
Appeal Decision

Site visit made on 1 November 2016

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: 20 April 2017

Appeal Ref: APP/L3245/W/16/3152587

The Moorings, Mytton Lane, Shawbury, Shropshire SY4 4HR

- 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 Yiend against the decision of Shropshire Council.
 - The application Ref 15/04602/OUT, dated 23 October 2015, was refused by notice dated 17 December 2015.
 - The development proposed is a detached 2 storey 4 bed dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council dealt with the planning application on the basis that the scheme is in outline with all matters reserved except for access. I have dealt with the appeal on this basis, treating the indication of reserved matters on the application form as a typographical error. I have treated the sketch layout that shows the access to the highway as indicative insofar as it relates to the layout, appearance and scale of the dwelling and landscaping.
 3. The development plan for the area includes the Council's Core Strategy (CS) adopted in 2011, and the Sites Allocations and Management of Development Plan (SAMDev) adopted in December 2015. It is clear from the appellants' statement that they were aware of the status of this document and that both parties have had the opportunity to address any implications arising from its adoption. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.
 4. SAMDev Policies MD3 and MD7a were not referred to in the Council's decision notice. However, the SAMDev was adopted around the same time that the application was refused and both parties have referred to these policies. I have been provided with a copy of the policies and have dealt with the appeal on this basis.
 5. Both parties have referred to a number of high court judgements and they have both had the opportunity to comment on the implications of these judgements. As such, neither party would be prejudiced by my consideration of these judgements. I have dealt with the appeal on this basis.
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Main Issues

6. The main issues in this case are:

- Whether the proposed development would provide a suitable site for housing having regard to the settlement strategy for the area and the proximity of services; and,
- The effect of the proposed development on the character and appearance of the area.

Reasons

Suitable site

7. The appeal site presently forms part of the garden to The Moorings. Shawbury is a village that is made up of a number of built up areas with open areas between them. The appeal site is on the edge of the part of the village that is located at its most easterly point alongside the A53. RAF Shawbury is situated to the north of the village.
8. SAMDev Policy MD1 sets out that sufficient land will be made available during the plan period to enable the delivery of housing planned in the Core Strategy under Policy CS1. It states that, further to the policies of the CS, sustainable development will be supported in Shrewsbury, the Market Towns and Key Centres and the identified Community Hubs and Community Cluster settlements, having regard respectively to CS Policies CS2, CS3 and CS4. Policy CS4 of the CS indicates that in the rural area, communities will become more sustainable by, amongst other things, focusing investment into Community Hubs and Community Clusters and not allowing development outside these settlements unless it meets CS Policy CS5.
9. There is no dispute between the parties that Shawbury is identified as a Community Hub and that the appeal site is not within the development boundary of Shawbury as identified in SAMDev Policy S17. I acknowledge that the site is on the edge of the overall settlement of Shawbury and that the development boundary does not include all of the settlement or RAF Shawbury. However, for planning policy purposes the site is to be treated as being within the countryside.
10. CS Policy CS5 states that new development in the countryside will be strictly controlled in accordance with national planning policies protecting the countryside and includes a list of development proposals which will be permitted on appropriate sites which maintain and enhance countryside vitality and character where they improve the sustainability of rural communities. Although the list is not exhaustive, market housing, other than conversions of rural buildings is not identified as being permitted in the countryside.
11. Furthermore, SAMDev Policy MD7a indicates, amongst other things, that further to CS Policy CS5, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns and Community Hubs and Clusters. In this respect new housing is limited to that which is needed to house rural workers, other affordable accommodation to meet local need and the replacement of existing dwellings. The appeal proposal does not fall within any of the categories of development covered by these policies.
12. SAMDev Policy S17.2(i) indicates that Shawbury will provide for modest growth of about 50 new dwellings over the period to 2026. An allocated site for 50

- dwelling close to the site of the relocated primary school is identified as part of this policy.
13. SAMDev Policy MD3 is also relevant to the proposal and this states that in addition to supporting the development of the allocated housing sites set out in settlement policies, planning permission will also be granted for other sustainable housing development having regard to policies in the Local Plan. The appellant and the Council have cited a number of recent appeal decisions in relation to the interpretation of this policy.
 14. However, I have read this policy as it is written rather than how another Inspector has interpreted it. From my reading of SAMDev Policy MD3 and the evidence before me it is clear that windfall developments within the countryside, such as the appeal proposal, need to be considered against the relevant Local Plan policies, namely CS Policy CS5 and SAMDev Policy MD7a. As indicated above, the proposal would not fall within any of the development categories covered by these policies.
 15. SAMDev Policy MD3 goes on to state at paragraph 3 that where a settlement housing guideline appears unlikely to be met, additional sites outside the settlement development boundaries that accord with the settlement policy may be acceptable subject to the considerations in paragraph 2. I acknowledge that the supporting text to Policy MD3 states that the settlement guideline figure is not a maximum figure. However, the plan period runs until 2026 and I do not have any robust evidence before me to indicate that the housing guideline of 50 dwellings for Shawbury is unlikely to be met.
 16. The appellants put forward a number of arguments to support the proposition that the appeal site is in a sustainable location. These include reference to shops and services within Shawbury, the bus service on the A53 and the primary school. I noted at the site visit that the nearest bus stops are within a reasonable walking distance of the appeal site. The appellant has stated that there is an hourly service to Shrewsbury and Market Drayton along the A53.
 17. The A53 is a busy road which does have a footpath on one side and it is mainly lit. The centre of the settlement which, appears to be located around the junction of the A53 and B5063, appears to contain the majority of shops and facilities. However, the primary school and the medical centre are an appreciable distance from this centre of the settlement as they are within the southern part of Shawbury. The services and facilities of Shawbury are within walking and cycling distance of the appeal site.
 18. I note that the school and medical practice are within the Shropshire Council's reasonable walking distance in relation to its school transport policy. However, the distances involved especially to the primary school and medical practice would deter walking and the amount of traffic on the A53 would not make it an attractive environment for cycling especially for more vulnerable groups of road users such as children. I acknowledge that the bus service could be utilised for a part of the journey to the school/medical practice. However, I have no evidence before me as to the specific times of the service to assess whether this would be practical in relation to the school hours.
 19. Taking into account all of the above I consider that the location is not well served in terms of provision for either walking or cycling, particularly for more vulnerable groups of road users such as children. I consider that for the majority of the time and for convenience reasons, occupiers would tend to be highly dependent on travel by the private car to access services and facilities.

As such I do not consider that the development would be in an accessible location. This assessment is supported by the exclusion of the site from the development boundary of Shawbury.

20. In conclusion the proposed development would not provide a suitable site for housing having regard to the settlement strategy for the area and the proximity of services. It would therefore conflict with CS Policies CS1, CS4 and CS5. It would also conflict with SAMDev Policies MD1, MD3, MD7a and S17.2(i).

Character and appearance

21. The appeal site is part of the garden associated with the adjacent house and it is on the edge of the settlement. There are fields on the opposite side of the A53 and adjoining the site. Whilst the parts of the garden, associated with the Moorings, adjacent to Mytton Road are formally landscaped the appeal site is less formal in appearance with a number of small trees within it and a hedge to the boundaries. The height of the hedge allows some views across the site and its immediate vicinity. The proposed dwelling would be on the edge of the settlement and as such it cannot be classed as infill.
22. I acknowledge that the appeal site is not subject to any landscape, ecological or historic designations and that the site would not lead to an encroachment of domestic development into agricultural land. However, the undeveloped nature of the site and its less formal appearance mean that the site is viewed as a transitional area with the adjoining countryside. As such, the development of another dwelling would slightly extend the urbanising nature and line of domestic buildings on the A53. However, the close proximity of the appeal site to The Moorings would limit the harm to the rural character and appearance of the area. Furthermore, as this is an outline application, a reserved matters scheme could be appropriately designed to ensure that the development would be in keeping with the locality.
23. Consequently, as the urbanising effect would be limited and slight the overall character and appearance of the area would be maintained. As such the proposal would, in this respect, comply with CS Policies CS5, CS6 and CS17 which, amongst other things, seek to protect and enhance Shropshire's natural, built and historic environment.

Other Matters

24. CS Policy CS9 in relation to infrastructure contributions is referenced in the reason for refusal but as any necessary contributions would be collected through the Community Infrastructure Levy, if I was minded to allow the appeal, this policy would be complied with.
25. The reason for refusal also makes reference to CS Policy CS11 in relation to local needs affordable housing. However, the Council have confirmed that following the recent judgement of the Court of Appeal of May 2016¹ and the subsequent changes to the Planning Practice Guidance (PPG) that they will not require an affordable housing contribution in this case.
26. I acknowledge that at the time of the determination of the planning application the Parish Council supported the proposal. However, they have subsequently

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council; [2016] EWCA Civ 441.

- modified their response as they now withdraw their support and object to the development.
27. The appellants have referred to a recent appeal decision² in relation to the Council's 5 year housing land supply and whether its policies that relate to housing supply are out-of-date. The Council lodged a legal challenge to that decision and it has subsequently been quashed in the High Court.³ I have no other evidence before me that the Council is unable to demonstrate a 5 year housing land supply and have, therefore, considered the appeal on the basis that it is able to do so in accordance with the Council's evidence.
28. The appellants contend that irrespective of the position in relation to the five year supply of housing land having regard to the Wychavon⁴ case the presumption in favour of sustainable development exists outside of paragraph 14 of the Framework and therefore does not only apply where the development plan is absent, silent or relevant policies are out of date. However, the remarks of the judge in the Wychavon case on that matter were made in obiter and there is no requirement that a decision maker should follow them.
29. The judgments of the Court of Appeal in the cases of East Staffordshire BC v SSCLG & Barwood Strategic Land II LLP⁵ and Barker Mill Estates v Test Valley BC & SSCLG⁶ confirm that paragraph 14 of the Framework explains how the presumption in favour of development is to be applied. It follows from this, that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date and the adverse impacts do not significantly and demonstrably outweigh the benefits. This is supported by the approach advocated in the East Staffordshire and Barker Mills judgements. As indicated above in this case I have no reason to regard the relevant policies for the supply of housing as being not up-to-date. Accordingly the presumption in favour does not apply.
30. In any case, paragraph 49 of the National Planning Policy Framework (the Framework) states that housing applications should be considered in the context of the presumption in favour of sustainable development. The Framework at paragraph 7 identifies three dimensions to sustainable development: economic, social and environmental.
31. There would be economic benefits associated with the proposal including the provision of construction jobs, some additional local spend and New Homes Bonus and community charge receipts. Prospective occupiers would provide some support for local services. However, the contribution one new dwelling would make to the vitality of the rural community and the support it would give to services in nearby towns and villages would not be significant. The proposal would provide a new dwelling which would make a small contribution to the housing supply. The development would therefore have some social benefits.
32. I acknowledge that the appeal site is not of agricultural value, is of negligible risk of flooding and that I have found that the character and appearance of the area would be maintained. However, this amounts to an absence of harm rather than a substantive benefit and I have found that future occupiers would

² APP/L3245/W/15/3067596

³ Shropshire Council V SSCLG [2016] EWHC 2733 (Admin)

⁴ Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments Ltd [2016] EWHC 592 (Admin)

⁵ East Staffordshire BC v SSCLG & Barwood Strategic Land II LLP [2016] EWHC 2973 (Admin)

⁶ Trustees of the Barker Mill Estates v Test Valley BC & SSCLG [2016] EWHC 3028 (Admin)

tend to be highly dependent on travel by the private car and consequently I consider that the environmental dimension of sustainable development would not be met. The proposal would reuse land that has been previously developed, as the exclusions in the Framework's glossary do not cover residential gardens in the countryside only those in built-up areas.⁷ However, that reuse would not be sustainable in other ways. Given that the 3 roles of sustainability are mutually dependent and should not be undertaken in isolation, I conclude that the proposal would not comprise sustainable development.

33. I have found that the proposal would conflict with the development plan. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
34. Even if the Council were unable to demonstrate a 5 year housing land supply, the adverse impacts which would be caused by the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The proposal would still therefore fail.
35. Both parties have referred to a number of other appeal decisions in support of their respective cases, some of which were allowed and others dismissed but all of these simply demonstrate the exercise of planning balance in the circumstances of each case. Each case is different and must be determined on its merits.

Conclusion

36. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR

⁷ The Queen on the application of Dartford Borough Council v SSCLG [2016] EWHC 635 (Admin)