

Appeal Decision

Hearing held on 10 May 2016

Site visit made on 10 May 2016

by Alexander Walker MPlan MRTPI

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

Decision date: 31st March 2017

Appeal Ref: APP/L3245/W/16/3142479

Land North of Station Road, Dorrington, Shrewsbury, Shropshire SY5 7LH

- 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 James and Mr Edward Davies of Messrs Davies against the decision of Shropshire Council.
 - The application Ref 14/05676/OUT, dated 18 December 2014, was refused by notice dated 14 July 2015.
 - The development proposed is for mixed residential development.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Shropshire Council against Mr James and Mr Edward Davies of Messrs Davies. This application is the subject of a separate Decision.

Procedural Matter

3. The application was submitted in outline, with all matters reserved for future consideration. I have determined the appeal on this basis.
4. Prior to the Hearing, the Council stated, in light of the additional evidence submitted by the appellants with regard to the ecological survey, it had withdrawn its second reasons for refusal. This was also confirmed at the Hearing. Based on the evidence submitted, I concur with this view and find that, subject to appropriately worded conditions, the development would not significantly harm protected species.
5. As part of their appeal submission, the appellants' case was that the Council could not demonstrate a five year supply of housing land. Prior to the Hearing, the appellants' evidence of a demonstrable five year supply of housing land was withdrawn and replaced with a Housing Land Supply and Delivery Statement. Whilst they no longer contested the five year supply of housing land, their argument centred on it not being delivered.
6. Following the Hearing, the appellants submitted an appeal decision concerning a site at Teal Drive in Ellesmere¹. The Inspector found that the Council was

¹ Appeal Ref APP/L3245/W/15/3067596

unable to demonstrate a 5 year forward housing land supply as required by paragraph 49 of the National Planning Policy Framework (Framework). The Council lodged a legal challenge to that the decision and the decision has subsequently been quashed in the High Court.

7. Furthermore, the Council published an up-dated Full Objectively Assessed Housing Need Report (FOAHN) on 6 July 2016 and following that published a Five Year Housing Land Supply Statement on 26 August 2016. The appellants have provided me with a written response to both of these documents and the Council has had the opportunity to comment on these responses. I have taken the comments of both parties on these matters into consideration in my assessment of the proposal.
8. A signed and dated section 106 agreement, dated 9 May 2016, was submitted at the Hearing. The agreement relates to the provision of affordable housing and I shall refer to this later in the Decision.

Main Issues

9. I consider the main issues in this appeal are:
 - Whether the Council is able to demonstrate a five year supply of housing land for their area to meet a full objectively assessed housing need; and
 - Whether the development would accord with the Council's housing strategy.

Reasons

Five Year Supply of Housing Land and Full Objectively Assessed Housing Need

10. The appellants' case initially centred on the argument that whilst they did not dispute that the Council could demonstrate a five year supply of housing land, it was not being delivered. However, following the Teal Drive appeal decision, the appellants also contended that the council did not have a FOAHN. Although the Teal Drive decision was subsequently quashed², and in the meantime the Council published an up-dated FOAHN report, the appellants contend that the up-dated FOAHN is not compliant with the National Planning Policy Framework (the Framework) or National Planning Practice Guidance (PPG), and as a result it cannot demonstrate a five year supply of housing. Accordingly, they contend that paragraph 49 of the Framework is engaged and therefore relevant policies relating to the supply of housing should not be considered up-to-date.
11. Paragraph 47 of the Framework states that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.
12. The Full Objectively Assessed Housing Need Report published on 6 July 2016, validates the CS housing requirement figure of 27,500 dwellings between 2006 and 2026. The first 10 year period of the FOAHN coincides with the last 10 years of the current plan period (2016-2026). The report identifies that the need in the final 10 years of the current plan period is 13,039 which equates to 1,304 dwellings per annum. Therefore, the Council confirms that the housing requirement figure set out in the Core Strategy is sufficient to deliver the

² *Shropshire Council v SSCLG and BDW Trading Ltd* [2016] EWHC 2753 (Admin)

FOAHN for this 10 year period. The Council state that the methodology utilised in the FOAHN is consistent with the PPG.

13. The appellants make the case that the FOAHN is not compliant with the PPG due to a number of significant shortcomings. One of the main conclusions the appellants make in their criticism of the FOAHN is that the Core Strategy requirement of 1,190 dwellings per annum was lower than the former Structure Plan requirement of 1,260 dwellings per annum. The Framework has not resulted in any increase over the former Regional Planning Guidance (RPG) and Regional Spatial Strategy (RSS) approach. The appellants assert that both the housing requirement looking forward and the underprovision figure to date, require revising in order to provide a Framework-compliant objectively assessed need figure. Whilst the intention of their FOAHN report rebuttal is not to provide an alternative FOAHN, the appellants suggest an alternative housing requirement of 2,223 per annum.
14. Whilst the Teal Drive appeal decision was quashed, the judgement made in its High Court challenge is pertinent to the consideration of the FOAHN and the housing requirement figure. A decision must be made on the Council's current FOAHN or housing requirement based on the evidence available, regardless of its imperfections. Therefore, it is incumbent upon me to reach a decision on the Council's housing requirement based on the evidence before me. The judgement also acknowledged that the Inspector is not required to undertake the kind of analysis which would be appropriate at a development plan level.
15. Notwithstanding the appellants' significant criticism of the FOAHN report and their alternative housing requirement figure, as this is not a local plan examination it is not for me to set the housing requirement figure. The up-dated FOAHN will be the subject of examination during the forthcoming development plan review, which is due to begin in early 2017. Nevertheless, in light of the *Shropshire Council v SSCLG and BDW Trading Ltd* judgement, I must make a judgement on the housing requirement, regardless of any imperfections in the evidence. The CS sets out the Council's housing requirements throughout the lifetime of the plan. Whilst the CS pre-dates the Framework, these requirements are validated in the recent FOAHN report, which, on the face of it, has adopted an appropriate methodology. The PPG³ advises that when attributing weight to an FOAHN it must be taken into account whether or not it has been tested.
16. The appellant's criticisms of the FOAHN include that it is based on demographic projections only, does not adequately take into account market signals, and does not make adjustments for employment trends. Consequently, the appellant contends that the FOAHN does not accord with the advice within the Framework and PPG. Whilst it may be that there are some criticisms of the FOAHN, the PPG states that establishing future need for housing is not an exact science⁴. In the absence of any convincing evidence to contradict the FOAHN, in this instance, I am satisfied that it is the correct assessment basis and that the proposed development should be considered against the Council's housing requirements as set out in the adopted CS, which the up-dated FOAHN endorses.

³ PPG Paragraph: 030 Reference ID: 3-030-20140306

⁴ PPG Paragraph: 014 Reference ID: 2a-014-20140306

17. In respect of the publication of the Five Year Housing Land Supply Statement on 26 August 2016, the appellants maintain that as the FOAHN is not Framework-compliant the Council cannot demonstrate a five year supply of housing land. The statement identifies a 5.97 years' supply of deliverable housing land. As I have found that the CS housing requirement is the appropriate figure to use, as supported by the FOAHN, the content of the Five Year Housing Land Supply Statement is sound. Based on the evidence before me, I am satisfied that the Council can demonstrate that they have at least a five years supply of deliverable housing land. Accordingly, the policies within the development plan that are relevant to housing supply are considered to be up-to-date and therefore paragraph 49 of the Framework is not engaged.

Housing Strategy

18. The development plan comprises the Shropshire Council Adopted Core Strategy (CS) 2011 and the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015.
19. Policy CS1 of the CS sets a target of delivering a minimum of 27,500 dwellings over the plan period of 2006-2026 with 35% of these being within the rural area, provided through a sustainable "rural rebalance" approach. The policy goes on to state that development in rural areas will be predominantly in Community Hubs and Community Clusters.
20. Policy CS4 of the CS sets out how new housing will be delivered in the rural areas by focusing it in identified Community Hubs and Community Clusters. Policy MD1 of the SAMDev identifies Dorrington, Stapleton and Condover as a Community Cluster.
21. The Council accept that a large number of the dwellings required in the rural areas must be provided through windfall sites, which the Examining Inspector for the SAMDev found to be proportionate. The explanation for Policy MD3 of the SAMDev also reinforces the importance of windfall development, both within settlements and in the countryside, including, where sustainable, greenfield sites.
22. Whilst the proposal does not specifically state the number of dwellings proposed, the indicative plans submitted indicate 24 units. Given the scale of the proposal I do not find that it would threaten the 35% set out in Policy CS1. Furthermore, although outside the settlement boundary, the appeal site is located adjacent to the village of Dorrington. I find therefore that the proposal would generally accord with Policies CS1 and CS4 of the CS and Policy MD1 of the SAMDev.
23. Policy S16.2(vii) of the SAMDev states that the Community Cluster has a settlement housing guideline of around 30-35 dwellings for Dorrington and that development by infilling, groups of houses and conversions may be acceptable within the development boundary. Two sites have been allocated for housing within the development boundary of Dorrington, both providing 15 dwellings each.
24. The opening paragraph to Policy MD3 clearly states that it is to be read in conjunction with the Local Plan as a whole, particularly Policies CS2, CS3, CS4, CS5, MD1 and MD7a. Therefore, it is not to be considered in isolation. Paragraphs 2 and 3 of Policy MD3 relate to the settlement housing guidelines,

with paragraph 2 confirming that they are a significant policy consideration. Where the settlement housing guideline is unlikely to be met, paragraph 3 allows for additional sites outside the development boundary, subject to satisfying paragraph 2.

25. The appellants argue that based on the number of dwellings that have been completed in the first 9 years of the Core Strategy period (2006-2015) the rate of housing delivery needs to increase in order to meet the Core Strategy requirement of 27,500 dwellings. This could be achieved by allowing development in the countryside. In accordance with this approach, the appellants contend that the proposal would represent a sustainable windfall site that satisfies Policy MD3.
26. Whilst the two allocated sites in Dorrington have not submitted planning applications, given the infancy of the SAMDev, as it was only adopted in December 2015, there is no evidence to suggest that these sites would not be developed within the remaining plan period. Furthermore, there is an extant permission for 3 dwellings within the village that was granted permission in 2014⁵. During the Hearing it was confirmed by the Council and the appellant that a development of approximately 23 dwellings was also granted permission in 2014 and is currently under construction on the edge of the development boundary of Dorrington. There is no evidence to suggest that other windfall sites within the development boundary would not come forward.
27. Whilst Policy MD3 does allow for additional sites outside the settlement boundaries this is only if the settlement housing guideline is unlikely to be met. Based on the evidence before me, there is no substantive evidence to suggest that the settlement housing guideline would unlikely to be met and as such the proposal would be contrary to Policy MD3. I accept that the settlement housing guideline is not a maximum figure. However, were the appeal to be allowed and the allocated sites and commitment site developed, in addition to the development on the edge of the village which is currently underway, this would far exceed the guideline figure, which although is not a maximum, has been based on the Community Cluster's ability to sustainably accommodate additional growth.
28. The appeal site is located outside the development boundary of Dorrington and therefore lies within the open countryside. Whilst Policy CS4 of the CS does not restrict development in rural areas to solely sites that are within Community Hubs or Community Clusters, development outside these settlements must meet Policy CS5 of the CS. Policy CS5 allows new development in the open countryside where it maintains and enhances countryside vitality and character and improves the sustainability of rural communities. It also provides a list of particular development that it relates to including dwellings for essential countryside workers and conversion of rural buildings. Whilst the development does not fall into any of the identified examples, I accept the appellant's contention that the list is not exhaustive.
29. However, Policy CS5 is complemented by Policy MD7a of the SAMDev, which goes on to further state that new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Centres and Community Hubs and Clusters. Therefore, it seems to me that although Policy CS5 of the CS does not explicitly restrict new market housing in the open countryside, Policy

⁵ LPA Ref 14/01313/FUL

MD7a of the SAMDev does. As the proposal is for open market dwellings, albeit with a proportion of them affordable, the proposal would fail to accord with Policies CS5 and MD7a.

30. I have been referred to a number of appeal decisions by the appellants whereby housing development in the open countryside has been allowed. The Council has also provided a number of recent appeal decisions where the Inspector has found that housing in the open countryside would fail to accord with the development plan. I have also had regard to the previous appeal decision⁶ with regard to the appeal site. Whilst the conclusions that have been reached in the decisions vary, this is largely due to the status of the development plan, in particular the SAMDev, at the time the decisions were made and, based on the evidence put to those Inspectors, whether or not it was considered that the Council had a five year housing land supply. Furthermore, these decisions pre-dated the publication of the Full Objectively Assessed Housing Need Report (FOAHN) on 6 July 2016 and the Five Year Housing Land Supply Statement on 26 August 2016. Whilst I have had regard to all of these decisions, I am not bound by them. I have determined this appeal on the basis of the evidence presented to me, much of which was not available to Inspectors determining previous appeals. Therefore, I cannot draw any direct comparison between previous decisions and the appeal before me.
31. The SAMDev acknowledges that Dorrington can accommodate additional housing that would contribute to the sustainable growth of the wider Community Cluster and Shropshire as a whole. This additional housing has been identified as being capable of being delivered within the development boundary. Whilst the plan allows for windfall development, the appeal site is located outside this boundary, in the open countryside where housing development is strictly controlled. As such, the development would fail to accord with the Council's housing strategy, as embodied by Policies CS5 of the CS and Policies MD3, MD7a and S16.2(vii) of the SAMDev.

Planning Balance

32. A key principle of the National Planning Policy Framework (the Framework) is that it promotes the presumption in favour of sustainable development. Paragraph 7 of the Framework identifies three dimensions to sustainable development – economic, social and environmental.
33. The construction of the dwellings would provide economic benefit to the local economy through the creation of jobs in the construction industry. Once constructed, the occupants of the dwellings would also contribute to the economy by using the local services and facilities in Dorrington and the wider area. In addition, the development would make a Community Infrastructure Levy contribution, of which a large proportion would be spent on local infrastructure.
34. The development would also provide some affordable housing and a mix and range of dwellings to accommodate the needs of the local community. Furthermore, the occupants would make a contribution to the general community life of the village.

