
Appeal Decision

Site visit made on 4 December 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: 29th December 2017

Appeal Ref: APP/G1630/W/17/3181744

Land at Sandhurst Lane, Sandhurst, Gloucestershire

- 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 DB Land and Planning Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref 15/00941/FUL, dated 21 August 2015, was refused by notice dated 14 February 2017.
 - The development proposed is described as a rural exception application for the erection of 16 dwellings off Sandhurst Lane, Sandhurst.
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Decision

1. The appeal is dismissed.

Procedural matters and planning policy

2. The development plan for the purposes of this appeal is the saved policies of the Tewkesbury Borough Local Plan (March 2006) (LP), which is time-expired and the Joint Core Strategy (JCS). The JCS was adopted in December 2017 by the three constituent authorities. The appellant already agreed that relevant policies of the then draft JCS were applicable to this proposal. Thus neither party would be prejudiced by the application of relevant JCS policies. I have considered this appeal on the basis of the development plan consisting of the JCS and those saved policies of the LP that remain extant.
3. There is no dispute between the parties that the Council is able to demonstrate a five year deliverable housing supply in the terms set out in the Framework. At 5.3 years, rising to 6.3 years imminently (including a 20% buffer), the Council argues that the presumption in favour of sustainable development as defined in paragraph 14 of the Framework should not apply.

Main Issues

4. The main issues in this appeal are whether the proposed development would firstly, represent an appropriate location for housing having regard to the effects on the character and appearance of the area and secondly, pose unacceptable risks from flooding.

Reasons

Character and appearance

5. The appeal site comprising a roughly square parcel of land amounting to 0.7Ha lies outside the core of the small rural settlement of Sandhurst but within a

scattering of housing that fronts Sandhurst Lane. Located on the western side of the junction of Sandhurst Lane and Bees Lane, beyond the roadside hedgerow, the site is generally flat and open. A public footpath runs in a westerly direction immediately to the north of the site.

6. The site falls within the rural settlement of Sandhurst, which has not been identified as either a rural service centre or a service village in the meaning of JCS policy SP2. Policy SD10 sets out which locations may be considered appropriate for housing development to ensure that such development can be guided to sustainable and accessible locations. The appeal proposal is promoted on the basis of a rural exception site. Policy SD12 establishes that such sites must be within or on the edge of a rural settlement and should be of a scale that is well related to the settlement both in functional and design terms.
7. In principle and, following the advice of the District Valuer Service, the Council accepts that the provision of affordable housing gained from a cross-subsidy from market housing would satisfy JCS policy SD12. Furthermore it is recognised that the affordable housing element would only be financially viable with the full complement of 8 market dwellings. These policies are consistent with paragraph 54 of the Framework.
8. From what I saw during my site visit and the evidence before me, I would accept the Council's arguments that the location of the site remote from services and facilities that would normally be available within higher order settlements is a significant impediment against the proposed development. The appellant does not refute the fact that Sandhurst has a restricted bus service and that occupiers of the housing at this site would be heavily dependent on the use of the private car. I return to this issue in the planning balance.
9. From what I saw of Sandhurst, the form and character of the village comprises intermittent pockets of development in ribbon forms to the west of the village which sets it apart from the modern culs de sac lying to the east. The appeal site is open and undeveloped. It includes mature hedgerows and trees along the road frontage which provides a soft and green edge to the otherwise built up frontage to the north. Beyond the western boundary, the site merges into large pasture fields, which accentuates its open countryside character. There is no doubt that the erection of 16 dwellings on the site, coupled with the formation of a new access and an internal road would change the essentially open and rural character of the site and hence there would be some adverse impact upon the distinctive character and appearance of the locality.
10. By comparison with the linear character of development in the immediate environs of the site, which is essentially rural in character, the proposed development would represent a harsh suburban addition that would extend well into the appeal site. The relatively dense suburban form would be conspicuous in the landscape at an important cross roads and focal point in the settlement when viewed from the approach roads. I accept that the impact of the development upon longer distance views would be less severe given the intervening landscape and built forms, but there would no doubt be harm to the essential rural and open countryside when viewed from more localised views along Sandhurst Lane.

11. Neither am I satisfied that the overall density and closely built form that is proposed would suitably reflect that of the surrounding area and would represent a clear division between the loose knit built up area and the countryside setting to the west and south. I therefore consider that, in respect of more localised views, the proposal would cause unacceptable harm to the character and appearance of the area. Consequently, I find that the proposed development would be contrary to JCS policy SD4 that amongst other things seeks to ensure that new development responds positively to the character of the site and its surroundings whilst creating clear and logical layouts. It would also be contrary to paragraph 17 of the Framework, which states that planning should recognise the “intrinsic character and beauty of the countryside”.

Flood risk

12. The Flood Risk Assessment (FRA) and Drainage Strategy submitted with the application indicates that part of the site above the River Severn falls within Flood Zone 2 but that the bulk of it falls within Flood Zone 1 as a consequence of topography. The likely limits of the river’s influence in this respect, broadly consistent with the Environment Agency’s mapping of Flood Zones are fairly clear upon examination on site. Subject to the imposition of appropriate conditions, the Lead Flood Authority raises no objection to the proposed development and there is no evidence to suggest that it would increase flood elsewhere.
13. The Council however contends that that the proposal fails the sequential and thus the exception tests because other land is available within Flood Zone 1 that could accommodate the development.
14. Clearly, the Council’s reasoning on this matter is entirely consistent with the aim of the Framework, which is to steer new development to areas with the lowest probability of flooding. The Framework advises that Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property. Paragraph 103 of the Framework articulates the approach to be used in the determination of planning applications.
15. In this case, the majority of the housing itself would be located on the substantial part of the site which is not at significant risk because there would be a low probability of flooding. The access would be entirely within Flood Zone 1. Two dwellings however would be within Flood Zone 2.
16. The onus lies with the applicant to demonstrate that there are no sites appropriate for the proposed development, in areas with a lower probability of flooding, which are reasonably available. The parties agreed the scope for the sequential assessment and, from the evidence, the test has been passed in that the appeal site is the only site that is available, suitable and achievable to meet this need. However I also agree with the Council that the first bullet point of paragraph 103 needs to be satisfied. Other than claiming the proposal would constitute sustainable development, the appellant has failed to provide convincing evidence to demonstrate that there are overriding reasons why a different location within the site cannot be found or a different layout design formulated to accommodate the two dwellings without locating within Flood Zone 2. This would be contrary to the guidance set out in section 10 of the Framework.

Other matters

17. A signed Statement of Common Ground (SoCG) states that there is agreement to the form of a Unilateral Undertaking (UU) that would accompany the appeal. The SoCG confirms the understanding of both parties that such an UU would meet all legislative and policy requirements. It does not set out the terms, including the tenure of the affordable housing element of the scheme or its retention in perpetuity. It does not include the provision and retention of the open space within the site. The SoCG sets out that financial contributions would be payable to the Council towards secondary school capacity improvements, off-site playing pitches and pitch provision, off-site children's play facilities, sports facilities and community building provision.
18. Although there appears to be a willingness to execute the UU during the course of this appeal, this is not yet in place. The Council also explains that there are outstanding technical difficulties associated with the UU. However, as I am dismissing the appeal on the substantive merits of the proposal, I need not consider this matter further.
19. Third party representations have been submitted that raise concerns regarding the ability of the local highway network to accommodate the proposed development. Whilst there are narrow stretches of highway serving the village, this is not inconsistent with the character of rural areas generally and the local highway authority did not raise objections at the application stage. Despite the rural nature of Sandhurst Lane, the development would be unlikely to lead to a cumulatively severe impact on highway safety.

Benefits of the scheme

20. The Council can demonstrate a five year housing land supply and so there is no immediate pressure to release land further for housing, particularly in a lower order settlement such as Sandhurst. Although paragraph 49 of the Framework is not engaged, no planning policies relating to housing supply have been identified by the Council in its reasons for refusal. I have however afforded full weight to JCS policies SP1 (The Need for New Development), SP2 (Distribution of New Development), SD6 (Landscape), SD11 (Housing Mix and Standards), SD12 (Affordable Housing), INF2 (Flood Risk Management) and INF7 (Developer Contributions). Policy SD10 of the JCS gives clarification as to which locations will be appropriate to ensure that new housing development is guided to sustainable and accessible locations. Policy SD10 allows for housing on rural exception sites in accordance with Policy SD12. Policy SD4 relates to Design Requirements.
21. It follows that for the purposes of paragraph 14 of the Framework, the development plan when taken as a whole is not absent, silent or its relevant policies are out of date, and so paragraph 14 is not engaged.
22. The proposed development would provide 8 no. affordable homes. Whilst the Council maintains that there is no need for affordable housing within the wider Tewkesbury Borough area and that the Council has historically met their affordable housing supply targets, the appellant argues otherwise and points to statements made previously by senior officers advising Council members, which appeared to suggest that there was indeed a continuing dire need for affordable housing provision within the Borough. Moreover, the Examining

Inspector on the JCS recommended an uplift in the housing requirement to deal partly with the delivery of affordable housing.

23. Despite the rather conflicting evidence of need for affordable housing, this matter should carry substantial weight in the overall planning balance.
24. Because I have concluded that neither paragraphs 49 or 14 of the Framework are engaged, the Framework's balancing requirement is straightforward. The definition of sustainability is the policies contained in paragraphs 18 to 219. I give limited weight to the need to boost significantly the supply of housing for the reasons given above. However, weighing heavily in favour of the appeal scheme is the provision of affordable housing. Against the proposal is that it would be contrary to policy SD4. The development would urbanise a rural lane and intrude into the open countryside. In the absence of evidence to the contrary, it would also be likely to pose unacceptable risks from flooding and particularly to potentially vulnerable occupiers of the two affordable housing units.
25. Whilst the appeal scheme would meet the economic and social goals of sustainability as described in paragraph 7 of the Framework, it performs poorly in the environmental role and, on balance, it is not sustainable development in the meaning of paragraph 6 of the Framework.

Conclusion

26. The starting point for my decision is section 38(6) and that the proposal is contrary to policy SD4 and the guidance on flood risk in the Framework. Given my conclusions that the proposal is not sustainable in the terms set out in the Framework, there are no material considerations that suggest a different conclusion to the development plan should be reached. The appeal therefore fails.

Gareth W Thomas

INSPECTOR