
Appeal Decision

Site visit made on 25 April 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 11th May 2017

Appeal Ref: APP/A0665/W/16/3167430

Plot of land next to Wayside, Dalefords Lane, Whitegate, UK, CW8 2BN

- 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 Kevin and Mrs Mandy Bell against the decision of Cheshire West & Chester Council.
 - The application Ref 16/02667/FUL, dated 11 June 2016, was refused by notice dated 15 August 2016.
 - The development proposed is the construction of 2 new houses on land previously used for storing building materials next to 'Wayside' Dalefords Lane, Whitegate.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the proposal would be a suitable site for development having regard to national and local policies which seek to protect the countryside and promote sustainable patterns of development.

Reasons

3. The appeal site is a plot of land on the north side of Dalefords Lane. It is outside the settlement boundary of Whitegate and Marton as identified in the Vale Royal Local Plan (VR Local Plan) and therefore in the countryside in policy terms.
 4. Policies STRAT1 and STRAT2 of Part One of the adopted Cheshire West and Chester Local Plan (CWC Local Plan) identify a strategic hierarchy for the delivery of new dwellings. Policy STRAT1 deals with sustainable development and requires development to follow sustainable development principles including; to locate new housing with good accessibility to existing or proposed local shops, community facilities and primary schools with good connections to public transport; to protect and improve the natural and historic environment; and to minimise the loss of greenfield land (amongst other things).
 5. Policy STRAT2 considers strategic development and sets out the settlement hierarchy. It advises that development will be focused in a number of key service centres, with an appropriate level of development brought forward in smaller rural settlements which have adequate services and facilities and access to public transport. Although these local service centres will be identified in the emerging Part Two of the CWC Local Plan, the Council confirms that Whitegate and Marton will not be one of them.
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6. Paragraph 55 of the National Planning Policy Framework (the Framework) indicates that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.
7. The appeal site is plot of open grassland adjacent to two semi-detached houses (Wayside and Beech View) and there are two detached dwellings opposite on the other side of Dalefords Lane (Mayfield and Elmtree). Whilst it adjoins open fields on two sides since it is within an existing cluster of development and close to other residential properties. This being so, I accept that it is not isolated in the sense of its location near to other development.
8. Nevertheless, the proposed house would be outside the established development limits for Whitegate and Marton and therefore in the countryside in policy terms. As a result, it would be contrary to adopted Local Plan policy, and it seems to me that special circumstances to justify a house would need to be demonstrated.
9. The appellants consider the land to be previously developed. They advise that it was used for many years as a commercial market garden business when there were large greenhouses and a boiler room on site. They refer to remaining evidence of previous buildings including low brickwork and foundations (in particular associated with the boiler room and greenhouses). Subsequently, the appellants explain that the site was used in part as a builder's storage yard and in part as a residential garden by the occupiers of Beech View.
10. The appellants have submitted aerial photographs from 1966 and 1973 which show structures on the site that appear to correspond with the horticultural greenhouses associated with its use as a market garden. I have also had regard to the letters submitted in relation to how the site has been used in the past including that from its former owner. Furthermore, I appreciate that the re-use of previously developed land is supported by the Framework.
11. That said, the Framework at Annex 2 (Glossary) defines previously developed land as that which is or was occupied by a permanent structure, and any associated fixed surface infrastructure. This excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.
12. In this instance, any structures which may have previously occupied the site have now for the most part been removed and the site appears overwhelming open and has grassed over. Evidence of the former commercial buildings and infrastructure on the site associated with either the market garden use or that of the builder's yard is not readily apparent. Although there is a shed in the north east corner, a garage type building in the south west corner, and a lean to type wooden structure on the site's eastern boundary, these structures are modest in size and agricultural in appearance. Thus they look consistent with the site's countryside location. As such, I consider that the site has assimilated into the surrounding countryside and am not persuaded that it can be regarded as previously developed land.

13. I appreciate that the appeal site currently appears as it does due to enforcement action instigated by the Council to clear the site of building materials. I also note that the appellants consider that the Council should have encouraged them to apply for a Certificate of Lawfulness for the builder's yard. Nevertheless, as things stand the Council regards the lawful use of the land to be for agriculture and I am mindful that Annex 2 of the Framework also excludes from its definition of previously developed land, land that is or has been occupied by agricultural or forestry buildings.
14. The existing houses close to the appeal site form a small cluster of sporadic development which is surrounded by open fields and set apart from other development and the main built up area. The character of the surrounding area is overwhelmingly rural rather than urban and the site relates closely to the open countryside to the north and west where it separated from the adjoining fields by a post and rail fence. As such, the site generally appears as part of the surrounding rural landscape.
15. The proposal would expand the extent of built development along this part of the north side of Dalefords Lane and would undermine the open nature of the site. It would consolidate the development nearby and expand the existing small pocket of buildings. The proposed houses are designed to reflect the appearance and proportions of neighbouring Wayside and Beech View and I understand that the appellants would be willing to reduce their size if necessary. Even so, they would encroach into the defined countryside and, in introducing residential development, would detract from its rural character and appearance. Despite the existing boundary screening to the roadside, this intrusion of urbanisation would be appreciated from Dalefords Lane, where it would be visible through the driveways to the houses. It would also be seen from the wider countryside to the north and west and would appear as a prominent and unwelcome addition that would have an adverse impact on the intrinsic character and beauty of the surrounding countryside.
16. I have had regard to the appellants' argument that the appeal proposal would represent an improvement to the character and appearance of the area in comparison to the previous use of the site as an unsightly builder's yard. However, despite the historic use of the site outlined by the appellants, that use has now ceased. It has not been established that it could lawfully recommence, or that such a fallback position would be available, and I have no substantive evidence to indicate that there is a significant probability that it would occur should this appeal be dismissed. Therefore I cannot afford this matter any material weight in favour of the appeal scheme.
17. The site has utilities connections and road access, but the Council considers it to be remote from services and facilities. The appellants estimate that there are shops and a school approximately 2.5 km away. However, given the considerable distances involved, and since there are no footpaths or street lights on Dalefords Lane in the vicinity of the appeal site, I am not convinced that those facilities would be likely to be accessible from the appeal site on foot. Apart from the school bus which passes the site, it has not been put to me that there are any opportunities for bus travel. Although cycling may be possible, in practical terms I consider that the future occupiers of the proposed houses would have few alternatives to the use of a private vehicle to meet their day to day requirements.

18. The future occupiers of the proposed houses may help to support local shops and public houses which the appellants advise are closing under pressure from online competition. However, they would be somewhat isolated from local facilities and services and reliant on the private car, and as a consequence their role in contributing to enhancing or maintaining the vitality of the rural community (as required by paragraph 55 of the Framework) would not be great.
19. I appreciate that supermarkets offer delivery services and acknowledge that the existing houses nearby are no more sustainably located than the appeal site. However, even in this context, I cannot see that the proposal would minimise the need to travel or reduce reliance on the car. This reliance of the future occupiers of the proposed houses on the use of the private car to meet their day to day household needs would be at odds with the aim of the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are, or can be made sustainable.
20. Through its settlement boundaries the Council is seeking to focus development into existing settlements, where development would generally make the best use of existing services and infrastructure and minimise the need for travel. The creation of new houses outside settlement limits, in locations where the future occupants would be reliant on the use of the car such as the appeal site, would undermine the Council's locational strategy and the overall aim of promoting development within existing settlements and in sustainable locations.
21. I therefore conclude that the proposal would not be a suitable site for development having regard to national and local policies which seek to protect the countryside and promote sustainable patterns of development. It would be contrary to VR Local Plan Policy GS5 which seeks to protect the character and appearance of the countryside and states that new buildings will not be allowed in the open countryside unless provided for through other policies of the Local Plan. It would be contrary to CWC Local Plan Policies STRAT1 and STRAT2 as well as STRAT9 which states that the intrinsic character and beauty of the Cheshire countryside will be protected by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements.
22. It would also be at odds with the core planning principles of the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are, or can be made sustainable, and to recognise the intrinsic character and beauty of the countryside and support thriving rural communities within it.
23. The Parish Council also refers to the emerging Whitegate and Marton Neighbourhood Plan Policy 1 which limits new development on sustainability grounds. However, I have not been provided with a copy of this policy and note the Council's view that it is at an early stage of production and of very limited weight.

Other matters

24. Despite the concerns of local residents, the Council raises no objections to the proposal on highway safety grounds, as to the loss of any agricultural land or the effect of the proposal on the living conditions of nearby occupiers. The absence of harm in these regards counts neither for, nor against the proposal.
25. The Council considers it can demonstrate a 5 year supply of deliverable housing land and the appellants do not dispute this matter. Notwithstanding this situation, the proposal would still add to housing land supply and bring economic benefits in terms of construction work. However, these benefits would not be great given the limited scale of the proposal for two dwellings and would be insufficient to outweigh the harm I have identified in relation to the main issue in this case.
26. I have also had regard to the Council's argument that the current proposal would set a precedent for other similar development along Dalefords Lane. Although each application and appeal must be treated on its individual merits, I can appreciate the Council's concern that the approval of this proposal could be used in support of such similar schemes. Allowing this appeal would make it more difficult to resist further planning applications for such proposals, and I consider that their cumulative effect would exacerbate the harm I have identified above. Although my decision on this appeal does not turn on this matter, it adds some weight to my conclusions.
27. The appellants refer to two similar plots of land at Swanlow Lane Winsford where development has been allowed on appeal. However, no further details have been provided and I cannot be sure that the circumstances that led to those approvals are comparable to the ones before me. A replacement dwelling at Sandy Lane, the replacement of other smaller houses nearby with larger ones, and instances of large extensions are also cited. Additionally reference is made to an application for a traveller's site. I have no further information in relation to these schemes either, but do not consider them to be development that is directly comparable to the appeal proposal which concerns two new dwellings rather than a replacement dwelling, extension or accommodation for travellers. Accordingly, these examples are insufficient to justify the appeal proposal.
28. The appellants indicate that they have always been open to discussion in relation to the appeal site but consider that the Council has not worked positively and proactively with them in the spirit of paragraphs 186 and 187 of the Framework. They refer in particular to a dispute with the enforcement officer over the use of the land for storing building materials and enforcement proceedings concerning a caravan on the site. I also note their claims of harassment and bullying. However, these are matters between the appellants and the Council. I confirm that I have considered the appeal scheme on its own planning merits and made my own assessment as to its impacts.

Conclusion

29. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR