
Appeal Decision

Site visit made on 10 April 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/L3245/W/17/3166957

Land at Longwood Park, Higher Heath, Prees SY13 2JL

- 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 Jeremy Shingler (Shingler Homes Ltd) against the decision of Shropshire Council.
 - The application Ref 16/02401/FUL, dated 25 May 2016, was refused by notice dated 25 July 2016.
 - The development proposed is erection of 4 dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues in this appeal to be firstly, whether the site would be a suitable location for housing having regard to national and local planning policy; and secondly, whether other considerations would outweigh any conflicts with the development plan.

Reasons

Site, Surroundings and Proposal

3. The appeal site is a broadly level open field, bounded to some extent by hedgerows and mature trees, and its associated access from Longwood Park a small development of substantially-sized detached dwellings. Mature trees around the site and within the gardens of adjacent properties impart a verdant and spacious character to the area. To the north of the site open fields separate large industrial units from the residential development, of a strongly suburban character that lines Twemlows Avenue, and related roads which spring off from the A41. The proposed development would introduce four detached houses onto the site orientated around a cul-de-sac.

Housing Location

4. The appeal site is outside of the settlement boundary of Higher Heath for the purposes of Shropshire's Site Allocations and Management of Development Plan (adopted December 2015) (SAMDev). The site is thus within the open countryside in the context of local planning policy, and as a consequence Policy CS5 of Shropshire's Core Strategy (adopted March 2011) (the Core Strategy) is of relevance. This policy is restrictive of new residential development with the
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exception of dwellings to house agricultural, forestry or other essential countryside workers and other affordable housing or accommodation to meet a local need.

5. The proposed development would supply open market housing on the site, it would thus not meet the exceptions given in Policy CS5. Moreover, whilst I note that SAMDev would be permissive of additional residential development outside of settlement boundaries when certain criteria are met, this would be subject to a settlement appearing unlikely to meet its housing guidelines. In the current case, due to the relatively recent adoption of SAMDev, the length of time the plan is due to be operative, and the number of allocated sites within Higher Heath, I have no reason to conclude at this juncture that there would be difficulties in meeting the housing guideline. Thus, taking these matters together, I consider that the proposed development would be clearly contrary to these aspects of the development plan.
6. I note that the appellant considers the site to be sustainable. However, the proposed development conflicts with the policies of a recently adopted development plan, which was assessed as being in compliance with the National Planning Policy Framework (the Framework), and indeed the Council can demonstrate a 5-year supply of housing land, a position that is unchallenged by the appellant. For these reasons the relevant policies of the development plan are not out of date, absent or silent and as a consequence, the presumption in favour of sustainable development set out in paragraph 14 of the Framework does not apply in this case.
7. Thus, for the reasons given above, I consider that the proposed development would not constitute a suitable location for housing, having regard to national and local planning policy. As a result it would conflict with Policies CS4 and CS5 of the Core Strategy; and Policies S18.2(i), MD3 and MD7 of SAMDev. Taken together, and amongst other things, these policies seek to ensure that new residential development in Shropshire's rural area is directed to community hubs and clusters and meets local needs.

Other Considerations

8. The appeal site benefits from an extant planning permission¹, which is identical to the proposed development in every respect except that the extant permission is subject to a planning obligation to provide an affordable housing contribution. The extant permission is due to expire on 23 May 2018. I note that a previous application to the Council to modify the planning obligation² was refused. Whilst I am cognisant of the appellant's position that the proposed development would constitute a fallback scheme, I note from their statement that removal of the planning obligation would "allow the site to come forward and increase the supply of housing within the District in line with local and national planning policies". This statement somewhat undermines the deliverability of the extant permission and thus its status as a fallback scheme. As a consequence, the extant permission attracts only moderate weight in the overall planning balance.
9. Two important matters have changed since the grant of the extant planning permission. These are firstly, the materiality of the Written Ministerial

¹ Council refs 14/02895/OUT and 16/01047/REM

² Council ref 16/04688/DIS106

Statement of 28 November 2014 on affordable housing contributions arising from small sites; and secondly the adoption of SAMDev.

10. In terms of the WMS a Court of Appeal judgement³ established that it is to be treated as a material consideration in planning decisions. The WMS states that for sites supplying less than 10 houses, or 5 in certain rural areas affordable housing contributions should not be sought⁴. I am cognisant too of the appellant's references to the Housing and Planning Act 2016, and the powers arising from that to make secondary legislation restricting the ability of Councils to require affordable housing contributions. The WMS is a clear and unambiguous statement of national policy, and the Council consider that it outweighs the relevant affordable housing policies of its development plan. However, in this case, as the objection to the proposed development is an in-principle one in terms of its conflicts with the settlement strategy of the development plan, the WMS does not weigh heavily in favour of the proposal. Rather it simply states that a development of this scale should not be required to provide an element of affordable housing.
11. I am aware that when the application was originally determined the site was considered sustainable by the Council, particularly in terms of its location, and that its contribution of additional dwellings to meet the housing supply requirements of the County was considered to weigh in its favour in terms of social sustainability. However, in the current case the subsequent adoption of SAMDev, with its related settlement strategy, and the Council's demonstrable five year supply of housing land, are both very weighty material considerations that alter the overall planning balance. As the Council now has a planned approach to meeting the County's housing requirements largely within defined settlements, the consequent weight that I attach to the proposed development of a limited amount of open market housing outside of a settlement boundary is very modest.
12. The proposed development being unencumbered by an affordable housing contribution could deliver a boost to the developer of the site. I note the appellant's comments that their business was disproportionately affected by the financial downturn and that wider national policies seek to support businesses of this size. However, whilst these matters weigh in favour of the scheme, they do so only to a modest degree.
13. The proposed development, like most new residential developments, would have economic benefits both during its construction phase, and through potential support to local services and businesses arising from its future occupants. However, the limited scale of the proposed development and the largely ephemeral nature of the wider economic benefits of the construction phase mean that these matters do not weigh heavily in its favour.
14. I note that the proposed development would be liable to make Community Infrastructure Levy (CIL) payments. However, CIL is a proportionate charge the purpose of which is to render the infrastructure externalities of a proposed development acceptable in planning terms. As a result, this is a consideration that has a neutral effect on the overall planning balance.

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

⁴ The Government's Planning Practice Guidance on Planning Obligations was updated on 19 May 2016 to reflect the national policy as expressed in the WMS

15. The adoption of the SAMDev is an important consideration, it establishes that the appeal site is outside of a settlement boundary for its purposes, which combined with the current housing land supply position, and overall settlement strategy of the development plan is a material change in circumstances from those prevailing at the time of the grant of the extant planning permission concerning the appeal site. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 establishes that "If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise." In the current case, for the reasons given above, the various other considerations advanced in support of the proposed development, whilst material, are not of a sufficient weight to indicate that a departure from the development plan is justified.

Conclusion

16. Accordingly, for the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

G J Fort

INSPECTOR