

Appeal Decisions

Hearing held on 5 April 2016

Site visit made on 5 April 2016

by M C J Nunn BA BPL LLB LLM BCL MRTPI

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

Decision date: 21 February 2017

Appeal A Ref: APP/L3245/W/15/3139973

Land off Bicton Lane, Bicton, Shrewsbury, Shropshire

- 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 Galliers Homes Ltd against the decision of Shropshire Council.
 - The application Ref: 14/02239/OUT, dated 16 May 2014, was refused by notice dated 21 September 2015.
 - The development proposed is described as 'residential development comprising 25 dwellings, estate roads and public open space'.
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Appeal B Ref: APP/L3245/W/16/3141878

Land off Bicton Lane, Bicton, Shrewsbury, Shropshire

- 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 Galliers Homes Ltd against the decision of Shropshire Council.
 - The application Ref: 15/04035/FUL, dated 16 September 2015, was refused by notice dated 17 December 2015.
 - The development proposed is described as 'erection of 15 dwellings, new access road, link footpath and landscaped public open space'.
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Decisions

1. Appeals A and B are both dismissed.

Procedural Matters

2. Appeal A was made in outline with all matters reserved for subsequent determination. As originally submitted, the appeal site comprised a larger area, and the planning application was for 25 dwellings, as recorded in the header above. However, during the determination process the appeal site was reduced in size with an illustrative layout showing 15 houses. The Council considered the proposal on the revised basis of 15 dwellings and so have I. Appeal B was made as full application for 15 dwellings, and I have assessed it accordingly.
 3. An application for costs has been made by Galliers Homes Ltd against Shropshire Council in respect of both Appeals A and B. These are subject of separate decisions.
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4. Two completed legal agreements were submitted at the Hearing, relating to Appeals A and B. I deal with these in the body of the text.
5. After the hearing, the appellant submitted a Heritage Impact Assessment. The comments of the Council were sought on this document, although none were received. I have taken its findings into consideration in reaching my decisions.
6. The appellant, after the hearing, drew my attention to an appeal decision at Teal Drive, Ellesmere, Shropshire, dated 16th May 2016¹ ('The Teal Drive decision'), allowing a proposal for 68 dwellings. Interested parties were asked for their comments on this decision. However, it was subsequently quashed by the High Court on 2nd November 2016². I deal with this matter in the body of my decision.
7. Extensive post hearing correspondence was received relating to the Teal Drive appeal decision from the appellant and Council. Documents were also provided by the parties relating to the subsequent High Court challenge. Also provided after the Hearing were, amongst other things, the Council's Fully Objectively Assessed Housing Need Report ('FOAHN Report') (dated 4th July 2016), the appellant's response, and the Council's Five Year Housing Land Supply Statement (dated 26th August 2016). I have taken all this post hearing correspondence into consideration in my decisions.

Main Issues

8. The main issues in both appeals are:
 - i. whether the development would comply with national and local policies relating to development within the countryside, including the Council's strategic approach to the location of new development;
 - ii. the effect of the proposals on the character and appearance of the area, including the landscape;
 - iii. whether a five year supply of housing can be demonstrated; and,
 - iv. whether, overall, the proposals would represent a sustainable form of development.

Reasons

Development within the Countryside and the Council's Strategy

9. The relevant legislation³ requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Shropshire Core Strategy, adopted in March 2011 ('the Core Strategy') and the Shropshire Site Allocations and Management of Development Plan, adopted on 17th December 2015 ('the SamDev'). The policies most relevant to these appeals are CS1, CS4, CS5, and CS6 of the Core Strategy, and Policies MD1, MD3, MD7a and S16.2(vi) of the SamDev.

¹ APP/L3245/W/15/3067596

² Shropshire Council v SSCLG & BDW Trading Ltd (David Wilson Homes) and others [2016] EWHC 2733

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004

10. Policy CS1 of the Core Strategy sets out a 'Strategic Approach' for the period up to 2026. It identifies a target of 27,500 dwellings for Shropshire between 2006 and 2026. It requires that around 25% of new residential development be accommodated in Shrewsbury, and around 40% in Market Towns and other Key Centres. Around 35% will be accommodated in rural areas, located predominantly in Community Hubs and Community Clusters. Outside these settlements, the Policy confirms that development will be primarily for economic diversification and to meet the needs of local communities for affordable housing.
11. Policy CS4, amongst other things, focuses private and public investment in the rural areas into Community Hubs and Community Clusters, and does not allow development outside these settlements unless it meets Policy CS5. The supporting text⁴ to Policy CS4 explains that, within Community Hubs or Clusters, so as to prevent fragmented development, new development must be within the villages, or on land specifically allocated for development, and that windfall development adjoining the villages is not acceptable, unless it is an exception site for affordable housing or for development allowed under Policy CS5.
12. Policy CS5 states that new development will be strictly controlled in accordance with national planning policies protecting the countryside, but permits development proposals on appropriate sites which maintain and enhance countryside vitality and character, and which improves the sustainability of rural communities by bringing local economic and community benefits. The policy lists types of development that may be allowed. This includes, amongst other things, small scale economic development diversifying the rural economy, dwellings for agricultural or countryside workers, affordable housing to meet a local need, conversion of buildings, agricultural related development, tourism and recreation proposals. Although the list is not exhaustive, general market housing, other than the conversion of buildings, is not identified as permitted within the countryside.
13. Policy CS6 refers to sustainable design and development principles. It requires high quality development that, amongst other things protects, restores, conserves and enhances the natural, built and historic environment, and is appropriate in scale, density, pattern and design taking into account the local context and character.
14. The SamDev sets out various policies to guide future development in order to help deliver the Vision and Objectives of the Core Strategy for the period up to 2026. Policy MD1 of the SamDev reinforces the scale and distribution of Development already established in the Core Strategy, directing it to Shrewsbury, the Market Towns and Key Centres, and within rural areas to Community Hubs and Community Clusters. The Policy identifies Bicton and Four Crosses as a Community Cluster.
15. Policy MD3 supports sustainable housing development on sites not allocated for development, having regard to other relevant plan policies, including CS4 and CS5, MD1 and MD7a. Policy MD3 confirms that the housing guideline figures for settlements are a significant policy consideration, and states that where a

⁴ Paragraph 4.69 Core Strategy

- settlement guideline figure appears unlikely to be met, additional sites outside the settlement boundaries may be acceptable subject to various criteria set out at Paragraph 2. Policy MD7a re-iterates that new market housing will be strictly controlled outside Shrewsbury, the Market Towns, Key Centres and Community Hubs and Community Clusters.
16. Policy S16.2 (vi) of the SamDev confirms that Bicton and the Four Crosses area is defined as a Community Cluster where development by infilling, conversion of buildings and small groups of houses may be acceptable on suitable sites within the development boundaries identified on the Policies Map, with a housing guideline figure of around 15 additional dwellings over the period to 2026.
 17. The National Planning Policy Framework ('the Framework') sets out the Government's up-to-date planning policies and is a material consideration in planning decisions. The Framework does not change the statutory status of the development plan for decision making. Importantly, however, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
 18. The SamDev was adopted only recently, in December 2015, having been found sound at examination by an Inspector and so, considering my conclusions set out below in relation to housing land supply, its policies carry significant weight. I acknowledge that the Core Strategy predates the Framework, with its more flexible and balanced approach to sustainable development within the countryside. That said, I do not find that the overall approach of Policies CS1, CS4, and CS5, setting out a strategy to achieve sustainable patterns of development within the plan area, directing development towards to existing urban areas, and in rural areas predominantly within identified Community Hubs and Clusters, to be at odds with the aims of the Framework. Nor do these policies impose a 'blanket ban' on development outside settlement boundaries. Therefore, and having regard to the housing land supply situation, I consider they should afforded significant weight in these appeals.
 19. The appeal site, although adjoining the settlement boundary of Bicton Village along one side, is a green field site falling outside it. Whilst a small proportion of the development would be affordable units (2 dwellings), both appeal schemes comprise predominantly open market units. As such, the schemes are not the type of development envisaged by either Policy CS5 or MD7a. The schemes would also run counter to CS4 because they constitute development of a type not listed in Policy CS5 and would be located outside the defined Community Cluster of Bicton and Four Crosses.
 20. The Council has provided details of development that has either taken place or has outstanding permission in the Bicton and Four Crosses area, totalling 15 units. The appellant disputes that figure on the basis it includes sites outside the development boundaries of the Bicton and Four Crosses Community Cluster. Nonetheless, given the Plan period runs to 2026, even if the Council's figure of 15 above is discounted, there is no compelling evidence to suppose that the guideline figure will not be met.
 21. All that said, I accept that the settlement guideline figure, although significant, cannot be regarded as a ceiling or maximum. Indeed, the SamDev Plan

Inspector endorsed reliance on windfall sites to achieve the housing requirements of the area, notwithstanding that they do not provide the same level of certainty as planned or allocated sites. She noted that windfall sites have historically been a major component of housing and required a modification to the SamDev to ensure that housing guidelines are considered flexibly to ensure consistency with the Core Strategy and the Framework⁵.

22. In these circumstances, I acknowledge that the guideline figures may have to be exceeded and windfall sites developed in the countryside. This is because Policy CS1 requires 35% of housing to be in rural areas, equating to around 10,000 dwellings in the rural area, whereas the amount of development within the settlement boundaries of the Community Hubs and Clusters identified within SamDev allow for less than half that amount. Further, given that the development boundaries are relatively tightly drawn with limited opportunities for infill, the delivery of additional housing may need to occur outside defined boundaries. I accept, therefore, that in certain appropriate circumstances, market housing could take place outside settlement boundaries, subject to other planning considerations.

Character and Appearance

23. The appeal site forms part of an open area of gently undulating fields and is currently agricultural grazing land. The eastern edge abuts the properties of Brookside, a relatively modern Close of residential properties. To the west is Bicton Lane, which in the section nearest to the appeal site, comprises a narrow single carriageway with a strongly rural appearance, bounded by mature trees and hedgerows. At some distance to the south, beyond the boundary of the appeal site, is Holy Trinity Parish Church, an attractive Grade II church built between 1885-7. There are other designated and non-designated heritage assets in the locality. Immediately to the north and beyond is attractive rural countryside.
24. The Council's approach in terms of the effect of the proposals on the character and appearance of the locality lacks clarity. On the one hand the Council has stated that the development 'would not have a significant visual impact that would affect the rural setting of the settlement'. On the other, it states that the development 'would result in a suburban built-form of development that would change the character and appearance of the site from that of open pasture to a cul-de-sac of modern houses altering the open landscape and rural character of the area' and that 'the intrinsic character of this part of the countryside would therefore be lost'. Local residents and Bicton Parish Council are, however, clear in their serious concerns about development's effect on the character and appearance of the locality.
25. From my own observations during my site inspections, I consider the site and its wider surroundings form part of an attractive and undulating landscape, with a gently rolling topography. The locality is composed of pastoral fields, punctuated and peppered by intermittent deciduous tree cover and hedgerow boundaries. This creates an intimate and pleasing character. The local landscape remains intact and unspoilt, and its elements are in good condition. Indeed, the predominant impression, when walking along Bicton Lane where

⁵ Inspector's Report into SamDev Plan, October 2015, Paragraphs 25 & 45

the new access road is proposed, is of being within an attractive and clearly rural area, with the urban edge of Bickton, and specifically the properties in Brookside, playing a relatively minimal role.

26. The appeal site is promoted on the basis that it should be regarded as essentially an area adjacent to, and read in the context of the built development of Bickton, and especially the houses in Brookside. However, in my judgement, the appeal site cannot be realistically regarded as self-contained, or substantially enclosed from wider views. Rather, from my observations, it comprises fields that merge with the wider sweep of rural land beyond the built-up confines of Bickton. The appeal site forms an important and pleasant part of the rural landscape and its loss would be harmful to it.
27. In order to reach the proposed area of new housing, the new access road would effectively 'cut across' the open and undeveloped landscape. The western section of the road, isolated within the countryside, would protrude incongruously into the landscape and result in a highly visible and intrusive feature. The access road would also result in the removal of a significant section of hedgerow along Bickton Lane.
28. The housing itself would encroach markedly into the countryside, and would have a common boundary with the existing urban edge of Bickton along only one side – namely the gardens of the Brookside properties. The other three sides would abut open countryside resulting in a promontory of development jutting into the landscape. The existing open, rural character of the site would be destroyed. I do not consider the proposal would mark a natural rounding off of the existing settlement, nor would it be adequately assimilated with it. Rather it would result in a significant harmful intrusion into a currently open and undeveloped area, with serious adverse effects for the wider landscape.
29. I acknowledge that additional structural planting and landscaping is proposed to supplement existing vegetation and trees in order to minimise the impact of the new housing. However, I am not convinced that this, even once it has become fully established over time, would be fully effective in altering the perception of urban development, including the new access road, behind the vegetative screening. Indeed, in the winter months when deciduous trees lose their leaves and vegetation dies down, the houses will inevitably be more obvious.
30. Overall, I conclude that the encroachment of new development on to this undeveloped area of open land would have very significant and adverse effects for the rural landscape. The development would cause a serious incursion into the open countryside and materially harm the locality of the area. As such, the scheme would be contrary to Policy CS6 of the Core Strategy which requires that all development, amongst other things, protects, restores, conserves and enhances the natural, built and historic environment, and is appropriate in scale, density, pattern and design taking into account the local context and character.

Housing Land Supply

31. At the Hearing, it was common ground between the parties that the Council was able to demonstrate a five year supply of housing sites⁶. As a consequence, this matter was not canvassed or discussed in detail at the event. It was only after the close of the Hearing that the appellant drew my attention to the Inspector's conclusions in the Teal Drive decision.
32. In that case, the Inspector concluded that the Council's housing requirement figure of 27,500 over the Plan period could not be considered robust, and that it did not reflect the Full Objectively Assessed Housing Need (FOAHN) of the District. The Inspector found that the Council could not have a five year supply of housing, and that therefore, in accordance with Paragraph 49 of the Framework, the Council's Development Plan Policies relevant to the supply of housing could not be considered up-to date. This, in turn, had implications for how proposals should be determined because Paragraph 14 of the Framework states that where relevant policies are out of date, planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits.
33. The appellant, after this Hearing was concluded, sought to argue the same point based on the reasoning above. However, and importantly, the Teal Drive decision has been quashed by the High Court and it cannot be accorded weight in these appeals. The Council produced an updated FOAHN Report in July 2016. This provided a general endorsement of the adopted housing requirement identified within the Core Strategy. The appellant has made various criticisms of the July FOAHN Report in that it is based on demographic projections only, that it does not adequately take into account market signals, and it does not make adjustments for employment trends. It is argued that it cannot be considered in accordance with the advice within Framework and the Planning Practice Guidance (PPG).
34. However, the PPG advises that establishing future housing need is not an exact science and there is no single methodological approach that will provide a definitive assessment⁷. It may be that criticisms can be made about aspects of the FOAHN report and it may be imperfect in certain respects. As noted above, detailed matters relating to housing land supply were not discussed in depth at this Hearing given that it was accepted by the parties the Council could demonstrate a five year supply of housing sites. There is no compelling evidence before me in these appeals that the Council's FOAHN Report is fundamentally flawed, or conflicts with the general approach of the Framework or PPG, or undermines the overall housing requirement within the Core Strategy.
35. The Council's latest Five Year Housing Land Statement, published 26th August 2016 demonstrates that the Council has 5.97 years' supply of deliverable land, based on the housing requirement identified in Policy CS1 of the Core Strategy. I understand that the methodology is consistent with that endorsed by the SamDev Plan Inspector. On the evidence before me, it appears to be robust and I have no reason to doubt that the Council has a housing land supply in

⁶ Statement of Common Ground, Paragraph 12

⁷ Paragraph: 014 Reference ID: 2a-014-20140306

excess of five years. Consequently, I am satisfied that the Council's policies relevant to the supply of housing should be considered up to date in terms of Paragraph 49 of the Framework.

