
Appeal Decision

Site visit made on 3 May 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 2nd June 2017

Appeal Ref: APP/L3245/W/16/3164623

Land off Cottage Lane, St Martins, Oswestry.

- 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 Michael Bigg, Gillian Bigg, Ruth Kitts and Brainerd Kitts against the decision of Shropshire Council.
 - The application Ref 16/03362/OUT, dated 28 July 2016, was refused by notice dated 7 October 2016.
 - The development proposed is for residential development of circa 8 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future approval. Indicative plans have been submitted that show alternative access points that could serve the development. I have taken these into account in so far as they are relevant to my consideration of the principle of residential development.
3. A signed Unilateral Undertaking under section 106 of the Town & Country Planning Act 1990 has been submitted which secures a financial contribution towards affordable housing. Its terms are addressed later in this decision.
4. There is no dispute between the parties that the Council is able to demonstrate a five years deliverable housing supply and that paragraph 14 of the National Planning Policy Framework (the Framework) is not engaged.

Main Issue

5. The main issue in this appeal is whether the site is a suitable location for residential development given that it lies outside the development boundary.

Reasons

6. The appeal site comprises a triangular parcel of land connected to the garden of the existing property of Windy Ridge that fronts Cottage Lane and which presently provides the only route to the site. The site is surrounded on all sides by existing suburban housing development and is effectively landlocked. The site lies outside the development boundary of St Martins. Immediately to the south is a small recently built housing scheme of nine properties that was approved at a time when the Council could not demonstrate a five year housing
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supply. One of the access options would see the appeal site accessed from the cul de sac of this adjoining development. The alternative solution would see the demolition of Windy Ridge.

7. Policy CS1 of the Shropshire Council Core Strategy¹ (the Core Strategy) sets the strategic approach to development in the County. The policy states that Shrewsbury will be the prime focus for housing development for the County over the plan period and will accommodate 25% of the housing development with market towns and key centres accommodating around 40% with 35% accommodated elsewhere. The Shropshire Council Sites Allocations and Management of Development Plan² (SAMDev) seeks to deliver the strategic objectives including sustainable development set out in the Core Strategy.
8. For rural areas, the SAMDev seeks to deliver a rural rebalance that was prioritised in Core Strategy Policies CS4 and CS5. It identifies rural settlements and community hubs and clusters where development would be focussed. Policy CS4 indicates that development will not be permitted outside those community hubs and clusters unless it meets criteria specified in Policy CS5. That policy seeks to control new development in the countryside, reflecting paragraph 55 of the Framework and limiting it to appropriate sites which maintain and enhance countryside vitality and character and improves the sustainability of rural communities by bring local economic and community benefits.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says that proposals must be determined in accordance with the development plan unless material considerations indicate otherwise³. Paragraph 14 of the Framework states, therefore, that proposals which are in accord with the development plan should be approved without delay.
10. However, the proposed development conflicts with the development plan because it is outside the development boundary for St Martins as depicted; it is therefore treated as open countryside by the Council. Development is strictly controlled in the countryside by Policy CS5 of the CS and Policy MD7a of the SAMDev and limited to, for example, dwellings for essential rural workers, market residential conversions and affordable housing to meet a local need, none of which are applicable in this appeal.
11. In relation to St Martins, Policy S14.2(v) of the SAMDev sets out to allow growth of around 200 dwellings to be delivered over the plan period 2006-2026 within defined settlement limits. An allocated site for 80 dwellings at Rhos-y-Llan Farm is included while there are already sites with planning permission for 110 dwellings. In addition, the Council states that it is expected that there are likely to be other sites coming forward through small scale infill and windfall development within the development boundary identified in the Proposals Map. However, as the site falls outside the development boundary, Policy S14.2(v) does not establish the principle of development at this location.
12. Policy MD3 of this plan concerns the delivery of housing development. The first part of this policy, under the sub-heading of delivering housing states that, in addition to settlement allocations, planning permission will also be granted for

¹ March 2011

² Adopted 17 December 2015

³ Also section 70(2) of the Town & Country Planning Act 1990 and paragraph 11 of the Framework.

other sustainable housing development having regard to the policies of the Plan, particularly CS2, CS3, CS4, CS5, MD1 and MD7a. However, MD3 says that such windfall opportunities must still have regard to Local Plan Policies, including CS5 and MD7a and where a conflict has already been established in this case.

