
Appeal Decision

Site visit made on 4 January 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 27 January 2017

Appeal Ref: APP/Y3940/W/16/3157676

Land off School Lane, Lea, Malmesbury, Wiltshire SN16 9PQ

- 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 Ms C Martin against the decision of Wiltshire Council.
 - The application Ref 16/04999/OUT, dated 25 May 2016, was refused by notice dated 22 July 2016.
 - The development proposed is erection of 1No. new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal relates to an application for outline planning permission with all matters reserved. A layout plan was submitted for illustrative purposes. I have considered the appeal on that basis.

Main Issue

3. The main issue is whether the proposed development would be in a suitable location, given that the appeal site lies outside any defined settlement boundary.

Reasons

4. The appeal site comprises a large roughly square grassed parcel of land bound by a combination of hedgerow, trees, vegetation and fencing. It lies off School Lane on the outskirts of Lea, which is classified as a 'Small Village' in Core Policy 13 (CP13) of the Wiltshire Core Strategy (CS).¹ Core Policy 1 (CP1) states that *'Small Villages have a low level of services and facilities, and few employment opportunities'*.
5. Whilst Lea does not have a defined settlement boundary in the CS, the majority of development is focussed on The Street, the main thoroughfare through the village, with further housing off Little Badminton Lane.
6. CP1 of the CS seeks to focus development on Principal Settlements, Market Towns, Local Service Centres and Large Villages stating that there is a general presumption against development outside their defined limits. This hierarchical settlement strategy, similar to that adopted in many development

¹ Adopted January 2015

plans, is aimed at achieving sustainable development by locating it in appropriate places accessible to services and facilities, whilst protecting the countryside. CP1 advises that some very modest development may be appropriate in 'small villages' to respond to local needs and to contribute to the vitality of rural communities. However, any such development is to be carefully managed by Core Policy 2 (CP2) and other relevant policies in the CS.

7. Development in 'small villages' is limited by CP2 to infill within the existing built area. Infill is defined as *'the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling.'* Proposals will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development:
 - i) *Respects the existing character and form of the settlement*
 - ii) *Does not elongate the village or impose development in sensitive landscape areas, and*
 - iii) *Does not consolidate an existing sporadic loose knit areas of development related to the settlement.'*
8. The appeal site is to the rear of residential houses that face onto The Street. To the west is a small field or paddock area with some chickens kept at the far end, accessed via a field gate. There is a school playing field on the other side of the road with open fields beyond. The school buildings are to the east opposite existing houses on the corner of The Street and School Lane.
9. School Lane itself is a narrow single track road with no pavement though there are verges on either side. It is a cul-de-sac shared, as I noted on my site visit, with a public right of way which turns south west across a field just before the lane ends. The lane contrasts with The Street which is wide enough to accommodate two-way traffic, has a better surface with a pavement along one side and extensive residential development.
10. Overall, School Lane has a rural character and appearance and, though there are some properties further along from the appeal site on the other side of the lane, the impression created is that one is leaving the built-up area of the village heading out towards the open countryside.
11. As 'infill' is defined in CP2 as the filling of a small gap within the village, it is reasonable to give those words their everyday meaning. A 'gap' implies a break or space between something. In this case there is a field, albeit a small one, immediately adjacent to the site to the west. Furthermore, though there is a school playing field, there is no built form to the immediate north and mainly garden land to the south. Therefore, I disagree with the appellant's view and do not consider that the proposal could be classified as infill within the existing built area.
12. In addition, developing the site would build the village out towards the existing sporadic development further along the lane, thereby consolidating that area, which would contravene another limb of CP2. Moreover, whilst an overall housing shortfall is acknowledged, no evidence has been presented to suggest that the proposal is satisfying a specific local housing need.

13. The appellant cites planning permission given for 4 new dwellings at Oaksey, Ref 16/04578/FUL, even though the site was outside the settlement boundary. Though I have seen the officer's report, I do not know the full details of the circumstances that led to that proposal being accepted. However, it related to four houses and the site was located off the main road through Oaksey, which has a defined boundary. From the plan supplied, it appears that the site is located between and opposite existing built development and the report indicates that it was partly within the Oaksey Conservation Area. Therefore, I do not consider that it represents a direct parallel to the appeal proposal. In any case, I have determined the appeal on its own merits.
14. An appeal decision relating to Oakhill House, Upper Seagry is referred to by the appellant as a logical assessment of an area of land which was not entirely enclosed.² It concerned a proposal to erect two dwellings. I note, however, that the Inspector describes the appeal site as surrounded by community related uses including a public house, allotment gardens and a cricket club.
15. The Inspector also comments on the domestic appearance of the site with a brick boundary wall, manicured lawns and landscape planting providing a visible association with other residential properties of the village, including those on both sides of Henn Lane. The site is referred to as a small gap between Oakhill House and the public house. That is also in accord with what I saw on my site visit. Therefore, though there are some similarities, there are also differences between the particular characteristics of that site and the appeal site before me. For example, it is not surrounded by community related uses and its surface is rough grassland with a rural rather than domestic appearance.
16. Neither does the proposal meet any of the exception policies in the CS which support residential development outside built areas of 'small villages' for identified affordable housing need, Core Policy 44 (CP44), or to accommodate essential rural workers, Core Policy 48 (CP48). The text of CP48 also states that in the case of such proposals, one of the key objectives is protecting the countryside and maintaining its local distinctiveness.
17. The proposal would extend built form into an area of transition between the village and the open countryside, to the side of a public right of way. I share the Council's view that the development would be contrary to Core Policies 51 and 57 which seek to protect the rural landscape and are in accord with section 11 of the National Planning Policy Framework (the Framework).
18. The Council also cites non-compliance with Core Policy 60 (CP60) of the CS, which states that the Council will use its planning powers to help reduce the need to travel particularly by private car. Though Lea has a primary school, church, village hall and public house it is still identified as having a low level of services and facilities, and few employment opportunities. Therefore, it is reasonable to conclude future occupants would need to travel to access a wider range of services and facilities.
19. The appellant points to the availability of public transport and I noted that there is a bus stop on The Street which offers reasonable services to Malmesbury, Cirencester and Swindon. Nevertheless, given the convenience

² APP/Y3940/W/15/3005870

of the private car and its capacity to more easily transport shopping and other consumer goods, it is reasonable to conclude that future occupiers would be likely to be generally reliant on its use.