Whether Sustainable Development

36. Turning to sustainability, the Framework identifies different dimensions to sustainable development, including economic, social, and environmental. These dimensions give rise to the need for the planning system to perform a number of roles. The additional housing would be a benefit for the area, by introducing much needed private housing for local people. A small element of affordable housing would also be provided. It would boost the supply of housing in accordance with the Framework. It would create additional housing choice and competition in the housing market. It would create investment in the locality and increase spending in local shops. It would create jobs and investment during the construction phase, albeit for a temporary period. The new homes bonus would bring additional resources to the Council. Community Infrastructure Levy contributions would predominantly be spent on local projects in Bicton. I also accept that the scheme is not merely speculative, but deliverable.
37. There are a range of services and facilities in the village, with a regular, albeit limited, bus service running between Shrewsbury and Owestry. I understand that the nearest railway station is some distance away in Shrewsbury. It seems to me that the site is not especially accessible by public transport, and so it is likely that future residents may be largely dependent on the private car. That said, the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. There is a Primary School, Pre-School, a village hall, convenience store, amongst other facilities. Overall, I accept that the scheme would generally comply with the economic and social dimensions of sustainability.
38. However, I have serious concerns in respect of the environmental dimension, specifically the very significant and adverse effects for the rural landscape, identified above. I appreciate that it is proposed to create an area of public open space, adjacent to the existing woodland area. I acknowledge that a new pedestrian route would be created between Brookside and Bicton Lane, improving pedestrian accessibility. I accept that that it is intended that the dwellings would be high quality, and energy efficient. However, these environmental benefits do not outweigh the serious overall harm that would result to the landscape character of the area. As such, I am not satisfied that the site complies with the environmental dimension of sustainability.

Planning Obligations

39. The appellant has completed two planning obligations, each dated 1st April 2016, for these appeals. The obligations secure the provision of affordable housing at a rate of 15%. I am satisfied that the provisions of the obligations are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in

scale and kind to the development, thereby meeting the relevant tests in the Framework⁸ and the Community Infrastructure Levy Regulations⁹.

Other Matters

40. Local residents and the Parish Council have raised concerns about the highway implications of the scheme, especially because of the narrow width of Bicton Lane, and its ability to accommodate additional traffic. However, the Highway Authority has noted that traffic speeds along this section of Bicton Lane are relatively slow and, subject to some localised carriageway widening opposite the site access to allow vehicles to pass, has raised no objections. Although I note the concerns of the Parish Council and local residents, I have no reason to doubt the Highway Authority's conclusions. Hence, I do not consider the proposals should fail on highway grounds.
41. The Council did not raise objections regarding the effect of the proposals on designated heritage assets in the locality. After the Hearing, the appellant commissioned a Heritage Impact Assessment which identified various designated and non-designated heritage assets in the locality. Designated assets include the Holy Trinity Parish Church, a Grade II listed building, south of the appeal site; Bicton Grove Farmhouse, a Grade II* listed building to the east of the appeal site; and Bicton Grove Stables, a Grade II listed building, also to the east of the appeal site. To the north, at greater distance, are the Red House and White House, both Grade II listed, and the remains of the old Church of the Holy Trinity, Grade II listed. Non designated assets identified include Bicton Hall, the walled garden to the east of Bicton Hall and The Vicarage.
42. All the listed buildings are at sufficient distance from the appeal site not to be adversely affected by the proposals. I am satisfied therefore, paying special regard to the desirability of preserving the setting of listed buildings, as set out in the relevant legislation¹⁰, that the proposals would preserve the setting of these listed buildings. Similarly, the non-designated assets are sufficiently far away from the appeal site not to be adversely affected. There would be no conflict with Policy CS6 of the Core Strategy, or MD2 and MD13 of the SamDev, in terms of the effect on designated and non-designated heritage assets.

