



Appeal Decision

Site visit made on 4 April 2017

by Mark Dakeyne BA (Hons) MRTPI

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

Decision date: 5th July 2017

Appeal Ref: APP/E3715/W/16/3158785

Land at Barby Lane, Hillmorton, Warwickshire

- 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 Gladman Developments against the decision of Rugby Borough Council.
 - The application Ref R15/2039, dated 22 December 2015, was refused by notice dated 28 July 2016.
 - The development proposed is application for outline planning permission for up to 107 residential dwellings (including up to 40% affordable housing), demolition of existing outbuildings, introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Barby Lane and associated ancillary works. All matters to be reserved with the exception of the main site access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with only access to be considered at this stage with all other detailed matters reserved. The vehicular access to the site would be from Barby Lane via a priority controlled junction. I have dealt with appeal on this basis, treating the layout plans within the Design and Access Statement (DAS) as an illustration as to how the site could be developed.
3. The application was amended prior to its determination by the Council so that the description changed from 'up to 110 residential dwellings' to 'up to 107 residential dwellings'. This revision is reflected in the description of development in the banner.
4. A completed legal agreement under Section 106 of the Planning Act (S106) dated 21 March 2017 is before me. The S106 includes obligations relating to affordable housing; on-site open space; an attenuation basin; and financial contributions for off-site sports and recreation facilities, the police service, sustainable transport, highway works and education. I will return to these obligations later in this decision.
5. The main parties were given the opportunity to comment on the recent Supreme Court judgement¹ which I have taken into account in this decision.

¹ Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG, Richborough Estates Partnership LLP & SSCLG v Cheshire East Borough Council

The approach to the decision

6. There is agreement between the main parties that the Council cannot demonstrate a five-year supply of deliverable housing sites. Although there is a dispute about the extent of the shortfall which I will come to later, in such circumstances paragraph 49 of the National Planning Policy Framework (the Framework) indicates that relevant policies for the supply of housing should not be considered up-to-date. In addition paragraph 14 of the Framework sets out that where the relevant policies in the development plan are out-of-date the presumption in favour of sustainable development means for decision-taking that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.

Main Issues

7. Taking into account the evidence before me and the approach set out above, the main issues are:
 - (1) the effect on the character and appearance of the area; and,
 - (2) whether any adverse impacts arising from the development would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

Reasons

Character and Appearance

8. The appeal site comprises pasture land and farm buildings at Waldings Farm immediately to the south of the built-up area of Hillmorton, a village absorbed into the south-eastern suburbs of Rugby. The fields initially slope gently away from the settlement edge but then the gradients become more pronounced over the south-eastern and eastern parts of the site. These more steeply sloping parts of the appeal site are part of the southern escarpment to a plateau upon which Rugby is situated as well as forming the upper slopes of the broad Rainsbrook Valley.
9. The landscape hereabouts has been assessed in a number of documents over the years. The Warwickshire Landscape Guidelines (1993) show the site lying within the Dunsmore Regional Character Area (RCA) wherein there are three distinct landscape character types (LCT), two of which affect the appeal site. The land to the north of the 120m contour falls within the Dunsmore Plateau Farmlands LCT whereas the land to the south of the contour comprising the upper reaches of the escarpment is within the Dunsmore Plateau Fringe LCT. The latter LCT includes a fairly narrow band running along the escarpment to the south of Rugby.
10. A more detailed assessment of the Dunsmore RCA was made in 2006 by Warwickshire County Council² (WCC) to help inform planning decisions. The assessment concluded that the Plateau Farmlands LCT was in a strong condition with a moderate sensitivity to change whereas the Plateau Fringe LCT was in strong condition with a high sensitivity to change. These findings of medium and high sensitivity were confirmed in a recent study of the landscape

² Landscape Assessment of the Borough of Rugby

around Hillmorton and Dunchurch again undertaken by WCC³. This study suggests that the escarpment should be safeguarded from development.

11. The appellant's Landscape and Visual Appraisal (LVA) originally produced in 2015 and revised in March 2017 to take into account the WCC work earlier in the year concludes that the site is of medium landscape value. WCC dispute this assessment suggesting that the part of the site that lies on the escarpment has a high landscape value⁴.
12. Having visited the site and surroundings and seen the landscape from viewpoints to the south, including some of those used in the LVA, I agree with the landscape character studies and the WCC assessment that the slopes of the escarpment are highly visible, a strong landscape feature, of high sensitivity and of high landscape value. In this regard I give most weight to the 2006 landscape study which was carried out in the absence of development proposals and therefore should be seen as being more objective. The more gently sloping northern part of the site is less sensitive but nevertheless is clearly distinguishable in its character from the housing in Westwood Road, the school playing fields and the allotments inside the clear settlement edge to the northern boundary of the appeal site.
13. The housing development would lead to urban built form beyond the clearly defined settlement edge encroaching down the escarpment slope below the 120m contour. This would be particularly apparent in the south-east part of the site where the top portion of a rectangular sloping field on the escarpment would be developed. The southern limits of the site are not currently defined by any physical or natural feature such as a hedgerow so the development would require the formation of a new site boundary.
14. The development would result in a significant urban intrusion into a mainly intact landscape. There are some existing incursions to the west of Barby Lane such as the stark white elevations of the crematorium and the buildings of The Ridgeway Farm to the west and those of the appeal site but these are individual or small groups of buildings which do not have the effect of extending the urban area beyond its existing well-defined edge on the plateau. In contrast the housing estate with its relatively dense form and urban features such as lighting, roads and engineered attenuation basin would have the effect of extending the currently well-contained built-up area down the escarpment.
15. The encroachment would be seen by those using the public footpath which rises up from the valley bottom before reaching the appeal site and those travelling up and down Barby Lane. From longer distance viewpoints the development would be glimpsed in breaks in vegetation by users of the Oxford Canal, the towpath of which serves as a long distance footpath route, and from other footpaths and lanes in the valley bottom and on its southern slopes. The existing urban area is not easily visible from the valley itself or the northern slopes, apart from the taller school buildings, because of the topography. In contrast the development would be more clearly seen as an extension of the urban area from such viewpoints.
16. The incursion would be mitigated to an extent by the retention of most of the trees and hedges which form field boundaries in accordance with criterion 1 of

³ Rainsbrook Valley Landscape Sensitivity Study 2017

⁴ Landscape Values defined in Guidelines for Landscape and Visual Impact Assessment (3rd edition) (GLVIA3)

Policy GP2, the provision of new structural planting and the inclusion of open space and other green infrastructure. However, such measures would not be capable of disguising the fact that the proposal constitutes a housing estate extending out from the urban edge and down the escarpment which would lead to irreversible change in the landscape. It would be seen as an unplanned and contrived extension of the urban area.

17. The illustrative plans in the DAS show the south-east part of the site, which includes some of the steepest and most exposed land, being used for an attenuation basin and open space. However, layout is reserved and the approach could change as acknowledged by the appellants⁵. Moreover, even if the steeper parts of the escarpment were not built upon with houses there would still be, to my mind, an unacceptable spread of development beyond the urban area.
18. I conclude that the development would have a significantly harmful effect on the character and appearance of the area and conflict with Policy CS16 of the Rugby Core Strategy of June 2011 (CS) as it would be of a scale and density that would cause material harm to the qualities and character of the area. There would also be conflict with Policy GP2 of the Rugby Local Plan adopted July 2006 (LP) as the landscape character of the area would not be retained. I would describe the landscape and visual effects in the longer term to be moderately adverse using the descriptors from the LVA.
19. The Council suggest that the appeal site lies within a valued landscape which paragraph 109 of the Framework says should be protected and enhanced. Whether or not a landscape is valued is a matter of judgement⁶. The site is not within a designated landscape such as a National Park or an Area of Outstanding Natural Beauty. The landscape has not been highlighted in any development plan or supplementary planning document as being valued. Part of the site forms a component of a wider landscape (the escarpment) which has high sensitivity to change and demonstrable physical attributes. The site has clearly some value for local people, particularly those that use the public footpath that rises up the escarpment and crosses the land. But such factors do not necessarily equate to a 'valued landscape'. In my judgement I would not describe the site or part of it as lying within a valued landscape.
20. Nevertheless the core planning principles of the Framework which underpin decision making include taking account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and contributing to conserving and enhancing the natural environment. Whilst these principles do not go as far as protection for its own sake they are considerations to be taken into account. The escarpment is part of the intrinsic character of the countryside, having a different and more significant role in the wider landscape and a higher sensitivity than many areas of countryside on the edge of settlements. Whilst the high sensitivity of the landscape does not necessarily preclude development as demonstrated by the proposed allocations in the Draft Local Plan for Rugby (DLP), it is an important consideration.

⁵ Appendix 2 to Addendum Statement of Case

⁶ Stroud DC v SSCLG & Gladman Developments [2015] EWHC 488 High Court decision

Policies of the Framework

21. There are three dimensions to sustainable development, economic, social and environmental. The Framework indicates that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
22. The development would make a significant contribution to the supply of housing. The provision of this housing would provide economic benefits through construction and associated jobs, local spend from the new residents and New Homes Bonus and Council tax payments. There would also be social benefits from the provision of the new homes, including over 40 affordable dwellings, in an area where there is a shortage of deliverable sites and an acute need for affordable housing.
23. The extent of the shortfall in housing land supply against the five year requirement is a material consideration that can be attributed weight⁷. In this case the dispute about the extent of shortfall stems primarily from differences in how the five year requirement should be calculated.
24. The development plan requirement set out in the CS is 540 dwellings per annum (dpa). However, adding the shortfall in provision since 2006 (the base date of the CS) together with 20% for persistent under-delivery leads, according to the Council, to a 4.36 year housing land supply.
25. The alternative approach, promoted by the appellants, is to base the housing requirement on the Coventry-Warwickshire Housing Market Assessment of September 2015 (HMA) which considers the implications of the 2012-based household projections and economic forecasts. The HMA calculates that Rugby's Objectively Assessed Need (OAN) is 480 dpa. However, there is an acknowledgement that Coventry is unlikely to be able to meet its own needs. A Memorandum of Understanding about the distribution of housing within the Coventry and Warwickshire Housing Market Area states that Rugby should accommodate 12,400 homes over the period 2011-2031 equating to 620 dpa. Applying this figure and adding the shortfall since 2011 and a 20% buffer leads, based on the appellants' calculations, to a 2.83 year housing land supply.
26. The Planning Practice Guidance (PPG) suggests that considerable weight should be given to the housing requirement figures in adopted Local Plans.....unless significant new evidence comes to light. The PPG also indicates that evidence that dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.
27. The CS requirement was based on the West Midlands Regional Spatial Strategy Phase 2 Revision published in December 2007. On the face of it the figure falls into a category that the PPG suggests should be treated with caution. However, it is telling that the CS requirement exceeds the up-to-date OAN for Rugby on its own. Moreover, the level of housing that Rugby should take from Coventry, although likely to be significant, and forming part of the DLP, has not been fully tested as the plan has not yet been subject to independent examination.

⁷ Phides Estates (Overseas) Limited v SSCLG & Shepway District Council [2015] EWHC 827 (Admin)

28. For the above reasons I consider that the CS requirement should form the basis for calculating the housing land supply. As a result I take the Council's figure of 4.36 years supply of deliverable housing sites. That said the existence of a shortfall, although not as significant as claimed by the appellants, should still be attributed considerable weight. The appeal proposal would make a significant contribution to tackling the shortfall.
29. Moreover, the acute need for affordable housing as evidenced by the number of people in unsuitable housing, the quantum of affordable homes needed per annum and the affordability ratio, as set out in the HMA, does not appear to be disputed. Affordable housing has been under-delivered over a number of years. The provision of over 40 affordable homes to accord with Policy CS19 would be secured by the S106. The affordable housing obligation is necessary to make the development acceptable, directly related to the development and is fairly and reasonably related in scale and kind. Therefore, I have taken the obligation into account. The provision of affordable housing is a significant factor in favour of the appeal.
30. There would be some potential biodiversity benefits provided appropriate planting and habitat creation was incorporated into the detailed design. These benefits should be afforded moderate weight.
31. In terms of other claimed benefits, the provision of open space within the development is primarily aimed at meeting the needs of new residents and ensuring a suitable layout. I see this as a neutral factor.
32. Rugby is the largest settlement in the Borough and earmarked as the primary focus for housing growth in both adopted and emerging development plans. The site is close to schools and shops in Hillmorton. Some of these facilities such as the secondary school would be very close using the public footpath that runs through the site. There is a regular bus service into the centre of Rugby from the B4429 to the north of the site which can also be reached via the footpath. The footpath would be improved. Although the private car would be used for many journeys, such as travelling to work, accessing health services and main shopping trips, the site is in a reasonably sustainable and accessible location. The accessibility of the site is a neutral consideration.
33. I have taken into account the objections on highway grounds but note that the Highway Authority is satisfied that the access would be designed to meet guidelines, not cause dangers for road users and that the development could be accommodated on the highway network subject to improvements.
34. The development would change the outlook for the existing residents in Westwood Road but the long gardens would ensure good separation distances such that living conditions would not be materially affected.
35. The S106 includes a number of obligations relating to the provision of services and infrastructure to support the development. On the basis that these obligations need to meet the legal and policy tests set out in paragraph 204 of the Framework, they would mitigate the effects of the development and would not be benefits. However, as I am dismissing the appeal, I do not need to consider in further detail whether these obligations, including those that are disputed, meet the tests.

36. In terms of adverse impacts, environmental harm would arise from the effects on the landscape as discussed earlier. I regard this irreversible harm to be substantial.
37. The development would also lead to the loss of about 3.5 ha of the best and most versatile agricultural land. The Framework advises that the economic and other benefits of such agricultural land should be taken into account. Having regard to the good availability of the higher grades of land in the county and Borough, the harm arising from the loss would be limited.
38. The older farm buildings originating from the late 18th to the mid-19th centuries are non-designated heritage assets. However, their significance as buildings and their setting have been adversely affected by demolition of some of the original assemblage, unsympathetic alterations and the 1980's farmhouse, modern functional agricultural buildings and telecoms masts which now form part of, and dominate, the 'farmstead'. Although the proposals would result in the total loss of the non-designated heritage assets the harm would be limited because their significance has been eroded over time and mitigation through recording of the buildings could be secured.
39. The scheme would comply or be capable of complying with a number of non-contentious development plan policies relating to affordable housing, biodiversity, open space, developer contributions, transport and sustainable design. However, the proposal would be contrary to Policies CS16 and GP2 of the development plan. There would also be conflict with Policy CS1 (development strategy) which states that new development in the countryside, unless allowed by national policy, should be resisted, and with the settlement boundaries set by the LP. However, all three policies were adopted before the introduction of the Framework in 2012. The weight to be given to them depends on their consistency with the Framework.
40. Policy CS16 only permits development which does not cause material harm to the qualities, character and amenity of an area. Material harm equates to a level of harm which is noticeable, including limited harm. This sets a higher bar than the Framework which takes a more balanced approach to considering the dimensions of sustainable development and harm against benefits.
41. LP Policy GP2 requires the retention of important site features and that the landscape character of an area is retained or enhanced. Although criterion 1 is broadly consistent with the Framework, criterion 2 goes beyond the hierarchy of protection promoted by paragraph 113 of the Framework and the core planning principle of recognising the intrinsic character and beauty of the countryside. Rather the policy seeks protection and enhancement of all landscapes, not just those that are valued.
42. Policy CS1, in dealing with the spatial distribution of housing through a settlement hierarchy, is a relevant policy for the supply of housing. Due to the lack of a five-year housing supply Policy CS1 is out-of-date. Moreover, the protection of the countryside for its own sake in the policy is more restrictive than the Framework.
43. For these reasons I do not give full weight to these policies. Policies CS16 and GP2 should carry moderate weight and Policy CS1 limited weight.

Planning Balance and Conclusions

44. Paragraph 14 of the Framework is engaged as relevant policies of the development plan are out-of-date. This is the case even if Policy CS1 were not to be considered a relevant policy for the supply of housing as the shortfall in housing supply is enough to trigger the operation of the second part of paragraph 14⁸. In this case there are no specific policies of the Framework that indicate that development should be restricted. For example I do not regard the site to be part of a valued landscape, on the basis that the protection of valued landscapes is a restrictive policy. Therefore, the tilted balance under the fourth bullet point of paragraph 14 applies.
45. I conclude that the adverse impacts of granting planning permission arising from the substantial environmental harm to the landscape and limited harm from the loss of agricultural land and non-designated heritage assets would significantly and demonstrably outweigh the significant economic and social benefits resulting from the provision of new housing, including affordable homes, in an area where there is a shortfall in provision, and the moderate biodiversity benefits.
46. In reaching my overall conclusions I have had regard to the fact that allowing the appeal would weaken the Council's position in protecting the clearly defined southern fringe of the urban area and the escarpment from intrusive development. Whilst each application should be considered on its merits there is no doubt in my mind that permission here would make it more difficult for similar proposals to be resisted with a cumulative negative impact on the landscape. An example of a similar proposal would be the current application for housing on the east side of Barby Lane. I regard this to be more than a generalised fear of precedent but a realistic and specific concern. Whilst development is proceeding at Ridgeway Farm to the west that site has a frontage onto the B4429 and housing does not extend beyond the existing buildings with only open space and an attenuation feature below the 120m contour. Therefore, the circumstances are not directly comparable.
47. I have had regard to the large number of objections on other grounds but these do not affect my overall conclusions.
48. The proposal would be in conflict with the development plan. Although the weight to be attributed to the relevant development plan policies is moderate or limited, the starting point for decision making is the development plan. Material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. Therefore, the proposal would not constitute sustainable development.
49. For the reasons given above the appeal should be dismissed.

Mark Dakeyne

INSPECTOR

⁸ See paragraph 59 of the Supreme Court judgement referred to in Footnote 1