⁶ Appeal Ref APP/L3245/A/14/2222742

35. In terms of the environmental role, there is no evidence that the development would have any significant harm on protected species and appropriate landscaping could provide an enhancement of the existing ecology of the site. Furthermore, the site is within reasonable walking distance of a number of services and facilities within the village, including a convenience store, public houses, a post office and a primary school. Also, there is a bus service that provides access to the wider area, including Shrewsbury, enabling access to a wider range of services and employment opportunities.
36. Notwithstanding this, the site is a verdant field located in the open countryside. It forms part of a large open field that lies between the village and the railway line to the east. The boundary of the field generally comprises mature hedging although there is a wide gap in the hedge allowing access to the field off Station Road. An established hedge line to the western edge of the field demarcates the boundary with the urban development of the village. Overall, the field makes a positive contribution to the openness and rural character of the area.
37. I note that the site has no valued landscape designation. Nevertheless, the development of the site would result in an encroachment into the open countryside which would significantly harm its intrinsic character and value. Due to the land rising from the east to west, the site is particularly prominent on approach to the village from the east along Station Road, thereby exacerbating this harmful effect. Although the application is in outline, the dwellings would result in an extension of the settlement into the open countryside that would fail to protect or enhance the natural environment. Whilst the design and layout of the development may well accord with the neighbouring built form, subject to the reserved matters, this would not outweigh the significant harm the development of the site would cause to the rural character and appearance of the area.
38. I find therefore that the proposal would not represent sustainable development. As such, it would fail to comply with Policy CS17 of the CS and Policy MD12 of the SAMDev, which, amongst other matters, seek to ensure that development protects and enhances the natural environment, and landscape character and the visual qualities of Shropshire's natural assets.
39. In their reasons for refusal the Council rely on Policies CS6 of the CS and MD2 of the SAMDev. These policies have regard to sustainable design. Whilst they make reference to landscape character, as the proposal is in outline form, I find that these policies are not relevant to the proposal.

Other Matters

40. The planning obligations in the s106 agreement have to meet the tests in Community Infrastructure Levy Regulations (CIL) Regulation 122 in order for them to be taken into account in my determination of this appeal. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonable related in scale and kind to the development. These tests are also identical to those set out in paragraph 204 of the Framework.
41. The S106 Agreement would secure on-site affordable housing provision not less than the prevailing target rate as at the submission of the last of the reserved matters. I am satisfied that the planning obligations to secure the on-site

provision would be necessary to ensure compliance with Policies CS9 and CS11 of the CS and to help meet the need for affordable housing throughout the County. From the evidence before me, I find that the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework.

42. I understand the apprehension local residents have with regard to the effect of the development on highway safety, in particular its effect on the junction of Station Road and the A49. This stretch of Station Road is narrow and without footways. Furthermore, the visibility at the junction is restricted. However, in the absence of any substantive evidence that the development would result in severe harm to highway safety, I concur with the Council's view that it would not result in any significant harm to highway safety.

Conclusion

43. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mrs Helen Howie MRTPI	Berrys
Mr James Davies	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Mullineux	Principle Planner
Mr Edward West	Principle Planner (Policy)

INTERESTED PERSONS:

Steve Gardner	Local resident
Jane Mottram	Local resident
Keith Mottram	Local Resident
M Davies	Local Resident
J Hitchcock	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Section 106 agreement dated 9 May 2016
- 2 Appellant's response to Council's costs application
- 3 Policy MD2 of the SAMDev
- 4 Appeal Decision Ref APP/L3245/W/15/3134584 (substitution of Appendix 6 of Council's Statement of Case)
- 5 Annex 3 of the Shropshire Council – Five Year Housing Land Supply Statement (2015)

DOCUMENTS SUBMITTED AFTER THE HEARING

- 6 Appeal Decision APP/L3245/W/15/3067596
- 7 Appellants' comments on Appeal Decision APP/L3245/W/15/3067596
- 8 Council's comments on Appeal Decision APP/L3245/W/15/3067596
- 9 Shropshire Council Full Objectively Assessed Housing Need Report, published 4 July 2016
- 10 Shropshire Council Full Objectively Assessed Housing Need (FOAHN) - Accompanying Note July 2016
- 11 Appellants' Response to the FOAHN report, dated 18 July 2016
- 12 Council's Response to the Appellants' FOAHN Response, dated 15 August 2016
- 13 Council's Five Year Housing Land Supply Statement, published 26 August 2016
- 14 Council's Response to Appellants' Rebuttal of FOAHN, Published 9 September 2016
- 15 Appellants' Further Comments to Council's Response, dated 19 September 2016
- 16 Appellants' Rebuttal of FOAHN, dated 26 September 2016
- 17 Appellants' Response to Teal Drive judgement and Council's Five Year Housing Land Supply Statement, dated 26 September 2016