
Appeal Decision

Site visit made on 7 December 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 17th January 2017

Appeal Ref: APP/C3240/W/16/3158277

Builders Yard, Barrack Lane, Lilleshall, Shropshire TF10 9ET

- 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 BEVID Limited against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2015/1105, dated 8 December 2015, was refused by notice dated 21 March 2016.
 - The development proposed is the erection of 1 no dwelling and garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved. I have dealt with the appeal on that basis, treating the submitted layout as indicative.
3. Part E of the appellant's appeal form indicates that the description of the development changed from that stated on the application form. I am satisfied that the Council considered the application on this basis, as have I. The description in the heading above uses the revised description, although I have removed superfluous wording that does not relate to development.

Main Issues

4. The Council's decision includes a single reason for refusal with several elements. One concerns where new development is to be focussed. Paragraph 9.46 of the justification to Core Strategy¹ (CS) policy CS7 explains that the purpose of the policy is to focus development on a limited number of rural settlements that offer residents a number of key local services and facilities. It argues that by focussing housing, employment and service and facility development into these locations, a pattern of development should be created that maximises the accessibility of services and facilities to rural residents, whilst reducing the need to travel by car and enhancing local character and identity. The first main issue in this appeal is whether the proposal would provide acceptable access to everyday local facilities, by a range of modes of transport.

¹ Telford & Wrekin Core Strategy Development Plan Document – Adopted December 2007

5. The second element of the Council's reason for refusal alleges an unacceptable extension of the village into the countryside. Therefore, the second main issue is the effect of the development on the character and appearance of the area.
6. The third element of the Council's reasons for refusal concerns the relationship between the development and New House Farm. Thus, the third main issue is the effect of the development on the living conditions of future occupants, with particular regard to noise, odour and pests.

Reasons

Access to facilities

7. While Lilleshall is a physically large village, it is not particularly well served by services or facilities. It contains a primary school and some community facilities. There is some access to public transport but from what information I have before me the services are not frequent. The appeal site is around 500m from the pub, but other services in the core of the village are at least 800m away. The village also does not contain any shops, secondary education or healthcare facilities. The nearest settlement with a range of services is Muxton, which is around 2.5km away.
8. I would conclude from this that future occupants would be reliant on the car to meet their everyday needs. I note that my colleague came to a similar conclusion about on a relatively recent appeal² in Lilleshall and I have seen nothing to suggest a different conclusion should be reached. In my view, the site would effectively be isolated from the most important day-to-day services and facilities.
9. Lilleshall is not identified as one of the acceptable locations for housing set out in saved Core Strategy³ (CS) policies CS1, CS3 or CS7. There is, therefore, a clear conflict with these policies. However, it has been suggested that these should not be considered up-to-date in the context of the National Planning Policy Framework (the Framework) and should be given limited weight.
10. The general thrust of the strategy to focus development into areas with good access to services and facilities is broadly consistent with the principles of the Framework. However, the wording and operation of the policies effectively create a blanket restriction outside settlements for which there is no provision within the Framework and which would be contrary to its aims to boost significantly the supply of housing. The housing targets set out in policy CS1 are based on the revoked West Midlands Regional Plan. This is not consistent with the Framework's requirement for targets to be based on objectively assessed needs. As such, I consider these policies to be out-of-date and I have given them only limited weight.
11. While I have not been provided with these policies, and they are not referred to in the decision notice, the officer report states that saved policy H9 of the Wrekin Local Plan⁴ (WLP) identifies Lilleshall as a potentially suitable location for development, subject to policy H10. This only allows for small scale infill where development would not extend the village into the countryside. However, I have also noted that the submitted Committee minutes conclude

² Appeal reference: APP/C3240/W/15/2141136 and APP/C3240/W/15/3141156

³ Telford and Wrekin Core Strategy Development Plan Document – Adopted December 2007

⁴ Wrekin Local Plan 1995-2006.

that policy H9 is also out-of-date and it was recommended by officers that reference to this policy be removed from the report. I have no reason to disagree with the Council's views on this and thus little weight is given to H9. In any event, no matter how far the definition is stretched, the development would not constitute infill. It is not part of a built up frontage and is not well related to other dwellings in the area. The effect of this on the character of the area is addressed later in my decision.

