent.
13. The sustainability of the site is prayed in aid with its proximity to Ludlow town centre. However, part of the route into the town involves considerable gradient, it lacks continuous footways and routine walking or cycling would be an unlikely prospect and car journeys would likely be the norm. Whilst

consideration needs to be given to the appellant undertaking car journeys to work, if he were to live in Ludlow, his intended eleven years of employment before retirement would be considerably less than the lifespan of the dwelling and its longer term car movements and ongoing lack of sustainable travel.

14. Overall, the proposal would lack a proven economic or social role and building in the open countryside, without good reason, would run counter to the environmental role of sustainable development. It follows that it would not gain support from SAMDev Policy MD3.
15. Although it is claimed that the SAMDev will not deliver the Core Strategy objectives of rural rebalance or anticipated housing numbers in general, and much is said about the process leading to adoption, the SAMDev is nonetheless part of the adopted development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires determination to be made in accordance with the plan unless material considerations indicate otherwise.
16. The National Planning Policy Framework sets out the manner in which local planning authorities should boost significantly the supply of housing through the plan-making process and for housing applications to be considered in the context of the presumption in favour of sustainable development.
17. Whilst these principles were rehearsed in the appeal decision referred to by the appellant,³ that proposal can be clearly distinguished from the current project. In this regard, the decision has to be read in the round and it is apparent that the Inspector, in allowing the appeal, gave significant weight to the socio-economic benefits of up to 215 market and affordable homes and the related development leading to a conclusion which engaged the presumption in favour of sustainable development.
18. In the appeal before me, the scale of benefits would be wholly different and of minimal weight; and the proposal would fail to achieve the three interdependent roles of sustainable development.
19. It follows that the erection of a new dwelling in the open countryside, without due justification, would be in conflict with the distribution of development set out in the development plan and it would thus be in conflict with Core Strategy Policies CS1, CS4 and CS5 and also with SAMDev Policies MD1, MD3 and MD7a.

Conservation Area

20. The appeal site lies adjacent to the Ludlow Conservation Area and, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The Council takes no issue on this matter as it is satisfied that the dwelling would be well-designed and would be likely to have minimal impact on the historic environment.
21. For my part, the character and appearance of the historic town owes much to its wider landscape setting and significant areas of open countryside are

³ APP/L3245/W/15/3001117: Land off A49 and Bromfield Road, Ludlow, SY8 1DY: residential development comprising up to 215 dwellings a commercial building (ClassB1(a) or (b) – business) and/or neighbourhood store (Class A1 – retail)

included within the designated area. Whilst scattered development on the periphery of the town is an established component, and the proposed dwelling would be masked to a large degree, the domestication of the land would result in a marked loss of countryside character and its overwhelming rural appearance. This would be particularly incongruous and damaging, given adjacency to the Conservation Area and the acknowledged importance, to the designated area, of the high woodland and common to the south and west of the town.

22. As such the proposal would have an adverse impact on the designated asset and it would neither preserve nor enhance the character or appearance of the Ludlow Conservation Area.
23. In terms of the National Planning Policy Framework, the proposal would amount to 'less than substantial harm'. Nonetheless, when considering the harm to an asset, great weight should be given to the asset's conservation; and, the more important the asset, the greater the weight should be. Where it is found that a development proposal would lead to less than substantial harm to the significance of the designated asset, the harm should be weighed against the public benefits of the proposal. In this case the benefits would be personal to the appellant and permission should be refused.

Ecological interests

24. The Council's concern, in the wording of the second reason for refusal, is whether sufficient information has been provided in order to reach a conclusion on whether or not the proposal would cause an offence under the Conservation of Habitat and Species Regulations (2010).
25. Its appeal statement elaborates on the areas of concern and reference is made to paragraph 99 of Circular 06/2005 notably:- *'..... it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'*.
26. The appellant's Protected Species Report, undertaken by a competent person, records findings and an overall assessment following two visits to the site (summer and autumn/winter). The field survey was carried out in accordance with the guidelines in the handbook for Phase 1 Habitat Surveys (the guidelines).
27. The Phase 1 habitat classification and associated field survey techniques provide a relatively rapid system to record semi-natural vegetation and other wildlife habitats. The report confirms that no evidence of any protected species was found on the site.
28. Whilst the surveyor expressed the view that the proposed development was unlikely to have impact on any protected species that might be found in the area, the report does not contain any form of transparent assessment or details to support that conclusion.
29. In particular, whilst the site itself has been used for grazing and it contains no particular features which might support habitats, it is bound on two sides by hedgerows and there is substantial tree cover on its eastern side and in the wider locality. The guidance confirms that *'..... sites of relatively limited*

conservation interest may nevertheless be of strategic importance to nature conservation, acting for instance, as wildlife corridors or "stepping stones"."

30. In my opinion, the local planning authority's criticism of the limitations of the survey, in relation to potential bat, badger and reptile activity is well founded. Moreover, whilst regular grazing of the land is likely to have impoverished the plant species to be found within the site, the land forms part of the larger Whitcliffe Common Local Wildlife Site and it lies adjacent to the Whitcliffe Common Reserve. Moreover, it is telling that the appellant has not sought to respond to any of the criticism levelled by way of further details other than by placing continuing reliance on the presumed robustness of the original assessment.
31. Whilst it is said that broad habitat types were recorded and mapped, and that desk study did not identify any known presence of protected species within 250 metres of the site which could be impacted on by the proposed development, the overall level of information was superficial with no clear assessment of the potential role of the site within its wider context.
32. Core Strategy Policy CS17, reinforced by SAMDev Policy MD12, requires developers to identify, protect, enhance, expand and connect Shropshire's environmental assets, including reference to ecological assets, their immediate surroundings or their connecting corridors. In my opinion, the level of information provided by the appellant fell well below the threshold required to discharge the onus placed on the developer to provide an adequate evidential basis.
33. Overall, the report fell short in assessing potential direct impacts on the Whitcliffe Common Local Wildlife Site and potential indirect impacts on the adjacent Whitcliffe Common Reserve and the wider environmental networks. The shortcomings, and the potential effects of the proposal on ecological interests, run counter to Core Strategy Policy CS17, SAMDev Policy MD12 and the aim of the National Planning Policy Framework to minimise impacts on biodiversity, including by establishing coherent ecological networks.

The roadside tree

34. A well-established tree, of considerable amenity value, stands adjacent to the access into the site. Although the existing access point into the field is grassed over, and the existence of the stoned surface is not apparent, it has been confirmed that no excavation would take place around the tree and the subsequent surface would be permeable.
35. However, the access is of a somewhat informal nature and it is said that it was formed by the Water Board for their machinery when a new pipe was laid across the field. In this regard, there is no detailed information as to its construction or its relationship with root systems and no consideration appears to have been given to the consequences of likely significantly increased use to serve a dwelling. All of these elements, with any necessary mitigation, should have been set out in an arboricultural assessment in order to demonstrate that the project would not have a material adverse effect on the well-being of the tree.
36. Without these details, the proposal would be in conflict with Core Strategy Policy CS17 and SAMDev Policy MD12 which seek to ensure the protection of natural assets, including trees.

Other matters and planning balance

37. With regard to the claim that the site is previously developed land, part of the plot is occupied by a small observation bunker. Whilst the diminutive above-ground structures remain apparent, these are a minor and subsidiary element set within an area of rough pasture. As such, the bunker provides an insufficient basis to justify the erection of a dwelling and its related domestic curtilage which would itself retain the bunker.
38. In conclusion, having considered all of the policies drawn to my attention, the proposal would be in conflict with the development plan when read a whole and in particular to the spatial distribution of development. The claimed sustainability benefits of the proposal, the need for additional housing and the personal aspirations of the appellant do not outweigh the harm identified and accordingly I conclude that the appeal should be dismissed on this ground alone.
39. The proposed dwelling would also fail to preserve the character or appearance of the Ludlow Conservation Area and in the absence of any clearly confirmed public benefits, the harm identified is a further, stand-alone, reason to dismiss the appeal.
40. The inadequacy of the ecological information and the absence of an arboricultural assessment are further factors to be added to the compelling harm identified above.
41. Having regard to the above, and to the consideration of all other matters raised, the appeal is dismissed.

David MH Rose

Inspector