

Appeal Decision

Site visit made on 3 May 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 31 May 2017

Appeal Ref: APP/Y3940/W/16/3167175

Vacant Land Adjacent to Church Road, Heywood, Westbury, Wiltshire, BA13 4LP

- 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 Steve Earl, SPE Developments against the decision of Wiltshire Council.
 - The application Ref 16/01261/FUL, dated 9 February 2016 was refused by notice dated 5 July 2016.
 - The development proposed is the construction of 4 no 5 bed detached dwellings and the planting of a 3 acre woodland.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Wiltshire Council against Mr Steve Earl, SPE Developments. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (i) whether the site offers an acceptable location for the proposed development, having regard to its accessibility to local facilities;
 - (ii) the effect of the proposal on the character and appearance of the surrounding area; and
 - (iii) the effect of the proposal on biodiversity.

Reasons

Location

4. Core Policy (CP) 1 of the Wiltshire Core Strategy (CS) sets out the settlement strategy for Wiltshire and directs development towards the area's main settlements in accordance with the settlement hierarchy. Furthermore, CS Policy CP2 restricts development outside the defined settlement boundaries except where otherwise permitted by other policies within the CS. These include rural exception sites, specialist accommodation provision and where it is essential for agriculture or forestry.
 5. Heywood is not recognised as a settlement and, in policy terms, forms part of the open countryside. The proposal would involve the erection of 4 open market
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dwelling. They are neither essential in terms of agriculture or forestry nor do they fall to be classed as specialist accommodation. As such, they would be contrary to CS Policies CP1 & CP2.

6. Furthermore, although there are a number of other properties located nearby, no services are evident in the immediate vicinity and it appears remote from the surrounding settlements. Paragraph 55 of the National Planning Policy Framework ("the Framework") advises against new isolated dwellings in the countryside other than in a limited number of defined circumstances. While not physically isolated in respect of other dwellings, in view of its remoteness from services, I consider the proposed dwellings would be isolated within the meaning of Paragraph 55. In the absence of any evidence which would indicate that one or more of the special circumstances set out in that paragraph are engaged, I find the proposal would be contrary to the national planning policy.
7. Moreover, the bus timetables provided by the appellant indicate that, while some public transport is available, it is limited both in terms of its extent and frequency. When taken with the limited services available nearby, there is every indication that the proposal would result in a high degree of reliance on the use of private vehicles. As such, the site would offer no real choice of sustainable transport opportunities to future occupiers. This lack of sustainable transport provision would be contrary to CS Policy CP60, CP61 & CP62 all of which seek to reduce the need to travel by private car and encourage the use of more sustainable modes of transport.
8. The appellant has argued that in view of its proximity to the nearby business parks, the appeal site offers a number of employment opportunities for future occupants. However, I observed that these are located some distance from the appeal site and in view of the limited sustainable transport opportunities available, I find that it provides limited support in favour of the proposal. Similarly, while I accept that the existing properties in Heywood are no differently serviced by public transport than the appeal site, it does not overcome the policy objections identified above or justify the grant of planning permission for the residential development proposed.
9. Consequently, I find that in view of its location, the proposal would be contrary to CS Policies CP1 & CP2. It would also be contrary to the guidance set out in Paragraph 55 of the Framework. Furthermore, in view of the limited availability of sustainable transport opportunities, it would also be contrary to CS Policies CP60, CP61 & CP62.

Character and appearance

10. The appeal site consists of around 2 hectares of agricultural land on the north eastern side of Church Road, directly opposite a ribbon of residential development which consists of approximately 35 dwellings. However, the northern side of Church Road is generally devoid of residential dwellings and positively contributes to the open and spacious character of the surroundings.
11. The proposal would involve the erection of four large detached houses and the planting of three acres of woodland. The introduction of 4 new dwellings in this location would significantly alter this part of Church Road. It would introduce a considerable amount of built form where presently there is none which would be out of keeping with the prevailing pattern of development.