12. I also note that the emerging Local Plan⁵ identifies Lilleshall as a location that could accommodate an additional supply of rural housing. This suggests some acceptance that the village is capable of being a sustainable location for housing. Again, I have not been provided with the relevant policies from this plan or any of the justification for them. The Council has, however, indicated that only small scale infill would be permitted. My comments on whether the site should be considered infill still stand and there is nothing to suggest the development would meet the requirements of the emerging plan in any event.
13. The second bullet point of paragraph 14 of the Framework states that where a plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. As a result of this, I do not consider that it is necessary to conclude on the evidence relating to the Council's housing land supply (HLS) and whether a five year supply exists or not. As I consider the above policies to be out-of-date, this part of Framework applies irrespective of whether the Council has a five year supply or not.
14. The policies of the Framework are, therefore, a significant material consideration in this appeal. Paragraph 55 is particularly important in that it provides specific guidance on housing in rural areas. This states that to promote sustainable development, housing should be located where it will enhance or maintain the vitality of rural communities. This fits into the core planning principle of supporting thriving rural communities.
15. My findings on the weight to be given to policies CS1, CS3 or CS7 do not alter the relatively poor level of service provision within the village or the likely reliance on the car. I have already concluded that the village is not well served by facilities and the site is not closely related to those that do exist. The likely dependency on the car would also not suggest any functional link or connection between the development and any particular settlement or set of services. Therefore, the benefits to the vitality of any individual settlement in the context of paragraph 55 would be negligible. While it is also not unusual for there to be a greater reliance on the car in rural areas, the Framework still encourages development to be located where it can make the fullest possible use of public transport, walking and cycling. I am not convinced that the site would provide reasonable travel choices.
16. In conclusion on this matter, I find that the site would not provide adequate access to everyday facilities by a range of means of transport. The underlying principle of managing growth toward accessible locations and accords with national policy. For this reason, while I have given them limited weight, the development would still conflict with saved CS policies CS1, CS3 and CS7 which seek to meet housing needs in the most sustainable and accessible locations.

⁵ Telford and Wrekin Local Plan (Submission Version)

It would also conflict with WLP policies H9 and H10 insofar as the development would not constitute infill development. Moreover, the development would conflict with the requirements of the Framework in terms of managing patterns of growth in order to make fullest use of fullest possible use of public transport, walking and cycling or locating development where it can maintain or enhance the vitality of rural communities.

Character and Appearance

17. The site comprises a former builder's yard. It is accessed from a shared access road from Barrack Lane and is roughly triangular in shape. The site has an unkempt appearance which is overgrown with grass, weeds and shrubbery. There are no signs of any permanent buildings on the site, though there was a caravan, various temporary storage containers in poor repair and an assortment of rubbish and other detritus, presumably associated with the former use.
18. The site has a farm and open fields to two sides and a dense bank of trees to the other, which provides a boundary to an open area of land associated with the curtilage to Old Coppice Lodge. The site is some distance away from any other dwellings and does not relate well to them, being located off the road running through the village and up a long access drive. While the site may be considered previously developed, its appearance is one of a largely open area devoid of permanent structures that is in the process of returning to nature. Signs of the previous use are limited in scale and extent. The relatively verdant appearance of the site is accentuated by the heavily landscaped boundary and presence of a large number of mature trees. To any casual observer not versed in the planning history of the site, it would appear both visually and physically more related to the open countryside than any housing in the village. The site has a generally open aspect that forms part of a clear transition between the built form of the village and the countryside beyond.
19. My attention has been drawn to criterion (a) of saved policy UD2 of the Wrekin Local Plan which states that development should respond positively to its context, both visually and functionally. A dwelling in this location would appear somewhat detached and isolated from other housing in the village. While the site may have been previously used for commercial activities, it is currently largely open and undeveloped, with the remnants of its previous use scattered across the site. A new dwelling here, along with all associated domestic paraphernalia, would appear as an incongruous addition to this part of the village that would not respond positively to this context.
20. In coming to this conclusion, I have noted that the site would be well screened by the mature landscaping which surrounds the site. Indeed, it is partly this verdant landscaping that provides the site with a sense of the countryside and rural character. Irrespective of this, a public footpath runs down one side of the site and thus the development would still be visible from publically accessible vantage points and closer views. From here, the dwelling itself may be screened to an extent by noise mitigation measures which in themselves could be fairly prominent features that would not complement the character of the wider area.
21. I have also noted the appellant's comments that the site could revert to commercial use and that compound fencing could be installed which would be more harmful to local character. They argue that the development would

improve the current poor state of the site. It is clear that it is some time since the site was used as a builder's yard. It would seem unlikely, therefore, that there is any significant probability that the site would revert to a commercial use. I have attached only limited weight to this as a fallback position. Moreover, a lack of maintenance should not be seen as a legitimate reason for allowing an otherwise harmful development.

22. In conclusion, I find that the development would be harmful to the rural character and appearance of the area. Accordingly, there would be conflict with WLP policy UD2 and CS policy CS15 which, amongst other things, requires development to respect and respond positively to their context and positively influences the appearance and use of the local environment.

Living Conditions

23. The site is in close proximity to the working dairy farm known as New House Farm. The Council and interested parties have raised significant concerns about the potential for noise, odour and pests associated with the farm having an unacceptable impact on the living conditions of any future occupiers. The farmer is particularly concerned that any resulting impact on the residents could have a prejudicial impact on his activities.
24. My attention has been drawn to an appeal decision in 1997 on this site, which concluded that the farm would not have an unacceptable impact. I have had some regard to this. Information from the farmer indicates that there has been a doubling of livestock since this time, which is a significant material consideration. I must also consider the evidence submitted with this appeal and the changes to both national and local policy context since the determination of that appeal. The considerable passage of time and material changes in context mean that I have given only limited weight to this decision.
25. The appellant has submitted an acoustic assessment which measured the noise on the site on two separate occasions. Specifically, the assessment took place between 1500 and 1700 on day one and 0930 and 1115 on day two. Although these took place during the working day of the farm, there is a suggestion that they do not reflect the times of the greatest activity. The farmer has suggested that the working day of the farm can be as early as 0330 in the morning and can end as late 2000 in the evening. While I expect there to be some variation in this over the course of the year, there is no reason to assume that this is not an accurate timescale for the operation of the farm. It has been argued that a particular flaw in the assessment is the lack of measurement between 0400 and 0900 when feeding and milking take place. It has also been suggested that the surveys took place when the cows were mainly in the fields and not the sheds, which would also have an effect on noise and odours.
26. The assessment states that there was little evidence of noise associated with the farm at the time of the surveys. There is no suggestion in the report that there is no risk of noise from the farm, rather that the assessment took place at times when associated activities were not taking place. To address this, the report contains a number of so-called 'worst case' assumptions, designed to make up for the fact that there was little farm noise at the time of the surveys. These assumptions used have also been criticised by interested parties.
27. The fact that the assessments did not take place during the times when the farm is likely to be at its most active is a significant cause for concern. Any

assessment is likely to contain some assumptions, but one that does not coincide with what would reasonably be assumed to be the busiest time for a farm does not strike me as a robust approach. Even if it were not possible or practical to carry out the assessment at different times of the year to reflect more accurately the varying noise profile of the site, it should have been possible to carry out the assessment at times of the day more reflective of the noisiest periods, or to conduct the assessments over longer time periods. Assessing the differences between when the cows are in the sheds and fields would also be an important factor. This would have provided a greater degree of comfort than has been provided by the assessment.

28. I have noted the Council's Environmental Health officers were happy with the approach and results of the report. Nonetheless, it occurs to me a higher degree of certainty than what has been produced is required when considering the high risk associated with such a regular and intensive use as a dairy farm so close to a residential property. It is also surprising that there is no reference to the noise from the livestock in the report. While I accept this was not observed during the times of the assessment, it is reasonable to assume that during feeding times in particular, there would be some effect. This does not appear to have been factored into the assessment. Taking all of the evidence and my own observations of the site into account, I am not satisfied that the assessment fully reflects the realistic noise climate of the farm and therefore cannot conclude with any certainty that the living conditions of residents would not be unduly harmed as a result.
29. The appellants have proposed a 'precautionary' set of mitigation measures, which include a bund and acoustic fence. The details of this would be secured by condition. However, in light of my concerns over the results of the assessment, there is no guarantee that such measures would be effective.
30. In terms of odour, an assessment took place using a 'sniff' test on five occasions in the early evening during the summer. The overall conclusion was that the good practice of the farm and prevailing winds away from the site would ensure that any exposure to odours would be infrequent and short lived. The report recognises that when wind speeds are low or blowing in a different direction and certain activities on the farm are taking place, the strength of the odour would be strong and identifiable. They conclude that such 'perfect storms' would be infrequent and short lived.
31. Nevertheless, there is recognition that unpleasant odours from the farm are a possibility and the resulting harm is a matter of judgement. A combination of different factors may be required to cause a significant problem, but the assessment seems somewhat optimistic about the limited frequency with which these would occur. In this respect, I have had regard to the comments from interested parties which indicate that the level of activity at the farm associated with silage and slurry are greater than suggested in the report. If this activity is taking place every day – or even most days – then there would be a fair chance of identifiable unpleasant odours affecting the occupants of the dwelling on a regular basis on those occasions when the wind is not in the prevailing direction (which would not be that infrequent an event). Even if individual 'exposures' were not frequent or prolonged, the likely number of actual 'episodes' over the course of a year, is likely to lead to both a real and perceived effect on the living conditions of residents. Even with the mitigation proposed, this would not be acceptable in my view.

32. It would also be reasonable to assume that when such events do occur, the closer proximity of the development to the farm than other dwellings in the area would result in stronger and more unpleasant odours than might be experienced elsewhere in the village.
33. A similar result was found in relation to the prevalence of insects. The assessment took place over a short period of time and found little evidence that flies within the site were any more prevalent than the control sample. Again, little harm was identified by the assessment and this was attributed to effective and responsible farming practices. Again, local residents and the farmer do not believe the results reflect their experiences of living in the area. While the quantitative evidence is important, the study reflects only a brief snapshot in time and I must consider all the evidence before me. The proximity of the farm and particularly the silage clamps must be a realistic cause for concern for future occupants who will be subject to much longer exposure in different conditions to what the assessment considered. As such, and taking all information provided into account, I find the evidence relating to pests somewhat unconvincing. The information provided does not persuade me that there would be not be an unacceptable risk to living conditions from pests.
34. While I recognise the comments are from people objecting to the development, the information provided appears reasonable and rational and I have no reason to disregard the comments made. The appellant's view that such conditions are expected in a rural location also does not carry significant weight. While I can accept that there would be some expectation of noise and odours from the farm, this is no reason to subject future occupants to potentially unacceptable levels of harm.
35. In conclusion, I do not have sufficient confidence in the findings of the noise or pest assessments to conclude that residents would not be unduly harmed or that mitigation would be effective. Moreover, I find that the results of the odour assessment do not persuade me that there would be no material harm associated with the farm. None of the policies provided to me address this matter directly. Nonetheless, the development would conflict with the paragraph 17 of the Framework, which seeks to ensure development provides a good quality of amenity for future occupants.

Other matters

36. The appellant has expressed some concern that the Planning Committee did not carry out a site visit. Any procedural issues are not a matter before this appeal, but I have seen nothing to suggest that Members were not provided with sufficient evidence to be able to come to a reasoned decision. Members are, of course, entitled to come to a different conclusion to their officers if it can be justified on planning grounds. In this case, I am satisfied that such grounds exist.
37. I recognise that the Council did not object to the development in terms of highways, the living conditions of neighbours, drainage or ground stability. Although I saw nothing to disagree with their conclusions on these matters, this is not sufficient to outweigh my above concerns.
38. The appellant has suggested the height of the development could be conditioned to minimise the impact on the character and appearance of the

area. This would not resolve my general concern that any dwelling in this location would relate poorly to its context and be disconnected from the pattern of residential development of the village.

39. I have noted above that a number of appeals were put to me in relation to the weight that should be given to the development plan. Reference was also made to the similarities between the character of sites considered and the appeal site. As already stated, I have not received the full details for these developments and thus cannot be certain they are directly comparable schemes. In any event, I have considered the effects of the development on its own merits.

Planning balance

40. Paragraph 7 of the Framework identifies the three dimensions of sustainability as economic, social and environmental. The development would have limited social and economic benefits in terms of providing one additional dwelling to the supply. With or without a 5 year supply, it is still an objective of the Framework to boost the supply of housing. Clearly, one dwelling would not carry significant weight in this regard. Investment in construction and related employment during construction would be an associated short term benefit that carries little weight.
41. The development would provide a small amount of additional expenditure to support services, but the poor relationship and lack of accessibility to day-to-day facilities weighs against the development in terms of the social dimension of sustainable development. The resulting reliance on the private motor vehicle, the least sustainable mode of transport, conflicts with the environmental objectives of the Framework. In particular, the aim of moving toward a low carbon economy and using natural resources prudently. The location of the site also relates poorly to the economic role of ensuring development takes place in the right locations.
42. I have also concluded that the development would have a harmful effect on the character and appearance of the area in conflict with the environmental dimension of sustainability. Finally, the concerns I have relating to the living conditions of future occupants weighs significantly against the development from a social perspective.

Conclusion

43. In this case, the adverse impacts that I have identified would significantly and demonstrably outweigh the limited benefits of one dwelling when assessed against the policies of the Framework when taken as a whole. The proposal would not, therefore, represent sustainable development.
44. While policies CS1, CS3 and CS7 are out-of-date, the proposal would nevertheless be contrary to these and other development plan policies noted above. This conflict would not be outweighed by other material considerations, including the provisions of the Framework and paragraph 14 in particular. As a result of this, I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR