
Appeal Decision

Site visit made on 20 February 2017

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

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

Decision date: 30 March 2017

Appeal Ref: APP/W1850/W/16/3163453

Land adjacent to The Firs, Paradise Green, Marden, Herefordshire

- 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 Nick Phillips and Ms S Phillips against the decision of Herefordshire Council.
 - The application Ref 160353, dated 9 February 2016, was refused by notice dated 23 June 2016.
 - The development proposed is new road access, turning head, footpath links and section of private roadway for 5 no detached 4 bedroom houses with garages.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. No site address was stated in section 4 of the planning application form. Therefore, I have taken the address from the Council's decision notice, the appeal form and application plans.
3. The description of the development in the heading above has been taken from the planning application form. However, in part E of the appeal form it is stated that the description of the development has not changed but, nevertheless, a different wording has been entered. A slightly different description is also used in Council's Decision Notice. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given in the original application.
4. The application was submitted in outline with approval also sought for access. Matters of appearance, landscaping, layout and scale are reserved for future consideration. A block plan, Drawing no PHI2667-202, which the appellants advise is illustrative, shows two dwellings fronting the road and three dwellings behind them. I have treated that plan as illustrative. A proposed layout plan, Drawing no PHI2667-201, was also submitted with the application which identifies the proposed access.
5. Since the original refusal of planning permission, the Marden Neighbourhood Development Plan To 2031(MNDP)¹ has been 'made' by Herefordshire Council and now forms part of the development plan. Both main parties have had the opportunity to comment on it and I must determine the appeal in accordance

¹ 12 October 2016

with the current development plan unless material considerations indicate otherwise.²

6. A Written Ministerial Statement (WMS), issued on 12 December 2016, concerns the way in which housing policies in neighbourhood plans are dealt with in decision-making. It is referred to in the Council's statement of case which the appellants have had the opportunity to comment upon and have done so. The WMS is a material consideration which must be read alongside the National Planning Policy Framework (the Framework) and any relevant statutory provisions in determining the appeal.

Main Issue

7. The main issue is whether the proposed development would be in a suitable location, given that it lies outside the settlement boundary defined in the MNDP and having regard to local and national policies relating to development in the countryside.

Reasons

8. The appeal site is located on the west side of the rural village of Marden, adjacent to a two storey residential dwelling known as The Firs. It consists of an agricultural field of about 0.93 hectares which fronts onto the C1120 highway leading into the village. It is screened from the road by a mature hedgerow except at the existing field access to the west. Mature trees form its southern boundary near a watercourse and it is also bounded by trees and a hedge to the west. To the east is a combination of hedging and fencing forming the boundary with The Firs.
9. Policy SS2 of the Herefordshire Local Plan Core Strategy 2011-2031 (CS)³ proposes delivery of a minimum of 16,500 homes over the plan period. As part of a strategic spatial strategy, it focusses approximately two thirds of such development on Hereford and market towns with the remainder to be provided in rural areas. Policy RA1 of the CS deals with that rural housing distribution and states that a minimum of 5,300 dwellings will be spread across seven Housing Market Areas (HMAs).
10. Marden is one of 23 rural settlements within the Hereford HMA identified as the main focus of proportionate housing development by Policy RA2 of the CS. The indicative housing growth target of 1870 dwellings (18%) for the Hereford HMA, of which Marden forms part, is used to inform the level of development to be delivered in the various settlements. Whilst RA2 states that sustainable housing growth will be supported in or adjacent to those settlements, it also says that Neighbourhood Development Plans (NDPs) will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets, by indicating levels of suitable or available capacity.
11. CS Policy RA3 and its explanatory text say that settlement boundaries are to be defined in either NDPs or the Rural Areas Sites Allocations Development Plan Document. It limits residential development outside settlements to various exceptions including housing for agricultural or forestry works and replacing existing dwellings. Though the appeal site is adjacent to the settlement

² s38(6) Planning and Compulsory Purchase Act 2004 and s70(2) Town and Country Planning Act 1990

³ Adopted October 2015

boundary, as defined in the MNDP, the proposed development does not meet any of the exceptions specified in Policy RA3.