12. Furthermore, other than the church¹, the proposed dwellings would be the only buildings situated along the northern side of Church Road. As a result, they would appear highly visible both in the immediate vicinity and the wider landscape. They would urbanise an area of open countryside, negatively impacting on the open nature of the surroundings. This would result in a significant detriment to the character of the surrounding area. Although the proposed establishment of a three acre woodland would provide some mitigation, it would take many years to reach maturity or a level where it would off-set the harm which would result from the proposed scheme.
13. Consequently, I find that the proposal would be harmful to the character and appearance of the surrounding area. This would be contrary to CS Policies CP51 & CP57 which, amongst other things, seek to protect against such harm.

Biodiversity

14. The Council has raised concerns regarding the effect of the proposal on sensitive wildlife and habitats, including on bat species protected under the Habitats Regulations and ancient woodland located in close proximity to the appeal site.
15. CS Policy CP50 requires all development proposals to incorporate appropriate measures to avoid and reduce disturbance to sensitive wildlife species and habitats. Furthermore, Paragraph 118 of the Framework indicates that development which results in the loss or deterioration of irreplaceable habitats including ancient woodland should be refused.
16. In view of its proximity to ancient woodland and the surrounding countryside, I consider there to be a reasonable likelihood that sensitive wildlife species and habitats will be disturbed. Although the appellant has submitted an Extended Habitats Survey and a Reptile Mitigation and Compensation Report, this information is now out-of-date and can no longer be relied on. In the absence of more up to date information, I cannot be satisfied that any disturbance could be adequately managed and, accordingly, I find the proposal would be contrary to CS Policy CP50.
17. Furthermore, I note the comments of the Woodland Trust and concur that, in view of its close proximity to ancient woodland, there is a reasonable likelihood that the proposal would negatively affect this irreplaceable habitat. As such, it would be in conflict with the advice set out in Paragraph 118 of the Framework.
18. Turning then to protected species, guidance on biodiversity and the impact of statutory obligations within the planning system can be found in DCLG Circular 6/2005² ("the Circular"). It advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the grant of planning permission. This is in order to ensure that all relevant material considerations have been addressed in the decision making process. However, it also indicates that developers should not be required to undertake surveys unless there is a reasonable likelihood of the species being present and affected by the development.

¹ Which I am informed has now become a dwelling.

² Circular 6/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system; DCLG (ISBN: 9780117539518).

19. There is currently little in the way of robust evidence to establish whether or not bats or other protected species are present. However, for reasons similar to those set out above, I consider there to be a reasonable likelihood that protected species may be present³ and, as such, might be affected by the development proposed. In the absence of further information which establishes the presence or otherwise of such species, I consider the proposal would be contrary to the requirements of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations").
20. While I note the appellant's suggestion that this could be overcome by means of a condition, the Circular advises that ecological surveys should only be secured by such means under exceptional circumstances. I have seen nothing which would lead me to conclude that such exceptional circumstances are present in this case.
21. Consequently, I find that there is insufficient information available to establish with any certainty whether the proposal would result in unacceptable levels of disturbance to sensitive wildlife species and habitats. Furthermore, there is insufficient information to establish the presence or otherwise of protected species. As such, I find the proposal contrary to CS Policy CP50, Paragraph 118 of the Framework and the requirements of the Habitats Regulations.

Other Matters

22. At the time the application was determined, the Council was unable to demonstrate a 5 year supply of deliverable housing sites. However, it now claims to be able to demonstrate such a supply. This has not been disputed by the appellant and I have seen nothing which would lead to question that position. Nevertheless, even if I were to conclude that the Council was unable to demonstrate such a supply, I consider the harm identified above would significantly and demonstrably outweigh the benefits which would result from the proposed scheme, the greatest of which would be its contribution to local housing.
23. The appellant has referred to a previous appeal on this site which was subsequently dismissed⁴. However, that scheme was considered under a different set of development plan policies and accordingly, while I have had regard to it, I have afforded it limited weight in the determination of this appeal. In any event, each application should be considered on its own merit and that is the approach I have taken in determining this appeal.
24. In reaching my decision I have had regard to all matters raised by interested parties, both those in support and those against. However, I have seen nothing there which would overcome the harm identified above.

Conclusion

25. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR

³ either on site or nearby.

⁴ APP/Y3940/A/12/2171109.