13. Policy MD3 is supportive of windfall development but only in the context of a managed approach to housing delivery. Part 3 of the Policy emphasises that it is only where that housing guideline appears unlikely to be met that additional sites outside the settlement development boundary may be acceptable. Part 2 of the Policy stresses that the settlement housing guideline is a significant policy consideration.
14. The appellant suggests that there will always be problems associated with the delivery of housing schemes, a point recognised in the Council's Five Year Housing Supply Assessment and that the over-provision against target assumed in the Council's submissions should be viewed with caution. However I am satisfied that the 200 target is achievable given the commitments to date together with the likelihood of the Rhos-y-Llan Farm site coming forward following outline consent alongside other infill sites within the settlement boundary. Even accounting for the appellants' recalibration, the SAMDev target of 200 dwellings is very likely to be achieved.
15. I accept that the Local Plan will be reviewed in time, including the housing requirement contained within it; however, given that the Council can currently demonstrate a five year housing supply and that the settlement housing guideline appears likely to be met at St Martins, the windfall provision in Policy MD3 cannot take effect at this time.
16. The appellants also set out that the appeal proposal should be considered against the presumption in favour of sustainable development as set out in the Framework. A recent High Court decision⁴ clearly sets out the approach decision-makers should adopt when determining planning applications. It was held that there is no freestanding presumption in favour of sustainable development outside the circumstances described in Paragraph 14 of the Framework. Where a proposal is inconsistent with an up-to-date Local Plan there is little scope for a decision-maker to approve an application, and that discretion of "relatively narrow construction" can be applied, but only in "exception" cases (paragraph 33 of the judgement).
17. In coming to this conclusion, the Court highlighted that the 'primacy of the Local Plan is a theme which runs throughout the Framework' (including at paragraphs 37, 150-151 and 182). I note that the appellants consider the appeal site to be sustainable and refer to the three dimensions of sustainable development set out in the Framework: economic, social and environmental. However, the proposed development conflicts with the policies of a recently adopted development plan, which was assessed as being in compliance with the Framework. I attach significant weight to this in my determination.
18. Therefore, 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 at this time and given the circumstances

⁴ East Staffordshire BC v Secretary of State for Communities and Local Government and Barwood Land [2016] EWHC 2973 (Admin)

described above. As a result it would conflict with policies S14.2(v) and MD3 of SAMDev and the adopted Core Strategy policies CS4 and CS5.

Other matters and overall balance

19. A signed Unilateral Undertaking (UU) has been provided that covenants to the making of a financial contribution towards off-site affordable housing provision. However, following a Court of Appeal judgement⁵ the Written Ministerial Statement (WMS) of 28 November 2014 stating that for sites supplying less than 10 houses, or 5 in certain rural areas, contributions towards affordable housing should not be sought has been reinstated.
20. The UU responds to the Council's concerns in relation to affordable housing provision and also to the designation of St Martins as a settlement where developments comprising five or more units would trigger the requirement for affordable housing in line with the WMS. However, as I am dismissing this appeal on the substantive grounds set out in the Council's decision notice, I do not need to dwell heavily on this issue. The presence of a signed UU does not therefore weigh heavily in favour of the proposed development and does not override the harms that I have identified.
21. I appreciate that the site is not now readily suited to agriculture. I also accept that it borders a neighbouring residential development that also lies outside the settlement boundary that is indeed closer to the open countryside. I recognise too that the proposed development would fulfil one of Government's core aims to significantly boost housing supply, including affordable housing.
22. However I am also mindful that the Council can now demonstrate a five year's deliverable supply of housing and although this should not be viewed as a cap as the Inspector found in another appeal involving Shropshire⁶, Policies S14.2(v) and MD3 form part of a planned approach to meeting the County's housing requirements predominantly within settlement limits. The Ludlow case by comparison also provided for a relatively substantial housing proposal that would have made a significant contribution to the delivery of housing as well as serving a higher order settlement. Consequently, I can only accord limited weight to the provision of open market housing in this case.
23. Moreover, in terms of economic benefit I am aware that the proposed development would be liable to make Community Levy (CIL) payments and that the New Homes Bonus payments would also be accrued by the Council. However, the former are proportionate payments to off-set infrastructure liabilities; the latter is intended to provide incentives to encourage authorities to provide housing and do not attract weight in the planning balance. These considerations have a neutral effect on the overall balance.
24. The presence of a fully adopted development plan represents an important consideration. Despite the modest number of dwelling units proposed, the scope for approval of housing development that conflicts with the plan is limited as a result. I am satisfied that the considerations advanced in support of the proposed market housing proposal are not of sufficient weight to justify a departure from the development plan.

⁵ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C12015/2559; [2016] EWCA Civ 441

⁶ APP/L3245/W/15/3137161

Conclusion

25. Accordingly, for the reasons given above, and having regard to all other matters raised I conclude that the appeal should be dismissed.

Gareth W Thomas

INSPECTOR