

Appeal Decision

Site visit made on 21 February 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 24 March 2017

Appeal Ref: APP/H1840/W/16/3162546

**Station Garden Nurseries, Station Road, Blackminster, Badsey,
Worcestershire WR11 7TF**

- 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 Mr & Mrs Tolkien against the decision of Wychavon District Council.
 - The application Ref W/16/00303/OU, dated 26 January 2016, was refused by notice dated 6 May 2016.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The scheme is in outline with all matters reserved. I have dealt with the appeal on this basis, treating the submitted plans as indicative insofar as they relate to the layout, appearance and scale of the dwelling, access and landscaping.
3. The Council has stated that it is not contesting the second reason for refusal regarding affordable housing provision and I have therefore determined the appeal on the basis of the first reason for refusal only.

Main Issue

4. The main issue is whether the site would be a suitable location for a dwelling having regard to the policies of the development plan and the National Planning Policy Framework (the Framework) and any other material considerations.

Reasons

5. The appeal site comprises part of a former commercial orchard and is roughly rectangular in shape. There are no trees or hedges within the site and it has a frontage onto the B4085. To the north of the site is an area that also formed part of the orchard and a railway line and level crossing. To the south of the site there are dwellings. Victoria and Corner Cottages are located at the junction of Station Road and the B4085.
 6. Between these cottages and the appeal site there was one house under construction at the time of my site visit and there is planning permission for a second dwelling. The existing dwellings on the opposite side of the B4805 coincide with the whole of the appeal site and for an appreciable distance
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- beyond it towards the railway line. To the north of the railway line is a car sales showroom and the Blackminster Business Park.
7. Paragraph 12 of the Framework makes it clear that the statutory status of the development plan as the starting point for decision making has not changed. Development that conflicts with an up-to-date development plan should be refused unless other material considerations indicate otherwise.
 8. The development plan includes the South Worcestershire Development Plan (SWDP) adopted February 2016. Policy SWDP 1 sets out the general presumption in favour of sustainable development. Policy SWDP 2 is a key policy of the development plan setting out the development strategy and settlement hierarchy. There is no dispute between the parties that the site is not within the development boundary of Blackminster. Sites outside the development boundaries are to be considered as open countryside where development will be strictly controlled.
 9. The appellants have drawn to my attention planning consents on the adjacent site¹ to this proposal. However, these planning applications were determined before the SWDP was adopted and a different approach to decision-taking was therefore required in those cases. Furthermore, the delineation of a settlement boundary and the choice of a site for some additional housing in a small settlement are matters which would normally be considered when a new plan is prepared, in the light of any representations made through consultation exercises. I have no evidence before me as to whether the appeal site was considered during the SWDP process.
 10. The development would not fall within one of the categories of development allowed by Part C of Policy SWDP 2 and as such it would be in conflict with this policy. The proposal for a dwelling on the appeal site would therefore conflict with the strategy for the location of new housing in the relatively recently adopted SWDP. Nonetheless, there are a number of other material considerations that I must take into account.
 11. The Council have stated that they can demonstrate a 5 year supply of housing land (HLS). The appellants' design and access statement submitted with the planning application disputes whether the Council has a 5 HLS but this evidence is based on the level of supply prior to the adoption of the SWDP. The appellants have not disputed the Council's evidence submitted with this appeal on this matter. Consequently, there is no evidence before me to suggest that a 5 HLS does not exist.
 12. In such circumstances, the Framework at paragraph 49 sets out that relevant policies for the supply of housing can be considered up-to-date and paragraph 14 of the Framework sets out a presumption in favour of sustainable development. For decision taking this means '*approving proposals which accord with the development plan without delay*'.
 13. Blackminster is a category 3 village that has access to some services and facilities. Blackminster Business Park and Blackminster School are within walking and cycling distance of the appeal site. The B4085 is a bus route and the nearest bus stops are within close proximity to the site. The Council's Officer Report states that there are 3 bus services giving regular access to

¹ W/14/00173/OU and W/15/02194/REM

larger towns. I appreciate that, practically, the appeal site would not differ very greatly from properties within the defined development boundary and would be in a relatively accessible location. However, this only indicates that the proposal would not result in substantial harm in respect of this matter.

14. Paragraph 55 of the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, the contribution one new dwelling would make to the vitality of the rural community would be small. Moreover, there is no evidence to suggest that the existing services and facilities close to the village are under threat.
15. Due to the orchard trees to the north of the site and existing dwellings on the B4085 views of the site are restricted to near/middle distance views. I note that the appellants have stated that the orchard would be retained and would become an informal nature reserve. I am satisfied that subject to the control that exists at reserved matters stage, the dwelling could be designed to be sensitive to local character and architectural styling.
16. The proposal would be seen in context with the dwellings on the opposite side of the B4085 and those adjacent to it and the development would not result in a visually isolated or sporadic dwelling in the open countryside. However, the site is currently open and undeveloped and the dwelling would extend the urbanising nature and line of domestic buildings on this side of the B4085. I acknowledge that, taking into account the above, the urbanising effect would be limited and the proposal would not result in significant harm to the character and appearance of the area.
17. The Framework states that, in determining planning applications, local authorities should aim to conserve and enhance biodiversity by encouraging opportunities to incorporate biodiversity in and around developments. I note that the existing site is of limited ecological value and that planning conditions could ensure that there is an enhancement through landscaping and bat/bird boxes. This would be a benefit of the development but provides limited weight in favour of the proposals. I note that ecological mitigation measures were conditioned as part of the previous planning consents on the adjacent site but this adds no weight in favour of this proposal.
18. The appellants has stated that it is intended that the proposal would constitute 'affordable' housing. There is no specific mechanism before me such as a completed Section 106 agreement that would secure this. In the context of planning, the term 'affordable housing' has a specific meaning, as defined by Annex 2 of the Framework. Although the proposal may be intended to be of a size that may make it more affordable it does not meet the definition of 'affordable' housing for the purposes of planning policy. This is therefore a neutral consideration which does not weigh for or against the appeal scheme.

Overall Balance and Conclusions

19. As set out in S38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The location of the site outside the defined development boundary for Blackminster would result in conflict with Policy SWDP 2. Accordingly the

proposal would fail to comply with the development plan. The Framework establishes, as a core planning principle, that planning should be genuinely plan-led.

20. There would be limited benefits in relation to the enhancement of the biodiversity of the site but this is not a sufficiently weighty consideration to lead me to conclude that the proposal should be determined other than in accordance with the development plan.
21. The appellants refer to the three dimensions of sustainable development set out in the Framework: economic, social and environmental. The proposal would provide a new dwelling which would have limited social and economic benefits. As stated above the proposal would have limited benefits in relation to biodiversity but this has to be weighed against its urbanising effect. As such, the development would be neutral in environmental terms.
22. The Council have referred to a recent court judgement² stating that in light of this judgement there is no 'freestanding' presumption in favour of sustainable development. The appellants have stated that this judgement notes recognition of the existence of discretion outside of paragraph 14 of the Framework. I acknowledge that the development considered as part of the appeal decision involved in the judgement is not directly comparable with the proposal before me. However, I consider that the judgement supports the approach taken in this decision.
23. The failure to comply with the development plan leads me to conclude that the proposal would not be sustainable development. There are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan. Taking all of the above into account I consider that the site is not a suitable location for the proposed dwelling. Having regard to all other matters raised therefore, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR

² East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973