
Appeal Decisions

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: 9 June 2017

Appeal A - Appeal Ref: APP/W1850/W/16/3157903 Wheatsheaf Inn, Bromyard Road, Whitbourne WR6 5SF

- 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 Fatydam 2 Ltd against the decision of Herefordshire Council.
 - The application Ref 161690, dated 27 May 2016, was refused by notice dated 24 August 2016.
 - The development proposed is change of use and residential development at The Wheatsheaf Inn.
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Appeal B - APP/W1850/W/16/3157904 Car park opposite Wheatsheaf Inn, Bromyard Road, Whitbourne WR6 5SF

- 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 Fatydam 2 Ltd against the decision of Herefordshire Council.
 - The application Ref 161691, dated 27 May 2016, was refused by notice dated 24 August 2016.
 - The development proposed is residential development at land adjacent The Wheatsheaf Inn.
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Decision

1. The appeals are dismissed.

Application for costs

2. An application for costs was made by Fatydam 2 Ltd against Herefordshire Council. This application is the subject of a separate Decision.

Procedural matters

3. I have used the addresses from the Council's decision notices above as these more accurately reflect the location of the sites.
4. Both appeals relate to outline applications with all matters reserved for future consideration. Site layout plans have been submitted but I have treated these as being for illustrative purposes only.

Main Issues

5. The main issues in both appeals are as follows:
 - i. whether the locations of the sites are appropriate having regard to local and national planning policies aimed at directing development to the most sustainable areas;
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- ii. the impact of the developments on highway safety.

Reasons

Policy context

6. The development plan includes the Herefordshire Local Plan Core Strategy (CS) 2011-2031, adopted in October 2015. A number of policies have been drawn to my attention, of which the following are most relevant to these appeals. Policy RA2 supports sustainable housing growth in or adjacent to identified settlements, including Whitbourne. Policy RA3 relates to rural locations outside settlements as defined in neighbourhood plans. Residential development will be acceptable in such locations only if it involves the sustainable re-use of a redundant or disused building in accordance with policy RA5. Policy MT1, amongst other things, requires safe access, access to services by means other than the car and to seek to reduce short distance car journeys.
7. The Council acknowledges that it is unable to demonstrate a 5 year housing land supply. In accordance with paragraph 49 of the National Planning Policy Framework (the Framework) relevant policies for the supply of housing should not therefore be considered up-to-date. CS policies RA2 and RA3 are policies for the supply of housing and are therefore considered to be not up-to-date.
8. The Neighbourhood Development Plan (NDP) was adopted in late 2016. Policy LU1 states that the main focus for new development in the Neighbourhood Area will be within the settlement boundary. Policy LU4 supports delivery of a minimum of 50 houses over the plan period within the Neighbourhood Area.
9. A recent Written Ministerial Statement¹ (WMS) states that, in certain circumstances, relevant policies for the supply of housing in a recently made neighbourhood plan should not be considered out-of-date where the circumstances set out in the WMS are met. The parties' views have been sought on this matter and it is agreed that not all of the circumstances set out in the WMS are met in this case as the NDP does not allocate sites for housing. Its housing requirement is to be met by named windfall sites but there are no specific site allocations. The NDP is part of the development plan and consequently, its policies for the supply of housing, NDP policies LU1 and LU4, are also not up-to-date by virtue of paragraph 49 of the Framework.
10. I have had regard to the fact that the Planning Practice Guidance (PPG) has recently been updated to the effect that regard must be had to paragraph 198 of the Framework. This states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. The PPG confirms that regard must be had to this policy, even where the Council cannot demonstrate a 5 year housing land supply.

Location

11. The sites are located some distance outside of the settlement boundary as defined in the Whitbourne NDP. Consequently, development of these sites

¹ Neighbourhood Planning: Written Statement – HCWS346 12 December 2016

- would be contrary to CS policies RA2², RA3³ (excluding the re-use of the pub which I will deal with later in this decision) and the locational aspects of MT1.
12. The facilities in the village are limited to a pub and a small village shop. The road leading from the sites uphill to the village is narrow, bounded on both sides by tall hedgerows and lacks footways or lighting. At the time of my visit, traffic was travelling in both directions at around 30 – 40 mph, although slower in the uphill direction. These characteristics of the road would be likely to make it unattractive for future residents of the sites to either walk or cycle into the village to access these services. The appellant states that residents of the four recently built homes at The Moors access the village daily by foot and cycle. However, there is no evidence provided to substantiate this claim and I have cause to doubt that given that there is no footpath alongside the busy A44 along which residents from that development would have to walk or cycle.
 13. I acknowledge that the village shop and pub are on the edge of the village. However the majority of dwellings within the village are closer to those facilities than the residents on the appeal sites would be. Furthermore, the activity within the village and the more residential nature of the roads would be likely to make walking or cycling to the pub or shop more attractive to residents living within most parts of the settlement boundary.
 14. I note that there is a bus stop outside the site and that there is a free school bus which would benefit children living on the appeal sites. But I am not aware of the frequency of other bus services from here particularly in the evenings and at weekends. In rural areas such as this, these are often limited and I note the supporting statement for Appeal A refers to the 'unpromising outlook' for bus services⁴. Whilst the appellant points to further facilities in Knightwick, that village is some distance to the east along the busy A44. I consider that most residents would be deterred from cycling to Knightwick by the traffic conditions on the A44. Together these factors would make it likely that the majority of residents of the proposed dwellings would be primarily reliant on private vehicles on a day to day basis. This would be contrary to the aims of CS policies RA2, RA3 and MT1.
 15. The appellant states that it is intended to reduce short distance car journeys through use of travel plans and other promotional and awareness raising activities in accordance with policy MT1. However, no evidence is submitted in support of this claim and it is difficult to see how such measures could be effective given the characteristics of the sites' locations as set out above.
 16. CS policies RA2 and RA3 are not up-to-date and therefore have limited weight. Nevertheless, the policies comply with one of the core principles in the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. The location of the sites well outside the settlement boundary for the village, the lack of ease for future residents to access facilities by means other than the car and the limited facilities available nearby all lead me to give moderate weight to the conflict

² The appellant contends that the site is 'adjacent' to the settlement. An ordinary dictionary definition of 'adjacent' is very near, next to or touching. The site is clearly separated from the identified settlement boundary by some distance and I do not consider it to be 'adjacent' to that boundary.

³ The appellant claims that the wording of RA3 is ambiguous, although it is unclear in what respect. To my mind the policy is clearly worded and has been adopted following Examination. I do not agree that it is ambiguous.

⁴ Page 5

with the policies in the circumstances of these appeals, despite the lack of a 5 year housing land supply.

17. I note that the NDP does not allocate any sites to meet its proportion of housing need. The appellant claims that many of the identified windfall sites are not deliverable and are outside the settlement boundary. I am unable to make a comparative assessment of each of the sites in relation to the appeal sites as this is a matter which is outside of the consideration of these appeals and I have insufficient information before me to do so. The NDP is a recently adopted document and I note that the Examining Inspector did not make any criticism of the named windfall sites.
18. As set out above, both policies LU1 and LU4 of the NDP are policies for the supply of housing and are therefore not up-to-date due to the lack of a 5 year housing land supply. Both policies therefore attract limited weight in this appeal, in so far as they relate to the amount and location of housing. Policy LU1 indicates that the main focus for development should be within the settlement boundary but policy LU4 allows for housing development within the Neighbourhood Area, which includes areas outside the settlement boundary. Whilst Appendix A of the NDP names some potential windfall sites, this and policy LU4 do not preclude sites coming forward elsewhere within the Neighbourhood Area. Consequently, whilst the proposals would conflict with policy LU1 of the NDP they would not conflict with the locational aspects of LU4. Nevertheless, the conflict with policy LU1 attracts moderate weight in these appeals for the same reasons as weight is given to the conflict with the CS policies set out above.
19. Paragraph 55 of the Framework does recognise that housing can contribute to sustainable development in rural areas. It indicates that development in one village can support services in villages nearby. However, this does not support development outside settlement boundaries and contrary to development plan policies as in this case.
20. I conclude on this matter that the location of the development in both appeals would not accord with both local and national policies aimed at directing development to sustainable locations. The proposals would not conflict with NDP policy LU4 in so far as that supports the delivery of housing in the Neighbourhood Area. Nevertheless, the proposals would fail to comply with CS policies RA2 and RA3 and the locational aspects of MT1. It would also conflict with NDP policy LU1.

Highway safety

21. As set out above, CS policy MT1 requires development to have safe access. NDP policy LU4 also requires suitable and safe access to a highway.
22. The indicative layout suggests that Appeal A would involve the creation of an access into the site to serve the three new dwellings and unit 2 within the existing pub. Whilst the location of the access could change in a detailed scheme, it is clear that an access along the lines indicated would be necessary. The illustrative scheme includes a further two parking spaces on an existing hardstanding area to the rear of the pub for unit 1 within the existing building. The indicative plan for Appeal B indicates that the existing access to the car park would be utilised to serve the three new dwellings on that site. This is considered likely in any detailed scheme as any new access would be closer to

the junction with the A44 and would thus create a greater conflict with traffic at the junction than the existing access. I have therefore had regard to the likelihood of the accesses and parking areas being developed along the lines indicated on the illustrative layouts.

23. The appellant states that vehicles have used the hardstanding area to the rear of the pub (in Appeal A) for a number of years and that this hardstanding and an access to it were approved some years ago under reference DCN041826F. The appellant has not provided further details of this planning application. The Council have provided details of an application reference NC04/1068/F which they say was the original reference number for that development when the application was determined. The plan accompanying that application shows a hardstanding to the rear of the pub but no access to it from the highway. The application details state that the area was required to "improve the facilities for the amenities provided in the outdoor area" of the pub. I saw the hardstanding area at my site visit, but there is currently no access to it from the highway.
24. Nevertheless, even if an access to this hardstanding area was previously in existence, the peak times for the use of the access to the proposed development would be different to its use in connection with the pub. This would be the same for Appeal B. Residential development tends to generate traffic movements during peak hours, ie. in the morning and afternoon peak times, when the adjacent roads are also likely to be busier than at other times of the day. The public house, on the other hand, would be less likely to generate significant traffic movements during those peak times as they tend to be busier at lunchtime and early evening.
25. Moreover, in relation to Appeal A the visibility from the access would be restricted in both directions. To the north visibility would be restricted by the proximity of the access to the bridge parapet and the bend in the road. To the south it would be restricted by the pub building and proximity to the T-junction with the A44. Even if the access were to be moved further towards the junction, the pub building would further restrict visibility. Furthermore, if the site in Appeal A were to be developed with the two parking spaces to the rear of unit 1, these would result in reversing manoeuvres either into or out of the spaces at a point in the road where the forward visibility for vehicles travelling eastwards off the A44 is limited. The proximity of the bus stop on the junction would add to the conflicting traffic movements in this location.
26. In relation to Appeal B, clearly the car park and its access were used by vehicles to the pub when it was operating. The Council say that their concern regarding Appeal B relates to visibility when exiting the C1066 onto the A44 having regard to oncoming traffic travelling from the east. However, no evidence has been submitted to substantiate these concerns. The appellant's evidence suggests that the County Council's Highway standards of 4.5 x 90 metres visibility can be met and the siting of the dwellings in any detailed application could be controlled in order to ensure that this is the case. It would also be possible to impose a condition to control boundary treatments adjacent to the A44 in order to retain the required visibility splays. Visibility from the proposed access towards the junction is greater than is the case for Appeal A and oncoming traffic coming off the A44 is on the opposite carriageway and is therefore not as critical. Consequently, I am not satisfied that the visibility for vehicles using the junction would be harmed by the proposals in Appeal B.

27. Nevertheless, the developments in both appeals would result in a greater number of conflicting movements occurring at peak hours of the day. Vehicles entering and exiting the site at Appeal A would have to take account of vehicles entering and exiting the Appeal B site and vice versa. The restricted visibility at the Appeal A access, the parking area for unit 1, the proximity to the A44 junction and the adjoining bus stop would all exacerbate these difficulties.
28. The appellant states that the Council's highway engineers did not object to the proposals. I note from the delegated report that they did not respond to the consultation, but that does not preclude me from reaching my conclusions based on my own experience and observations.
29. I note that there have been no accidents at the junction to date. However, this does not justify permitting development which itself would increase the likelihood of accidents occurring.
30. For the above reasons I consider that the proposals would be likely to harm highway safety. This would be contrary to CS policy MT1, NDP policy LU4 (iv)⁵, which requires safe and suitable access to the highway, and to advice in the Framework which sets out that regard should be had to whether the development can achieve safe and suitable access⁶.

Other matters

31. Appeal A includes the change of use of the pub to two dwellings. The Parish Council is not satisfied that a case has been made that the pub is no longer viable. However, the appellant's viability report was accepted as satisfactory by the Council. I have very limited evidence in relation to this matter. Nevertheless, I note that three offers were received from parties wishing to acquire the property for continued use as a public house. Those bids were higher than the ultimate sale price. I recognise that things may have moved on since the pub is no longer operating. However, I share the concerns of the Parish Council that the submitted viability report does not appear to demonstrate that the pub was no longer viable at the time it was submitted.
32. In principle however, the re-use of the pub would be supported by policy RA3 as the sustainable re-use of a redundant or disused building, so long as it also complies with policy RA5. I agree that its re-use would enhance the surrounding area. However, Appeal A does not include details of the proposed conversion by way of floor plans or elevations. Furthermore, the parking and garden areas for those units within the former pub are included within the proposals for the three new dwellings on that site. For these reasons, it is not possible for me to conclude in this decision that the re-use of the former pub would be acceptable in its own right.
33. The Council refers to the effects of light pollution on the proposed dwellings in Appeal B but no further explanation is given of the likely impact. Interested parties have also raised concerns in relation to the living conditions of residents living on both sites. However, as the proposals are in outline only, I consider

⁵ Regardless of the lack of a 5 year housing land supply, this aspect of policy LU4 attracts full weight as it relates to highway safety matters.

⁶ The appellant refers to paragraph 32 of the Framework which states that development should only be prevented where the residual cumulative impacts are severe. However this statement in the Framework relates to matters of highway capacity and congestion rather than highway safety considerations.

that suitable schemes could be designed to ensure that living conditions of future residents would be acceptable.

34. Interested parties raised concern regarding flooding on the sites and the impact of foul sewage. The NDP identifies an area prone to flooding but this appears to be at the base of the hill on the opposite side of bridge to the appeal sites. The Environment Agency flood maps show no flooding or 'very low risk' for the appeal sites. Consequently, there is no evidence that flooding is an issue on the sites. Furthermore, Severn Trent has raised no concerns in relation to the disposal of foul sewage and there is nothing to suggest that a suitable scheme, which would avoid pollution to the adjoining watercourse, could not be designed.
35. I note the letter of support for the proposals but this does not justify allowing development which is found to be otherwise harmful.

The benefits

36. One of the core planning principles in the Framework is to re-use land that has been previously developed and the NDP seeks to protect agricultural land from development. These appeals would achieve these aims and this is a significant benefit of the proposals. The proposals would therefore accord with CS policy SD1 in so far as it relates to the efficient use of land.
37. The proposals would result in additional housing in an area where the Council cannot demonstrate a sufficient supply of housing sites. They would also add to the mix of housing in the area. The appellant states that the dwellings would be comparatively affordable compared to other houses in the village, although there is no evidence to substantiate this or any mechanism to ensure affordability over time. Nevertheless, the provision of a mix of dwellings in an area lacking in supply would be a significant benefit of the proposals and would contribute to the economic and social aspects of sustainable development as set out in the Framework.
38. The appellant also indicates that the energy efficiency of the dwellings could be ensured at reserved matters stage. This is the case for the majority of developments however, and carries only very limited weight in favour of these appeals.

Overall balance and conclusions

39. The proposals would accord with some development plan policies but it would conflict with others as identified above. Whilst CS policies RA2 and RA3 and NDP policies LU1 and LU4 are not up-to-date due to the lack of a 5 year supply of housing, they are in accordance with one the core principles set out in the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. Having regard to the location of these appeal sites and the limited possibilities which would be available to the residents of the appeal sites to make alternative transport choices, I have given the conflict with those policies moderate weight in these appeals⁷.
40. Paragraph 14 of the Framework states that where the relevant development plan policies are out-of-date planning permission should be granted unless the

⁷ Full weight is given to policy LU4(iv) as set out above.

adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

41. The Council has indicated that it has a 4.39 years' supply of housing and in such circumstances the benefits of the reuse of previously developed land and the provision of a mix of housing where there is no 5 year supply carry significant weight in favour of the proposals.
42. However, the adverse impacts in this case stem from the location of the sites outside settlement limits, the highway safety implications and the conflict with the NDP. I have also had regard to paragraph 198 of the Framework and advice in the PPG that planning permission should not normally be granted for development which conflicts with a neighbourhood plan which has been brought into force.
43. Having carefully weighed these factors, I conclude that the adverse impacts in these appeals would significantly and demonstrably outweigh the benefits such that the proposals would not represent sustainable development.
44. For the reasons set out above the proposals would not accord with the development plan as a whole and there are no other material considerations which indicate that the appeals should be determined other than in accordance with that plan. Having regard to all other matters raised, I conclude that the appeals should be dismissed.

Susan Heywood

INSPECTOR