



Appeal Decision

Site visit made on 20 June 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 20 July 2017

Appeal Ref: APP/A0665/W/17/3171306

Home Farm, Burton Road, Burton, Chester CW6 0ER

- 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 Peter and Mrs Mary Lightfoot of JH Lightfoot and Sons against the decision of Cheshire West & Chester Council.
 - The application Ref 16/02493/FUL, dated 13 June 2016, was refused by notice dated 19 September 2016.
 - The development proposed is the demolition of a single storey milking parlour and detached outbuildings, conversion of barns to form six dwellings, construction of a pair of semi-detached dwellings, construction of a three car garage and bin store and formation of associated parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Peter and Mrs Mary Lightfoot of JH Lightfoot and Sons against Cheshire West & Chester Council. This application will be the subject of a separate decision.

Main Issues

3. The main issues are:
 - i. Whether or not the proposal would be in an appropriate location for development having particular regard to the settlement strategy for the area and the accessibility of services and facilities;
 - ii. The effect on biodiversity; and
 - iii. Whether appropriate provision is made for affordable housing.

Procedural matters

4. The appellants have referred to the emerging Central Gowy (South) Neighbourhood Development Plan (CGSNDP) in their evidence and acknowledge that the recent Examination of the Plan has recommended that it does not proceed to referendum on the basis that the Parish Council is not in a position to act as a qualifying body for the whole of the plan area. Although I understand that the Examiner may have largely endorsed the policies within the emerging document it does not yet form part of the development plan. Although I give it limited weight it seems to me that the policies would not

significantly change the approach to development from those in the adopted development plan.

5. Both main parties have drawn particular attention to affordable housing as a substantive issue in the overall planning balance. Therefore I consider this to be a main issue in determining this appeal.
6. Furthermore, the Council has identified that since the refusal of planning permission biodiversity is a matter of conflict between parties. Therefore, I have also identified this as a main issue.

Reasons

Settlement strategy for the area and the accessibility of services and facilities

7. The appeal site is part of an existing farm located in the rural hamlet of Burton. It is situated in the centre of Burton which is characterised by mainly residential with agricultural development and is surrounded by open countryside and is adjacent to Grade II* Listed Burton Hall and within the Burton Conservation Area.
8. The current proposal is to demolish a total of nine buildings which are constructed in different materials and are of different ages and conditions and to convert the existing u-shaped barn into six dwellings and build an additional two semi-detached dwellings, a bin store, garage and car parking.
9. Policy STRAT 1 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (CWCLP Part One) relates to sustainable development and states that proposals that accord with relevant policies in the Plan and support sustainable development criteria will be approved without delay, unless material considerations indicate otherwise. Among these criteria is to locate new housing with good accessibility to existing or proposed local shops, community facilities and primary schools and with good connections to public transport. The use of previously developed land will be encouraged in sustainable locations.
10. Policy STRAT2 relates to strategic development and sets a three tier settlement hierarchy in order to focus development in places where there are a range of services, employment opportunities and facilities and where there is a choice of means of transport. I have noted that Burton is not within the first or second tier. Furthermore, I understand that it is highly unlikely to be included as a Local Service Centre in the emerging Cheshire West and Chester Local Plan Part 2. Given that this does not yet form part of the development plan I give this emerging position limited weight. Nonetheless, I observed at my site visit that Burton has no primary school, post office, convenience store, public house, church or community hall. I saw no evidence of public transport provision in the vicinity of the site but I understand that there is a bus service locally.
11. With regard to Policies STRAT 1 and STRAT 2 it is my understanding that the Council has been flexible in their application and, for example, where a residential conversion has been proposed which is acceptable in all other respects, the merits of re-use may compensate for the introduction of new residential units in otherwise unsustainable locations. Such a flexible approach could apply to some parts of the scheme before me; however, it seems to me that the Council's key concern in this particular case as reflected in the reason

for refusal is the proposed new build residential development of two new semi-detached houses in the countryside.

12. Although Policy STRAT 8 of the CWCLP Part One states that within the rural area the Council will support development that serves local needs in the most accessible and sustainable locations to sustain vibrant rural communities development should be appropriate in scale and design to conserve each settlement's character and setting. It appears to me that the policy is not intended to constrain any infill or redevelopment opportunities elsewhere. Policy STRAT 9 seeks to protect the intrinsic character and beauty of the countryside and protect it by restricting development to that which requires a countryside location and cannot be accommodated in identified settlements. Specific types of development will be permitted in the countryside.
13. The appellant contends that the proposal does not constitute the provision of isolated new homes in the open countryside. I agree that being in an existing hamlet the proposal would not be isolated. However, the new housing would have poor accessibility to local services and facilities and lacks good accessibility to these by means other than the private motor car. Therefore, the proposal is not in a suitable location. Although the Council has shown some flexibility in the application of relevant development plan policies the new buildings would be situated in the open countryside and do not form a type of development required to be in such a location. The Council's position is clearly to support the re-use of existing buildings that may be suitable; however, in this case the additional two new build units do not fall into that particular category and are considered inappropriate in that regard.
14. The proposal would constitute the redevelopment of part of an existing farm and would lead to a significant net reduction of operational development in the area. There may also be benefits in removing some poor quality buildings on the site and retaining and converting some buildings. However, the proposal fails to meet any of the specific criteria of development that will be permitted under STRAT9 and it is quite clear that Policy STRAT8 is intended to control development in rural areas to that which serves local needs in the most accessible and sustainable locations, which is not the case with this particular proposal. I do not consider that the proposal would support services in any nearby villages in a sustainable manner due to its relatively remote location and I have no evidence to suggest how the proposal would benefit the rural area generally in the way envisaged in the National Planning Policy Framework (the Framework), including Paragraph 55.
15. Therefore, on this issue I conclude that the proposal would not be in an appropriate location for development having particular regard to the settlement strategy for the area and the accessibility of services and facilities. As such it would conflict with Policies STRAT 1, STRAT 2, STRAT 8 and STRAT 9 of the CWCLP Part One and the Framework.

Biodiversity

16. The Council's Biodiversity Officer has stated that the proposal would result in the destruction of bat roosts. However, the mitigation measures as set out in the appellant's Bat Mitigation Method Statement were found to be acceptable. Nonetheless, a Natural England licence would be required for the works. When determining whether to grant a licence Natural England must be satisfied that three tests have been met, which may be summarised as follows:

- a) Preserving public health or public safety or other imperative reasons of overriding public interest;
 - b) There is no satisfactory alternative; and
 - c) The action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
17. The proposed mitigation measures would appear to be appropriate in order to maintain the bat species at a favourable conservation status in its natural range and therefore test c) can clearly be met. However, the proposed development would not relate to preserving a particular public health or public safety matter that I am aware of. Furthermore, given my conclusions on other main issues I find there to be no other purposes of the development of overriding public interest including those of a social or economic nature. As such test a) would fail. Finally, I understand that the Council has at least five years' supply of housing land and therefore there are other alternatives to providing housing in the Borough which would meet the need for housing and have less effect on protected species than the current site. Therefore, satisfactory alternatives do exist and the current proposal fails with regard to b).
18. Although the Biodiversity Officer states that on the basis of information provided it is considered likely that Natural England will grant a licence this conclusion is based solely on the conclusion that the proposed bat mitigation measures would be satisfactory. It is clearly not based on the above tests as their consultation response goes on to state that '*an assessment of the three European Protected Species 'tests' must be undertaken*'.
19. In the light of the above assessment I consider there to be a reasonable prospect of Natural England not granting a licence without which the development could not proceed lawfully. That being the case the proposal would be likely to have a harmful effect on biodiversity and be unlikely to be licenced. Therefore, it would conflict with the provisions of Policy ENV4 of the CWCLP Part One.

Affordable housing

20. Policy SOC 1 of the CWCLP Part One states that affordable homes will be sought within all new residential development. It goes on to clarify that affordable housing provision will be required on site unless there are exceptional circumstances which can be demonstrated to justify off site contributions. Under SOC 1 the Council will seek to maximise the proportion of affordable housing provided up to a target of 30 per cent.
21. I have also had regard to the Court of Appeal judgement in overturning the High Court Decision in the case of *The Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* which had effectively quashed the Written Ministerial Statement (WMS) of 28 November 2014 regarding contributions for affordable housing. The WMS states that '*for sites of ten units or less...affordable housing and tariff style contributions should not be sought.*' However, in certain rural areas and where the number of residential units is between six and ten contributions will be required but these will be in the form of a cash payment only and be

commuted until after completion of units within the development. I attach great weight to the WMS.

22. The appellant has drawn attention to the benefits of the proposal, a key part of which was the offer to provide two units on site to serve as affordable housing for the local community. It is my understanding from the evidence before me that the Council's latest position on affordable housing is that in rural areas for developments of between six and ten units the affordable housing contribution will only be sought as a cash contribution towards off-site provision. As there is no identified acute need for affordable housing in Burton relative to other rural areas in the Borough the Council has assumed that the current scheme would pay a commuted sum in order to enable off-site provision to be made in more sustainable locations in the Borough.
23. The Council therefore considers that the appellant's original offer of two on-site units would be contrary to the Council's latest expectations for affordable housing provision in this particular case.
24. Although the appellants state that there is no evidence from the Council that there is a methodology in place for calculating a commuted sum they consider that a contribution towards off-site affordable housing would enable affordable housing to be provided where there is a need as determined by the Council and therefore such provision would be a material planning consideration that weighs positively in the planning balance and is a key aspect of social sustainability.
25. Both main parties appear to have reached some kind of agreement as to how this issue may be resolved but I have no evidence of the financial contribution that may be paid and no completed Section 106 agreement has been submitted as evidence. However, as I have found that the proposal would be harmful in other respects I have not pursued this matter further.
26. The appellants also contend that this issue reinforces the significance of the fall-back position of developing only five new dwellings. Such a development would fall under the threshold for the payment of commuted sums towards affordable housing in rural areas and would therefore not be required. I acknowledge that in the event of allowing this appeal the current proposal would theoretically result in social benefits through the provision of affordable housing in parts of the Borough where there is better access to local services and facilities than the current site. However, I do not consider that such a benefit would outweigh the concern I have expressed with regard to other main issues.
27. In the light of the current evidence before me and in the absence of a Section 106 agreement in this specific case I conclude that the proposal would not make appropriate provision for affordable housing. Therefore it would not comply with Policy SOC 1 of the CWCLP Part One, the WMS or the Framework.

Other matters

28. The appellants have drawn attention to planning applications which they consider are comparable to the current case. However, I do not have the full details of the circumstances that led to these proposals being acceptable and so cannot be sure they represent a direct parallel to the appeal proposal. In any case, I have determined the current appeal proposal on its own merits.

29. The appellant also contends that the proposal would have significant improvements for the saleability of the adjacent listed building and the wider Conservation Area. It is a well-founded principle that the planning system does not exist to protect any private interests such as the value of land or property. Therefore, this is not a matter that has been given weight in the determination of the current appeal.

Conclusions

30. Paragraph 7 of the Framework identifies that there are three key dimensions to sustainable development – economic, social and environmental. The construction phase would generate some limited economic activity and there may be some additional spending on building materials, goods and services in the wider area. Future residents may also have some input into the local economy through increasing the demand for goods and services in the wider rural area.
31. The proposal would also make a contribution to boosting local housing supply should planning permission be granted. However, as explained above I have insufficient evidence that the proposal would make a suitable contribution to the provision of affordable housing in the Borough.
32. The development would result in a reduction in the built footprint of the site and would involve the removal of some poorer quality buildings from the site and the retention and conversion of some good quality buildings. It would be likely to have a positive effect on the setting of the adjacent Grade II Listed Building and the Conservation Area, generally.
33. However, I have found that the proposal would be likely to have a harmful effect on biodiversity.
34. The appellant has provided some evidence of limited local benefits from the development. However, I do not consider that adequate justification has been satisfactorily demonstrated in this particular case. The development would not provide significant economic, social or environmental benefits and would be heavily reliant on private vehicles. Consequently, the proposal would not be in an appropriate location for development having particular regard to the settlement strategy for the area and the accessibility of services and facilities.
35. Therefore, given the conflict with the objectives of local and national planning policies, the development would not be compatible with the key principles of sustainability. The harm caused would significantly and demonstrably outweigh the limited benefits when assessed against the policies in the Framework as a whole.
36. In coming to this decision I have taken account of the evidence submitted by all parties. For the reasons given above and taking into account other matters raised I conclude that the proposal conflicts with the development plan taken as a whole and that the appeal should be dismissed.

Alastair Phillips

INSPECTOR