20. I do not agree with the appellant's view that because CP2 displays some flexibility in contemplating modest development in 'small villages', via its infill provision, it is in some way incompatible with CP60. Those policies exist in the context of a general presumption against development outside the defined limits of larger settlements and the built area of Small Villages. The CS would have gone through a public examination process, prior to its relatively recent adoption in January 2015, to ensure that its policies were compatible with each other and consistent with the Framework.
21. Therefore, for the reasons given, I conclude that the proposal conflicts with the development plan's settlement strategy. However, the Council accepts that it cannot currently demonstrate a five year housing land supply, and the appellant has referred to various planning appeals confirming the same, so that is not in dispute. Therefore, it follows that in accordance with paragraph 49 of the Framework, policies CP1, CP2, CP13, CP44, CP48, CP51, CP57 and CP60, which all to varying degrees restrict housing land supply, must be considered out of date.³
22. However, that does not mean that the development plan policies no longer carry any weight at all. Paragraph 14 of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as whole. The presumption in favour of sustainable development exists within the circumstances set out in paragraph 14.
23. In relation to the weight to be attached to relevant policies for the supply of housing, the Council has drawn my attention to a recent appeal decision relating to Land off Flisteridge Road, Upper Minety, another 'small village' nearby.⁴ That decision also cites the recent Court of Appeal judgement, already referred to in footnote 3. It confirms that it is for the decision-maker to decide what weight should be attached to policies which are not considered up-to-date, as a result of paragraph 49, dependent on the circumstances of each case. Furthermore, the extent of the shortfall and the number of dwellings in a proposal are relevant factors. Though no other clear evidence of the current extent of the housing land supply shortfall has been provided, that appeal decision dated 26 September 2016, indicates that the shortfall was relatively limited, which has not been specifically disputed by the appellant.
24. That appeal related to a proposal to build 4 dwellings in a 'small village' in the same community area. In that case, the site abutted residential properties with existing houses on the opposite side of the road. The appellant suggests that Upper Minety is different from Lea in terms of scale and the proximity of local services. However, both are categorised as 'small villages' in CP13 and the Inspector referred to facilities in nearby Minety, whilst pointing out that another development in Upper Minety was permitted as an exception because it was affordable housing. Therefore, I find that there are a number of parallels

³ Suffolk Coastal District Council v Hopkins Homes Ltd [2016] EWCA Civ 168

⁴ APP/Y3940/W15/3141391

between that appeal scheme and the proposal before me. My conclusions on the main issues are largely consistent with that decision.

25. The proposal would offer economic and social benefits. There would be some economic uplift during the construction period through employment and spend on materials. There would be a contribution to the housing supply. Future occupants would make some contribution to the local economy, pay Council Tax and contribute to the viability of local services. A New Homes Bonus would be payable. Occupants would be likely to participate in the local community. Inevitably, however, the level of those benefits would be significantly limited because the proposal is just for one house, which case law, already referred to, says it is legitimate to taken into account.
26. From an environmental perspective, the appellant says that the new property would be more energy efficient and lists a variety of possible or theoretical harms that would not be caused. The proposal would, however, involve the loss of a previously undeveloped field or paddock-like area of land. It would, therefore, alter the character and appearance of a transitional area leading out of the village towards open countryside, adjacent to a public right way. It would also expand the extent of the built form of the village into the countryside. I have also already found that the location would be likely to lead to future occupants being mainly reliant on private car use. Given the limited nature of the economic and social benefits due to the size of the scheme, I consider that the environmental issues weigh against it.
27. Moreover, the vehicle for delivering sustainable development is the development plan, as indicated by paragraph 15 of the Framework. In contravening the CS aims of focussing development on larger more sustainable locations and limiting development in 'small villages', the proposal would undermine the strategic settlement strategy that seeks to achieve the three dimensions of sustainable development.
28. CP1, CP2 and CP13 are integral parts of that hierarchical settlement strategy within a relatively recently adopted development plan. Therefore, though the weight that can be given to those policies is affected by the lack of a five year housing land supply, as the policies are in accord with the Framework and the housing land supply shortfall would appear to be limited, I consider it reasonable to give them significant weight.
29. The above factors lead me to conclude that the adverse impacts of allowing the appeal proposal would significantly and demonstrably outweigh the benefits of the provision of one dwelling, when assessed against the policies of the Framework taken as whole. Therefore, I consider that the site, outside any settlement boundary, is not a suitable location for the proposal which would fail to achieve sustainable development.

Other Matters

30. In addition to the issues already dealt with, the Parish Council expressed concern about highway safety. It suggested that any increase in the number of vehicles using School Lane could pose a risk to children attending the primary school. I note that this view is not shared by the County Council or its specialist highway department. I do not consider that the relatively small

increase in traffic would be likely to pose a significant danger. In any event, I have dismissed the appeal on other grounds.

Conclusion

31. Whilst the policies breached are out of date the proposal would nevertheless be contrary to the development plan and that conflict would not be outweighed by other material considerations including the provisions of the Framework and paragraph 14 in particular. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR