
Appeal Decision

Site visit made on 23 January 2017

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 13 April 2017

Appeal Ref: APP/H1840/W/16/3160794

Land off Chapel Lane, Upton Snodsbury

- 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 Mrs S Downing against the decision of Wychavon District Council.
 - The application Ref W/16/00732/OU, dated 15 March 2016, was refused by notice dated 31 August 2016.
 - The development proposed is an outline application with all matters reserved apart from access for the construction of up to 22no. dwellings.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The application was submitted in outline, with matters relating to appearance, landscaping, layout and scale reserved. I have dealt with the appeal on this basis, treating all plans as illustrative, except where they deal with matters of access.
3. The planning application form does not include a site address but in the associated description, the appeal site is referred to as 'land to the west of Pershore Road, Upton Snodsbury.' The development proposed relates to land off Chapel Lane, as detailed on the appeal form and the Council's decision notice. I have therefore adopted the address on the appeal form and decision notice which more accurately describes the site.
4. Both the local planning authority and the appellant have agreed to amend the description of development on the planning application form. I have therefore adopted this revised description of development, as stated on the Council's decision notice.
5. During the course of the appeal the appellant submitted a Section 106 Agreement in support of the development proposed. The Procedural Guide to Planning Appeals¹ clearly states that new evidence will only be exceptionally accepted where it would not have been possible for the party to have provided the evidence when the full statement of case was submitted. I appreciate the reasons why the agreement was submitted late, however, if I were to consider this an exceptional circumstance and accept the legal agreement, the interests

¹ The Planning Inspectorate, Procedural Guide, Planning Appeals - England (31 July 2015)

of third parties would be prejudiced as they wouldn't have had time to comment on the agreement and its implications for the development proposed. The legal agreement does not, therefore, form part of the appeal. Notwithstanding this, in light of my findings, the legal agreement would not have altered my decision given the conflict found with the development plan on matters of location.

Main Issues

6. These are:

- (i) whether the proposal makes adequate provision for affordable housing and infrastructure contributions arising from the development, and;
- (ii) whether the proposal would be within an acceptable location with particular regard to planning policy.

Reasons

Policy position

7. The Council has a 5 year supply of housing which does not bring its policies into question by virtue of paragraph 49 of the National Planning Policy Framework (the Framework).

Affordable housing and infrastructure contributions

8. Policy SWDP15 requires a percentage of the housing provided to be affordable and *where a robust justification exists, off-site contributions may be accepted in lieu of on-site provision*. Policies SWDP4, SWDP7 and SWDP39 seek financial contributions towards local infrastructure, including transport and green space and outdoor community uses.
9. I do not have a legal agreement to realise the affordable housing proposed and other planning contributions required by policy. I appreciate parties' intentions to provide a legal agreement to secure such benefits, but for the reasons described in the procedural matters above, I cannot accept the legal agreement and make a decision on the appeal that does not prejudice interested parties. Consequently there is no means to secure the infrastructure required to support the development proposed and mitigate the burdensome effect the development would have on existing infrastructure. As a result I find that the development would be contrary to policies SWDP4, SWDP7 and SWDP39 and the SWDP.

Location of development

10. Policy SWDP2 of the SWDP sets out the development strategy and settlement hierarchy for the district. Policy SWDP2 and Annex D of the SWDP identifies Upton Snodsbury as a category 2 village with at least two key services and within the fourth tier of the settlement hierarchy identified. The settlement boundary of the village is identified on the policies map of the SWDP; the appeal site adjoins but is outside this boundary. Consequently, for policy purposes, the appeal site is within the open countryside.
11. Criterion C of policy SWDP2 states that development outside an identified settlement and therefore in the open countryside will be strictly controlled and

will be limited to certain forms of development². None of these exceptions apply here. Whilst the site does not have the characteristics of the open countryside and is within proximity of existing houses and a number of services and facilities within the village, being outside the settlement boundary, the development would conflict with policy SWDP2, together with the National Planning Policy Framework (the Framework) that seeks to focus development within urban areas.

12. I note the appellant's reference to Criterion A of policy SWDP2 and the degree to which the development would comply with this part of the policy. However Criterion A lists the criteria which the development strategy of the local plan and the site allocations within the SWDP is predicated on. For windfall sites, such as the appeal site, Criterion B onwards applies.
13. Supporting the development framework are sites allocated for development within the SWDP. Whilst the appeal site was identified for potential development within the SHLAA³, this carries little weight as the SHLAA is a technical exercise to identify which housing sites should form part of the local plan. Weight can be given to sites allocated within the SWDP, however, the appeal site is not one of these.
14. The site that has been allocated within the SWDP for development within the village is earmarked for development in 2026-2027 and therefore it does not appear within the list of sites identified to meet the Council's more immediate 5 year housing land supply. I have noted the shortcomings identified by the appellant of developing the allocated site however it is not within the remit of this appeal to discuss the merits of developing one site above another in the context of the Council's strategy for housing growth. I am required to determine the appeal in accordance with the development plan. The appeal site has not been allocated for development and lies outside the settlement boundary and therefore its development would run contrary to the development plan's aims for development within the village.
15. The application is in outline and therefore detailed matters have been earmarked for consideration at the reserved matters stage. Whilst I do not doubt the appellant's intentions to provide a high quality development with benefits for biodiversity, design, heritage and other such matters, there can be little guarantee of these at the outline stage of planning. Nevertheless, in considering the principle of the development and the form of the application submitted, the development would realise a number of benefits.
16. The Council can demonstrate a 5 year supply of deliverable housing sites and therefore the weight given to the development's contribution to housing supply is less. Furthermore the Council have a site allocated within the SWDP for additional housing within the village over the longer term, to meet identified need. Nevertheless, whilst there is no evident need for additional housing within the village, in the spirit of the Framework, this should not preclude further development coming forward. The development would, therefore, contribute to the Council's supply of housing, although in the weight given to this benefit is limited.

² Dwellings for rural workers, employment development in rural areas, rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, replacement buildings, renewable energy projects and development specifically permitted by other SWDP policies.

³ As shown on map 49 of the SHLAA in Appendix A12 of Written Statement of Appeal, Document A2, Moule & Co, (October 2016)

17. The development would create employment during the construction phase and thereafter, relating to on-going buildings maintenance and improvements. The development would contribute to the New Homes Bonus and on-going Council tax revenues and being within an accessible distance of the village's services and facilities would bring a reasonable level of custom to the village.
18. The appellant suggests that the development would realise a number of additional benefits that could be secured via a legal agreement, to include affordable housing and improvements to infrastructure. However, I found that there is no means to secure these benefits and therefore I cannot give weight to these in favour of the appeal.
19. Policy SWDP1, as with paragraph 14 of the Framework, places a presumption in favour of sustainable development and states that planning applications that accord with policies in the Plan should be approved. I have found conflict with policy SWDP2 of the SWDP. Whilst the benefits identified are welcome, they do not form a compelling reason to bypass policy SWDP2 and therefore in the absence of material considerations to indicate otherwise, the development would be contrary to policies SWDP1 and SWDP2 of the SWDP.

Other matters

20. The planning application was recommended to planning committee for approval. A recommendation to committee is just that with Members able to consider the Delegated Report together with any other material considerations to reach a conclusion on the application, either in accordance with the Officer's recommendation or contrary to it. A decision made contrary to the Officer's recommendation does not suggest that Members ignored the professional advice of the Planning Officer but that in light of the report and other material considerations, reached a different conclusion. I recognise that Members turning down the application at committee having received a favourable consideration of the proposal by the Planning Officer would have been a disappointment, however, the application was decided within the remits of the decision making process.
21. The Council's first reason for refusal identifies the development as being harmful by way of being unsustainable, in light of the objectives of the development plan and the Framework. I do not find, therefore, that the Council has refused the application unfairly or in a way that leads me to question the merits of the refusal.
22. My attention is drawn to a planning application⁴ that the appellant reports as having been approved for 22 dwellings on the appeal site. Whilst I have been provided with the committee report, I have no evidence to confirm that the planning application was approved. Notwithstanding this, I note that the application was decided against policies which have since been superseded by the SWDP. I am confident, therefore, that the application would have been decided within a different planning policy context to the current proposal and therefore does not make for a reasonable comparison.
23. I am aware that part of the site to the north would be within the settlement boundary of the village. However, this does not render the rest of the site as being within the settlement. Indeed policy SWDP2 relates to the land which

⁴ Ref: W/14/00585/OU

dwellings would be built upon; in this case this would be land outside of the settlement boundary. The area of land within the settlement boundary therefore, has no bearing on the suitability of the site for development overall.

24. A High Court Decision⁵ highlights the importance of undertaking a balancing exercise if the proposed development is not in accordance with the development plan. A number of decisions⁶ provide examples of this balancing exercise, including on a site which the appellant suggests is similar to the appeal site. Notwithstanding any shortcomings to the Council's approach to balance the benefits of the development with the conflict with policy, I have considered the benefits of the scheme in light of the conflict with policy SWDP1 and SWDP2 and found that the proposal would be contrary to policy.
25. The appeal site adjoins the Upton Snodsbury Conservation Area. Neither party have raised concern for the impact the development would have on the Conservation Area and in light of the evidence before me, I see no reason to disagree.

Conclusion

26. Paragraph 49 of the Framework requires developments for housing to be considered in the context of the presumption in favour of sustainable development and where the Council cannot demonstrate a 5 year supply of housing, its policies must be considered out of date. As the Council has a 5 year supply of deliverable housing sites I must give weight to the policies concerned.
27. I have found that the development would make an inadequate provision for affordable housing and infrastructure contributions arising from the development and would be within an unacceptable location. As a result the development would be contrary to the development plan. The harm identified is not outweighed by the other matters put forward in favour of the development proposed and therefore in all, the development would be unsustainable. As a result the appeal is dismissed.

R Walmsley

INSPECTOR

⁵ *Wychavon District Council v Secretary of State for Communities and Local Government & Crown House Developments Ltd* [2016] EWHC 592 (Admin);

⁶ Appeal Ref APP/H180/W/15/3008340; planning application W/16/01652/OU; and planning application W/16/00727/PN