

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: 05 April 2017

Appeal Ref: APP/W1850/W/16/3164464

Old Chapel Cottage, Sellack, Ross-on-Wye, Herefordshire HR9 6LY

- 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 Mr Richard Adams against the decision of Herefordshire Council.
 - The application Ref 162611, dated 17 August 2016, was refused by notice dated 25 October 2016.
 - The development proposed is erection of single dwelling. Turning and manoeuvring.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. 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, which appears to have been taken from the 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.
3. The appellant has submitted an additional plan, drawing no Chapel 1d, during the course of the appeal. It includes amendments relating to a parking and turning area and visibility splays which do not fundamentally change the nature of the scheme. The Council have had the opportunity to comment upon the plan and I do not consider that accepting it would prejudice any third party. Therefore, I have determined the appeal on the basis of the amended plan.

Main Issues

4. The main issues are:
 - whether the proposed development would be in a suitable location; and,
 - the effect of the proposed access and egress arrangements on highway safety.
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Reasons

Suitable location

5. The appeal site is located within a small rural settlement at Upper Grove Common. It currently forms part of the garden of Old Chapel Cottage and is accessed off the C1270 road, not far from its junction with the U71010, an unclassified road. It is a corner plot on the southerly edge of the settlement with residential dwellings and the rest of the settlement to the north. Agricultural fields lie beyond the roads to the east and west.
6. Policy SS1 of the Herefordshire Local Plan Core Strategy 2011-2031 (CS)¹ reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (the Framework). Policy SS2 of the CS proposes delivery of a minimum of 16,500 homes over the plan period. As part of a spatial strategy, it focusses approximately two thirds of such development on Hereford and market towns with the remainder to be provided in rural areas. The Council advises that 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).
7. Housing outside Hereford and the market towns is distributed in CS Policy RA2. It identifies 119 settlements across the HMAs as the main focus of proportionate housing development and 98 other generally smaller settlements where such development is also considered appropriate. Upper Grove Common and Sellack do not feature amongst those listed settlements.
8. The accompanying text to CS Policy RA3, which deals with Herefordshire's countryside, advises that outside the settlements identified in Policy RA2, new housing will be restricted to avoid unsustainable patterns of development. It will, therefore, be limited to proposals that meet specified exceptions such as dwellings for agricultural or forestry workers. The appeal proposal does not meet any of the exceptions.
9. Therefore, it is clear that the proposal conflicts with the development plan. The appellant submits that Policy RA2 is too selective and that Policy RA3 makes insufficient provision for affordable housing. However, the CS went through a process of public and independent examination, when its consistency with national policy and the Framework would also have been tested, before its adoption in 2015. Planning law² requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, as confirmed in paragraphs 11 and 12 of the Framework.
10. The appellant says that there have been planning consents for several dwellings in the immediate vicinity in far less sustainable locations. A site in Hoarwithy is referred to, though no copy of the planning permission or Officer's report has been provided. However, as the Council advises, Hoarwithy is identified in Policy RA2 as one of the settlements which will be the main focus of proportionate housing development in the Ross-on-Wye HMA. It would not, therefore, represent a parallel with the appeal proposal and location.

¹ Adopted October 2015

² s.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990

11. Whilst the appellant also refers to other planning permissions, I do not have full details of those schemes or knowledge of the circumstances that led to those proposals being approved. Therefore, I cannot be sure that they are directly comparable with the appeal proposal. I see from the descriptions provided by the appellant that one of them appears to relate to change of use from a Chapel to a holiday let. The conversion of an existing building for that purpose would not necessarily be subject to the same policy constraints as a new build market dwelling for permanent residential use. In any event, I have determined the appeal on its own merits.
12. The Council accepts that it cannot currently demonstrate a five year housing land supply. It follows that, in accord with Paragraph 49 of the Framework, policies RA2 and RA3, which to varying degrees restrict housing land supply, should not be considered up-to-date. However, that does not mean that the development plan policies carry no weight at all. It is a matter of judgement for the decision maker to attribute the appropriate weight dependent on the circumstances including, for example, the extent of the housing land supply shortfall.³
13. Nevertheless, in such circumstances, 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 in the Framework taken as a whole.
14. Paragraph 55 of the Framework advises that to promote sustainable development, housing should be located where it will enhance or maintain the vitality of rural communities. However, it also says that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Whilst the list of exceptions provided is not exhaustive, it is similar to those contained in CS Policy RA3. Again the proposal does not meet the exceptions.
15. The appellant argues that the location is not isolated and refers to various facilities and services in the area, some of which are described as within walking distance. However, the Council states that the village store in Peterstow is about 1.4 miles away, and the nearest primary and high schools are approximately 2.5 and 4.2 miles away, respectively. Sellack Village Hall and the Lough Pool Inn public house and some bus stops are closer, about half a kilometre or so away, but there are no pavements or street lighting and some quite steep gradients to negotiate.
16. There are bus services but the distances to bus stops and the narrowness of parts of the roads with no real provision for pedestrians or lighting would be likely to inhibit the regular use of buses. Given that the overall facilities and services are limited and that larger settlements and towns, such as Ross-on-Wye, with a wider range are further away, future occupiers would be likely to be reliant on the private motor car.
17. Whilst the appellant's 'Response to the Council's Statement of Case' refers to local employment opportunities within walking distance, the Design and Access Statement's assessment is that there are limited employment opportunities, mainly in agriculture. There are major employment centres and train stations

³ Suffolk Coastal DC v Hopkins Homes Ltd Court of Appeal [2016] EWCA Civ 168

in Hereford and Gloucester but they are some distance away and, for the reasons already explained, likely to be accessed via motor car.

