
Appeal Decision

Hearing held on 19 October 2016

Site visit made on 19 October 2016

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 09 December 2016

Appeal Ref: APP/B3410/W/16/3150471

Land off Lightwood Road, Yoxall, Burton on Trent DE13 8QE

- 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 Gladman Developments against the decision of East Staffordshire Borough Council.
 - The application Ref P/2014/01664, dated 23 December 2014, was refused by notice dated 20 November 2015.
 - The development proposed is outline application for up to 170 dwellings with associated landscaping and open space with all matters reserved except for access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The scheme before me differs from that described in the application form and in the banner heading above. This is because the proposal evolved during the application stage, whereby the number of residential units sought was reduced to no more than 135. The Council's decision, as is mine, is subsequently based on the lower quantum.
3. A legal agreement is before me dated 9 November 2016 which provides for financial contributions for services and infrastructure, and affordable housing made necessary by the proposed development. While not raised as a main issue, the main parties remain in dispute as to the necessity for, or the amounts sought for financial contributions towards sports play pitches and maintenance, refuse bins and a monitoring fee. However, because I am dismissing the appeal on the main issue, it is not necessary for me to reach any conclusions on the adequacy of the legal agreement in my Decision.
4. The appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of access. Any other details shown which would be a reserved matter, such as the layout, I shall treat as being indicative only.

Main Issue

5. The main issue whether the Council can demonstrate a five years supply of housing, and whether other circumstances exist to justify the proposed development.

Reasons

Five year housing land supply

6. Paragraph 47 of the National Planning Policy Framework (the Framework) requires local planning authorities to ensure that their local plans meet in full the objectively assessed needs in their housing market area, and to identify and update sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5 or 20%.
7. The development plan for the area comprises both the East Staffordshire Local Plan 2015 (Local Plan) and the Yoxall Neighbourhood Development Plan 2015 (Neighbourhood Plan). Local Plan Strategic Policy 3 states that 11,648 dwellings are required within the plan period 2012-2031, and common ground exists between the main parties that the five year housing requirement to 2020/21, plus additions for shortfall and a 20% buffer, equates to 847 dwellings per annum.
8. Local Plan Strategic Policy 2 directs development towards a settlement hierarchy. Yoxall is identified as a 'Tier 2 Local Service Villages', which sits lower down the pecking order and behind 'Main Towns' and 'Tier 1 Strategic Villages' as a growth area. Local Plan Strategic Policy 4 identifies a minimum of 40 dwellings for the village. The Neighbourhood Plan designates a site known locally as 'Leafields Farm' to the north of the village as the site to primarily deliver this requirement, and I was told at the Hearing that an extant planning permission exists for this and another site in which the 40 unit requirement will be exceeded.
9. It is common ground that the appeal site lies adjacent to, but outside of the settlement boundary of Yoxall and thus is in the open countryside. The appeal land is not designated for development in the Neighbourhood Plan. Although not cited in its reason for refusal, the Council requested at the Hearing that Local Plan Strategic Plan Policy 8 also be taken into consideration in the determination of the appeal. No objection was raised by any party and I see no reason not to do so. This policy states that development outside settlement boundaries will not be permitted unless certain circumstances arise and as listed; one of which is that it accords with a 'made' neighbourhood plan. Neighbourhood Plan Policy H2 states that development outside of the settlement boundary will be permitted if it can be demonstrated that the development is on a small site and would provide affordable housing for evidenced local need, or market homes where it is essential to deliver affordable homes, and that it preserves or enhances the character or appearance of the area.
10. The appellant disputes the number of forecast sites that the Council says will come forward in the coming five years to 2020/21. Reasons given for this assertion range from an absence of planning permission for the respective sites; an absence of a signed legal agreement, in some cases after a considerable period following a resolution to grant permission; no or not all reserved matters approved or conditions discharged; and/or that there is an absence of evidence of marketing or intent to develop those site by the developers. The Council states supply amounts to 4852 dwellings and based on this figure, it can demonstrate a 5.72 years supply of housing. The appellant on the other hand finds that the supply figure amounts to 3569, and as such the more realistic five year housing figure is 4.2 years.

11. However, the Council contends that the position on the deliverability sites can be a moveable feast and can change frequently. This was evidenced for all four questioned sites listed within 'Table B' (sites with a resolution to approve and awaiting s.106 sign off) of the Council's 'Note on 5 Year Land Supply Methodology 2016', where I was told that the legal agreements had now all been signed. Even accounting for the remaining issues which may currently be preventing these sites from coming forward now, the sites individually would not deliver significant levels of housing, and it is not inconceivable that they would not be developed in the next five years or that their delivery would be highly unlikely or insurmountable, particularly now as planning permissions have been issued.
12. For similar reasons, I find no obvious barrier to the delivery of the questioned sites listed in 'Table D' (sites in the Local Plan without live applications). This includes the site described as 'Churnet Farm', which is forecast to deliver 90 units in years four and five. I heard at the Hearing that this site has been beset with specific difficulties over and above those cited above; specifically the ability to provide a suitable access while avoiding the demolition of a building in the conservation area, which has aroused objections. The Council opines that discussions have advanced and that this issue has been resolved, although I heard little persuasive evidence that an application is imminent. Nevertheless, the quantum of housing proposed is again not significantly large that it would be difficult to be delivered by year five, and I am persuaded to give the benefit of the doubt to the Council.
13. The 'College Fields, Rolleston' site, which is the only one identified in 'Table E' (sites in the Local Plan which have been refused) has, since I closed the Hearing, been granted planning permission by the Secretary of State in his letter dated 10 November 2016. While it seems highly unlikely that the 40 dwellings scheduled to come forward in year two would realistically be delivered, the Council's housing forecast indicate that that the site would be delivered in full by year four. Even allowing for a one year delay so that commencement would begin in year three, which seems more probable, the site could plausibly still be delivered in full by year five. No 'Table C' sites are before me.
14. The appellant identifies five disputed sites listed in 'Table A' (large sites with planning permission); a sixth site was resolved prior to the Hearing. I find no case to doubt the delivery of the site identified as 'De Montford Way'. This is because it is forecast to deliver only 10 units and, and notwithstanding the fact that no developer is identified, I am satisfied that the quantum of dwellings proposed would be comfortably achievable within the five year period.
15. The remaining questioned sites are forecast to deliver a substantial number of housing in the coming five years, totalling 1114 dwellings, which is just short of a quarter of the total supply forecast by the Council. The appellant considers that this should be reduced by 534 units for the reasons I cite above, and I heard conflicting evidence from both main parties as to the capability or not of the sites' delivery, some of which arrived from the same source. However, it is not necessary for me to find on the deliverability of these sites, because even if were to accept the appellant's view, and deduct the said amount from the Council supply forecast, my calculations indicate that the Council would still be able to demonstrate a 5.1 years supply of housing.

16. I therefore find, on the evidence before me, that the Council has a five year housing land supply. As no evidence was advanced by any party regarding any issue of absence or silence of the development plan, the housing policies identified above carry full weight in my Decision.

Whether other circumstances exist

17. Common ground exists between the main parties that the proposed development would be conveniently located to local services and facilities, and would have social and economic benefits in respect of in providing new dwellings to meet the needs of present and future generations and would provide local construction employment opportunities. The proposed development would also make worthwhile contribution to the supply of housing and affordable housing in the borough and help boost the Council's five year housing supply.
18. The Council further accepts that any environmental harm caused by the proposed development by the loss of open countryside would be localised and accordingly would not be significantly harmful in its effects. From observations at my site visit and on the evidence before me, I have no reason to reach a different conclusion. The scheme would therefore amount to sustainable development for the purposes of the Framework. This is a material consideration which I have taken into consideration in my Decision.
19. The appellant argues that, even if I were to find that a five year supply of housing exists, the material consideration and the presumption in favour of sustainable development as advocated by paragraph 14 of the Framework should be capable of allowing the appeal, particularly as paragraph 14 states the requirement that sustainable development should be seen as the golden thread running through decision making. The breach with the development plan, it says, is purely technical.
20. However, a recent Judgement in the matter of *East Staffordshire Borough Council v Secretary of State for Communities and Local Government and Barwood Strategic Land* [2016 EWHC 2973] has rather helpfully clarified this matter and to which I have attached substantial weight to in my Decision. The Judgement handed down states that presumption in favour of sustainable development only exists within the circumstances set out within paragraph 14 of the Framework. It does not therefore apply to a proposal which is in conflict with an up-to-date local plan.
21. The Judge considered that it was implicit in paragraph 14 of the Framework from the third bullet point (approving development that accords with an up to date development plan without delay) that a proposal which is inconsistent with a relevant and up-to-date plan should be refused. He considered that this accorded with paragraph 12 of the Framework; which says that proposals which accord with an up-to-date plan should be approved and proposals that conflict should be refused unless other material circumstances indicate otherwise. Importantly, the Judge clarifies that the presumption in favour of sustainable development will already permeate throughout an up-to-date Local Plan, and it follows in my judgement by the same means that an up-to-date development plan must also accord with the principles to significantly boost the supply of housing as advocated by paragraph 47 of the Framework. These elements can therefore not be material considerations where a development plan is up-to-date.

22. The proposed development would not accord with Council's settlement hierarchy Local Plan Strategic Policies 2 and 4, details of which I have outline above. These policies I find are an expression of sustainable development in the borough, and the approach is strongly supported by one of the core planning principles set out in paragraph 17 of the Framework which requires planning be genuinely plan-led. This point is also clarified in the above-referenced Judgement, in which Judge emphasises how local plans are intended to be the means by which sustainable development is secured. The proposal would also not accord with Local Plan Strategic Policy 8 or with Neighbourhood Plan Policy H2, which I have also discussed above.
23. The benefits of the scheme I have identified above should therefore be viewed in the context of my findings that the council can demonstrate a five year supply of housing land. The material consideration advanced by the appellant is not indicative that the proposal should be determined other than in accordance with the development plan. Having regard to the strategic nature of the development plan policies breached, I find that the proposed development would not accord with the development plan overall, and in accordance with paragraph 12 of the Framework, development should be refused. The *Wychavon v Secretary of State for Communities and Local Government and Crown House Developments Ltd [2016 EWHC 592]* judgement, which the appellant cites in support to its case on this matter, was described as an incorrect approach in the judgement I have referenced above, and I have afforded little weight to it and others in my Decision.
24. I have noted the considerable level of representations made both to the application and the appeal on a number of issues. However, because I have found the proposed development would conflict with the development plan as a whole, it is not necessary for me to find on the other matters raised.

Conclusion

25. For the reasons given above I conclude that the appeal should be dismissed.

R Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr John Chorlton	Appellant
Mr Jonathan Penrose	Appellant
Ms Charlotte Goodwin	Appellant
Ms Janet Hudson	JVH Planning
Mr Freddie Humphreys	Kings Chambers

FOR THE LOCAL PLANNING AUTHORITY:

Ms Anna Miller	Planning Officer
Ms Naomi Perry	Principal Planning Officer
Mr John Kirkham	Senior Solicitor

INTERESTED PERSONS:

Mr Bob Keys	Yoxall Parish Council
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DOCUMENTS SUBMITTED AT THE HEARING

1. Data on housing completions
2. Updated plan of the site
3. Updated Statement of Common Ground
4. Extracts of the Inspectors Report on the Examination of the East Staffordshire Local Plan October 2015.
5. Email of a conversation between the Council and Bellway Homes