Overall Conclusions and Planning Balance

43. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by the economic, social, and environmental dimensions and the interrelated roles they perform. In this case, the contribution of the site to both market and affordable housing requirements of the district is a matter carrying significant weight. The schemes would generate certain economic and social benefits. Furthermore, I am satisfied that the settings of designated and non-designated heritage assets would be preserved, and that highway arrangements would be satisfactory.

⁸ Paragraph 204

⁹ Regulation 122

¹⁰ S66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

44. However, I consider the proposals would have very serious and harmful consequences in terms of the environmental dimension of sustainability with regards to the impact on the landscape character of the area. As such, taken as a whole, I do not consider that either of the appeal schemes can be regarded as a sustainable form of development. I find that there is little justification for the development of this green field site in the open countryside, beyond the settlement boundary of the Bicton and Four Crosses Community Cluster.
45. Overall, I conclude that the schemes, located outside the settlement boundary of the defined Community Cluster of Bicton and Four Crosses, would conflict with Policies CS1, CS4, CS5, CS6 of the Core Strategy, and Policies MD1, MD3, MD7a and S16.2(vi) of SamDev. They would contravene the Council's overall strategic approach to the location of new development. There are no material considerations that would warrant a decision other than in accordance with the development plan. Accordingly, and having regard to the various appeal decisions and court cases brought to my attention by both parties, I conclude that both appeals should be dismissed.

Matthew C J Nunn

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Howie	Berrys
Thea Osmund-Smith	No 5 Chambers
Nigel Clarke	Galliers Homes

FOR THE COUNCIL:

Jane Raymond	Senior Planning Officer, Shropshire Council
Edward West	Principal Planning Officer, Shropshire Council
Anne Gerzon	Legal Services

INTERESTED PERSONS

Richard Brett	Chairman, Bicton Parish Council
Roderic Warren	
Margaret Ratcliffe	
Colin Ames	
J Brett	
R Carlyle	
W Leighton	

DOCUMENTS SUBMITTED AT THE HEARING

1. Section 106 Agreement (Appeal A), dated 1st April 2016
2. Section 106 Agreement (Appeal B), dated 1st April 2016
3. Adopted Policies Map Extract– ‘Inset 2’ showing Bicton
4. Recent planning permissions in Bicton referred to in Council’s Statement
5. Wychavon District Council v SSCLG & Crown House Developments Ltd [2016] EWHC 592 (Admin)
6. Anita Colman v SSCLG & North Devon District Council & RWE NPower Renewables Ltd [2013] EWHC 1138 (Admin)
7. Suffolk Coastal District Council v Hopkins Homes Ltd & SSCLG; Richborough Estates Partnership LLP v Cheshire East Council & SSCLG [2016] EWCA Civ 168
8. Further comments of the Council dated 31st March 2016 in respect of the *Wychavon* Judgment & *Richborough* Judgment
9. List of suggested conditions – Appeal A
10. List of suggested conditions – Appeal B
11. Appeal Decision APP/L3245/W/15/3049332, dated 5th April 2016
12. Statement of Mr Brett, Chairman Bicton Parish Council

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Heritage Impact Assessment of Proposed Development, Richard K Morriss & Associates
2. Appeal decision relating to Teal Drive, Ellesmere, Shropshire, APP/L3245/W/15/3067596
3. Bundle of post-hearing correspondence from the Council and appellant relating to Teal Drive appeal decision, including the High Court challenge, and including amongst other things the Council’s Fully Objectively Assessed Housing Need (FOAHN) Report (dated 4th July 2016), and the Council’s Five Year Housing Land Supply Statement (dated 26th August 2016).