18. Though the appeal site is located on the edge of a small settlement in proximity to other dwellings, that settlement is surrounded by open countryside. Its limited services, facilities and access to employment combined with the dependence of future occupiers on the motor car, lead me to consider it to be isolated. The fact that there it is an existing settlement with some services does not, of itself, make it suitable for further expansion and development. That view is supported by the omission of Upper Grove Common and Sellack from the CS locations where further housing is considered appropriate. Therefore, the proposal would be contrary to paragraph 55 of the Framework.
19. It would offer some economic and social benefits. There would be an economic uplift during construction through employment and spend on materials. Future occupiers would make a contribution to the local economy and local services and potentially participate in the community. There would also be a contribution to the housing supply. The appellant suggests that it would contribute to the supply of affordable market housing, though there would be no mechanism to ensure that the house was or remained affordable. Inevitably, the level of any benefits would be significantly limited by the fact that the proposal is for just one house.
20. Environmentally, the appeal site would be in an isolated rural location, defined as open countryside, with future occupiers dependent on the motor car. That weighs against the proposal. Whilst the appellant refers to the appeal site as 'brownfield', the Framework's glossary⁴ makes clear that private residential gardens are excluded from the definition of 'previously developed land' for planning purposes.
21. Policies RA2 and RA3 form an integral part of the Council's spatial strategy aimed at ensuring sustainable patterns of development. Paragraph 15 of the Framework indicates that the vehicle for delivering sustainable development is the development plan. The Council advise that the housing land supply has improved from 3.63 years at the time of a previous appeal to 4.49 years as of July 2016, which has not been disputed by the appellant. In the context of an improving housing land supply and CS policies which have been fairly recently found consistent with the Framework, I consider that it is reasonable to give those policies significant weight. The proposal is in conflict with RA2 and RA3 and allowing it would undermine the Council's carefully considered spatial strategy.
22. Overall, the above factors lead me to consider that the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the limited benefits offered by the provision of one dwelling. Therefore, I conclude that the proposed development would not be in a suitable location and would fail to constitute sustainable development.

⁴ Annex 2: Glossary – National Planning Policy Framework

Highway safety

23. The Council expressed concern about the lack of information provided in relation to visibility splays, vehicle parking and turning areas and the possibility of vehicles reversing onto the highway.
24. It seems to me that the appellant's amended plan⁵, already referred to, provides such additional information. I note that the Council have also suggested conditions in relation to those matters, which the appellants have confirmed are acceptable.
25. Notwithstanding the amended plan, the Council refers to the lack of a full 7 day road speed survey and the proximity of the junction with the unclassified road to the proposed access. I appreciate that Policy MT1 of the CS requires that proposals should demonstrate that the local highway network can absorb the traffic impacts of the development without adverse effects.
26. However, as this is a relatively remote sparsely populated rural area and the relevant roads are C class and unclassified, I do not consider that cars associated with one additional dwelling utilising an existing, albeit modified access, are likely to have a significant adverse impact on the highway network. Concerns regarding highway safety could be adequately addressed by suitable conditions.
27. The Council also cite paragraph 32 of the Framework but that is primarily concerned with matters of highway capacity and congestion rather than highway safety considerations in themselves. In any event, I do not consider that the residual cumulative impacts could be defined as severe.
28. Therefore, on balance, I conclude that the access and egress arrangements, as secured by appropriate conditions, would not have an adverse effect on highway safety or the efficient flow of traffic.

Other Matters

29. The appellant refers to a willingness to make a contribution towards facilities in the area. However, as stated in the Council Officer's report, the Written Ministerial Statement of 28 November 2014 makes clear that such contributions should not be sought for developments of 10 units or less. In any event, it does not lead me to alter my decision.
30. The appellant suggests that if meaningful discussions had taken place with the Council, permission would have been granted. However, I note that pre-application advice was supplied by the Council, which made similar points with regard to the principle of development to those contained in the subsequent Officer's report and decision.
31. Whilst the appeal site is located in the Wye Valley Area of Outstanding Natural Beauty (AONB), I agree with the Council that, as the existing screening on the site would be largely maintained, there would be no significant adverse effect on the scenic beauty of the landscape. Therefore, CS Policy LD1 would not be breached.

⁵ Drawing no. Chapel 1d

Conclusion

32. Though I have not found an adverse effect on highway safety, the harm that I have identified regarding the location of the proposed development is decisive.
33. Whilst the supply of housing policies breached are out-of-date, the proposal would nevertheless be contrary to the development plan as a whole and paragraph 55 of the Framework. That conflict would not be outweighed by other material considerations, including other 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