
Appeal Decision

Site visit made on 14 February 2017

by **Susan Heywood BSc(Hons) MCD MRTPI**

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

Decision date: 27 April 2017

Appeal Ref: APP/H1840/W/16/3160822

Land to the rear of Meadowcroft, Bishampton Road, Flyford Flavell, Worcestershire WR7 4BT

- 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 John Broderick against the decision of Wychavon District Council.
 - The application Ref W/15/03198/PN, dated 17 December 2015, was refused by notice dated 31 August 2016.
 - The development proposed is the development of 4no dwellings.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. During the course of the appeal the parties submitted additional information which was not available at the time their statements were submitted. The appellant drew my attention to the Court of Appeal judgement in *Dartford Borough Council v Secretary of State for Communities and Local Government [2017] EWCA Civ 141*. As this upheld the judgement handed down previously in the High Court (*[2016] EWHC 635*), which the appellant had referred to in his appeal statement, it was not necessary to seek the Council's views on the Court of Appeal judgement.
3. The Council subsequently submitted an appeal decision (reference APP/H1840/W/16/ 3162546) involving the development of land outside a settlement boundary at Station Road, Blackminster, Badsey. The appellant's views have been sought on that decision and I have taken them into account in the appeal before me. I deal with these matters in greater detail below.

Main Issues

4. The **first main issue** in this appeal is whether the proposal would be in accordance with development plan policies aimed at directing development to the most sustainable areas. If it is not, the **second main issue** is whether there are other material considerations, including the impact of the development on the character and appearance of the surrounding area, which indicate that the proposal should be determined other than in accordance with the development plan.
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Reasons

Whether the proposal would accord with the development plan

5. The development plan includes the South Worcestershire Development Plan (SWDP) adopted February 2016. Policy SWDP1 sets out the general presumption in favour of sustainable development. SWDP2 sets out the development strategy and settlement hierarchy for the area. Amongst other things, this aims to focus most development on the urban areas where housing needs and accessibility to lower cost public services are greatest. As a Category 2 village, it is recognised in the plan that Flyford Flavell has a range of local services and facilities. Policy SWDP2 indicates that infill development within the defined development boundaries of the village will be acceptable in principle. However, the appeal site lies outside the settlement boundary for the village. According to policy SWDP2 C such areas are defined as open countryside. In the open countryside, the policy states that development will be strictly controlled and limited to certain circumstances, none of which apply in this case.
6. I note that the site has been considered for development in the Council's Strategic Housing Land Availability Assessment. However, the site was not allocated as a development site in the development plan. The appellant claims that the settlement boundary arbitrarily cuts through the garden for Meadowcroft. However, this is a matter which should be dealt with at the plan making stage, which has occurred fairly recently in this local authority area. The position of a settlement boundary is not a matter which should be determined on an ad-hoc basis through planning appeals.
7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan in the determination of this appeal, that determination must be made in accordance with the development plan unless material considerations indicate otherwise. The development of the appeal site is contrary to policy SWDP2 of the development plan.
8. The National Planning Policy Framework (the Framework) sets out that development that conflicts with an up-to-date development plan should be refused unless other material considerations indicate otherwise. I will therefore go on to consider whether there are other material considerations which would lead me to determine the appeal other than in accordance with the development plan.

Other material considerations

Locational factors

9. There is no dispute between the parties that the Council can demonstrate a 5 year supply of housing land and I have no reason to come to a contrary view. As such, the development plan policies relating to the supply of housing are not to be considered 'not up-to-date' by virtue of paragraph 49 of the Framework.
10. Flyford Flavell is a fourth tier settlement in the hierarchy set out in policy SWDP2, so it is not as sustainable a location as sites in areas higher up the settlement hierarchy. However, the village does have a range of services and facilities and some public transport. The Framework notes that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. The proposed development would not be located in an unsustainable location,

far from services and facilities. Nevertheless, the same circumstances would arise in relation to many sites which adjoin the settlement boundaries of this and other villages at the same level within the settlement hierarchy. This factor simply indicates that the proposal would not cause significant harm in this respect. It is not a positive benefit in its favour in the light of an unchallenged 5 year housing land supply.

11. The Framework states that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities, recognising that new development in such areas can support the retention of local services and community facilities. However, there is no evidence to suggest that existing local services or facilities would be under threat in the absence of the proposed development. The village has had new development within it through the development of the allocated site. This will be likely to have provided a boost to existing facilities in the village.
12. The Planning Practice Guidance recognises that rural housing is essential to ensure viable services in rural areas. However it goes on to say that assessing housing need and allocating sites should be considered at a strategic level and through the local plan and/or neighbourhood plan process.
13. For the above reasons the location of the site does not provide weight in favour of the proposal.

Character and appearance

14. The appeal site comprises a large rear garden to the bungalow at Meadowcroft. It adjoins open countryside to the east and similar open garden areas to the south. To the north lies a recent development of dwellings constructed on a site allocated for housing development in the SWDP. The site is surrounded by native hedgerows on its northern and eastern boundaries with a more mixed hedgerow and trees along the southern boundary. Despite being within the curtilage of the bungalow, the site retains an open rural character.
15. I note that the Inspector in dealing with a previous appeal on this site (APP/H1840/A/14/2221630) pointed out that the village boundary had been reconfigured to accommodate the adjacent allocated site. In doing so he noted that "*that may well entail some reconsideration of the 'boundary' across the appeal site*". However, at that stage the SWDP was still an emerging document and the Inspector also noted that this was not a matter before him in that appeal. Ultimately, the SWDP did not allocate the appeal site for development. Consequently, these comments by the previous Inspector do not change the policy context of the appeal site at the present time as set out above.
16. I agree with the appellant that the linear nature of the village has been altered by the development to the north in particular. Consequently, I do not concur with the Council's view that the siting of the development behind the dwelling at Meadowcroft would cause harm in this respect. Neither do I consider that the proposal would result in a cramped form of development.
17. The Inspector in the previous appeal did note that "*the built-up 'envelope' of the village would extend no further eastwards than the adjacent allocated site and any development on the appeal site would often be seen against, or in conjunction with, the development to the north*". I do not disagree with this statement. When viewed from the south and east, the development would

appear to form part of the existing development to the north and this would reduce its visual impact on the surrounding countryside.

18. Nevertheless, the site is also visible in glimpses from the road to the west, most notably through the existing gated access. From here the site is seen with the backdrop of open countryside to its east. In these views (which in the proposed scheme would be along the proposed access road), the development would appear out of character with the surrounding countryside and would cause some visual intrusion. In this respect the proposal would conflict with policy SWDP21 B ii. which requires development proposals to complement the character of the area. This matter adds further weight against the proposal.

Other factors

19. One of the core planning principles set out in the Framework is to encourage the efficient use of land by reusing land that has been previously developed. Annex 2 of the Framework defines such land as "*land which is or was occupied by a permanent structure including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed)*". The definition excludes "*land in built-up areas such as private residential gardens*". The appellant refers to the judgement in *Dartford Borough Council v Secretary of State for Communities and Local Government [2016] EWHC 635*, recently upheld in the Court of Appeal (ref: *[2017] EWCA Civ 141*), which establishes that residential gardens outside built-up areas are not exempted and are therefore to be considered to be previously developed land. Nevertheless, the land has an open rural character and there is nothing to suggest that the appeal site has been built on in the past. This leads me to conclude that the whole of the curtilage of the previously developed land should not be developed in this instance, despite the encouragement to reuse such land. This matter does not therefore add weight in favour of the appeal.
20. The appellant claims that the appeal proposals provide 24% of the site as Green Infrastructure, in excess of the amount required by policy SWDP5. This matter is not disputed by the Council. The proposal has been designed to retain existing trees, part of a former orchard, and hedgerows on the site. These are UK Biodiversity Action Plan (BAP) Priority Habitats. Some trees would be felled but the majority of the trees would be retained and a management plan has been submitted for both the orchard trees and the hedgerows. A condition could be imposed to secure the retention of the trees and adherence to this management plan. The Framework states that, in determining planning applications, local authorities should aim to conserve and enhance biodiversity by encouraging opportunities to incorporate biodiversity in and around developments. The long term protection of the orchard trees and hedgerows would be a benefit of the development. However, the additional ecological mitigation of bat boxes and bird houses provides limited weight in favour of the proposals being by way of mitigation rather than enhancement.
21. I note that the Council's officers recommended approval of the proposal and that there is some support for the development. Nevertheless, this does not alter the factors set out above.
22. Other concerns have been raised by interested parties including drainage, highways, impact on living conditions and human rights. None of these matters adds significant further weight against the proposal and, as I am

dismissing the appeal, it is not necessary for me to consider these matters further.

Overall balance and conclusions

23. In accordance with S38(6) of the Planning and Compulsory Purchase Act 2004, the starting point in this appeal is the development plan. The location of the site outside settlement limits would result in conflict with policy SWDP2. The harm to the character and appearance of the surroundings would result in conflict with policy SWDP21. Accordingly the proposal would fail to comply with the development plan.
24. Whilst the benefits relating to the protection of BAP Priority Habitats weigh in favour of the proposal this is not a sufficiently weighty consideration to lead me to conclude that the proposal should be determined other than in accordance with the development plan.
25. Policy SWDP1 states that where applications do not accord with policies in the SWDP, the local authority will seek to work with applicants to mitigate adverse impacts and identify sustainable solutions "where possible". Due to the nature of the conflict, with policy SWDP2 in particular, it is difficult to see how the adverse impacts could be overcome on the appeal site.
26. One of the core principles in the Framework is to ensure that planning is genuinely plan-led. Plans should be kept up to date and should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. The piecemeal development of this parcel of land on the edge of a village, contrary to the settlement hierarchy in the development plan and in circumstances where there is an undisputed 5 year supply of housing would not accord with this core principle of the planning system.
27. The appellant refers to the three dimensions of sustainable development set out in the Framework: economic, social and environmental. I acknowledge that the proposal would contribute to the economic role by generating employment opportunities during development and by encouraging economically active residents into the area. The new homes bonus and increased Council tax receipts would bring additional resources to the Council, although I consider these matters to be incentives for Councils to provide housing rather than attracting weight in the planning balance. The creation of additional dwellings would provide a social role. Environmental benefit would be gained through the protection of BAP priority habitat trees on the site. Nevertheless, I have also set out the environmental harm above.
28. The parties have referred to judgements in *Suffolk Coastal District Council v Hopkins Homes Ltd [2016] EWCA Civ 168*, *East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973* and *Trustees of the Barker Mill Estates and Test Valley BC & SSCLG [2016] EWHC 3028 (Admin)*. Whilst I note the differences between the judgements identified by the appellant, there is no conflict between these judgements and the approach taken in this decision.
29. I accept that the Inspector in the previous appeal considered that the scheme before him represented sustainable development. That decision predated both of the above judgements and at that stage the SWDP was still an emerging

document. The SWDP has now been adopted and the proposed development would fail to comply with its policies. The failure to comply with the development plan leads me to conclude that the proposal would not be sustainable development. There are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.

30. I have had regard to the appeal decision, reference APP/H1840/W/16/3162546, submitted by the Council and the appellant's response to that decision. I note that there is consistency between that decision and my decision in this appeal. Nevertheless, I am not aware of the precise circumstances of that appeal and it is a well-established planning principle that each decision should be treated on its own merits. Accordingly, that decision has not had any bearing on the decision made in this appeal. I accept the appellant's argument that it would have been open to me to find that material considerations were weighty enough to justify the grant of planning permission in the case before me despite the conflict with the development plan. For the reasons set out above, I have not reached this conclusion.
31. Having regard to all other matters raised therefore, I conclude that the appeal should be dismissed.

Susan Heywood

INSPECTOR