12. More critically, in the particular circumstances of this appeal, Policy M1 of the MNDP states that: *'In order to retain the rural character of Marden Village over the plan period, proposals for new housing development will only be permitted within the Settlement Boundary or on allocated sites, as shown on the Marden Village Policies Map, in accordance with the Herefordshire Core Strategy'*. It then lists further criteria such as connection to the existing village settlement and community facilities, appropriate density, high quality design and other factors which must also be satisfied. Therefore, as the appeal site is outside the settlement boundary the proposed development is in conflict with Policy M1 of the MNDP, which is part of the development plan for the area.
13. Moreover, the Council advises that taking into account allocated housing sites within Marden Village at New House Farm and Rose Villa and further commitments at Orchard Green and Rose Villa, the indicative proportional growth requirement of 104 dwellings has already been exceeded. Both parties agree that the MNDP is not seeking to impose a cap on the supply of housing but rather seeks to shape and direct appropriate windfall growth within the parish.
14. However, though conceding that it is early in the CS and MNDP period, the Council argues that there is no reason to assume that there will not be sufficient growth through windfall within settlement boundaries to meet the prevailing targets. It points to a recent approval for one dwelling⁴ and prior approval for the conversion of farm buildings at Rose Villa into three dwellings⁵, both within the settlement boundary. I find that view persuasive and, therefore, it seems to me that compelling reasons would be required to approve a proposal outside the settlement boundary.
15. The WMS represents Government policy. It says that relevant policies for the supply of housing in a recently made neighbourhood plan should not be considered out-of-date under paragraph 49 of the Framework, where at the time the decision: the WMS is less than 2 years old, or the neighbourhood plan has been part for the development for 2 years or less; the neighbourhood plan allocates sites for housing; and the local planning authority can demonstrate a three-year supply of deliverable housing sites.
16. The MNDP was made in October 2016 and allocates sites for housing. Further, the Council states that, as established at a recent public inquiry, it can demonstrate a housing land supply in the region of 4.39 years, a figure that is not disputed by the appellants. Therefore, as the criteria of the WMS are met, Policy M1 of the MNDP is not considered out-of-date, despite the lack of a five year housing land supply, and must be given full weight. Consequently, I give the clear conflict of the proposed development with Policy M1 significant weight.
17. Furthermore, paragraphs 183-185 of the Framework say that neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development that they need. Paragraph 196 of the Framework emphasises that the planning system is plan-

⁴ Application 151929

⁵ P163666/PA4

led whilst paragraph 198 confirms that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

18. The appellants' appeal statement, which is dated prior to the WMS, refers to a number of appeal decisions. However, they concern much larger developments and include factors such as the lack of a five year housing land supply and mainly emerging NDPs. Importantly, they pre-date the recent WMS. In contrast the appeal proposal seeks permission for only five dwellings, is in the context of a 'made' NDP and is subsequent to the WMS which means, on the facts of this case, that the relevant policies for the supply of housing in the MNDP are not considered out-of-date. Consequently, the tilted balance in the fourth bullet point of paragraph 14 of the Framework is not engaged in relation to the MNDP. Therefore, I do not find that there is a direct comparison to be made with between those appeal decisions and the appeal before me.
19. The appellants consider that as the site is adjacent to the settlement boundary, next to existing residential development to the east and opposite housing to the north, it is not disconnected from the village and should not be considered as countryside. Whilst the appellants maintain that the proposal meets the additional criteria in Policy M1 of the MNDP, which include being well connected to the village, that does not deal with the basic fact that those criteria are premised on and further to the requirement that new housing development will only be permitted within the settlement boundary or on allocated sites. The purpose of that requirement is to retain the rural character of Marden village and the surrounding countryside as stated in the policy M1 and objective 1 of the MNDP, and reflected in policy RA3 of the CS.
20. It is the development plan, which includes MNDP, that is the vehicle for the delivery of the presumption in favour of sustainable development articulated in the Framework. Paragraph 16 of the Framework explains the important role of neighbourhood planning in that delivery process.
21. The proposed development would provide some economic benefits during the construction period in terms of employment and the supply of associated goods and services. Future residents would also support local services and facilities and the Council would benefit from payment of the new homes bonus. In social terms there would be a contribution to the supply of housing. However, though the Council cannot demonstrate a five year housing land supply, it does have 4.39 years supply and the local growth target has been exceeded via site allocations within the MNDP and windfall sites within the settlement boundary. The economic and social benefits are also limited by the relatively small scale of the proposal.
22. Environmentally, as the proposal is in outline only it is not clear that there would be significant benefits. An agricultural field adjoining other fields would be lost though the land area is relatively small. The Council accepts that any loss of hedgerow or effects on biodiversity could potentially be mitigated at the reserved matters stage. The site is on the edge of the village but within walking and cycling distance of facilities and public transport links which would potentially reduce reliance on the private motor car. Taking those various factor into account, I consider that the environmental position is neutral.
23. Overall, though there are some limited benefits to the proposal they do not outweigh the clear conflict with the recently made MNDP, which is part of the

development plan, and Policy RA3 of the CS. I conclude, therefore, that the proposal would not be in a suitable location given that it lies outside the settlement boundary defined in the MNDP and having regard to local and national policies relating to development in the countryside. It would not be appropriate, especially in light of the recent WMS, to effectively set aside policy M1 of the MNDP which is an important component of the overall spatial strategy in the development plan. To do so would harm that considered strategic approach which has been examined against the Framework. Whilst I have fully considered the appellants' case, I do not see that there are sufficient material considerations which indicate that the appeal should be determined other than in accordance with the development plan as a whole.

Conclusion

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR