
Appeal Decision

Site visit made on 16 April 2018

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

an Inspector appointed by the Secretary of State

Decision date: 25th April 2018

Appeal Ref: APP/J1860/W/18/3193229
Elmleigh, Rye Street, Birtsmorton, Malvern

- 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 John Keith Leadbeater against the decision of Malvern Hills District Council.
 - The application Ref 17/01571/FUL, dated 28 September 2017, was refused by notice dated 12 December 2017.
 - The development proposed is division of house into 2 units and ground floor extension. Make ex pedestrian access into vehicular access.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues in this appeal are firstly, whether the location of the appeal site would be a suitable location for an additional dwelling unit and secondly, the effects of the proposed development on the living conditions of future occupiers of one of the created dwellings in terms of privacy.

Reasons

Whether suitable location

3. The appeal property lies within the small rural settlement of Rye Street, a small straggling hamlet that hugs the rural lane from its junction with the A438 and consists of a detached 5 bedroomed dwelling that has the appearance of once having been two cottages. To the south lies a tree lined watercourse and agricultural land.
4. The development plan for the area comprises the South Worcestershire Development Plan (SWDP) a National Planning Policy Framework (the Framework) compliant development plan adopted in February 2016. Policy SWDP 1 seeks to ensure that development follows the broad presumption in favour of sustainable development as set out in the Framework. The Council believes the appeal turns primarily upon whether the proposed development would comply with Policy SWDP 2 of the SWDP, which establishes the settlement hierarchy and development policy that should apply in the villages and open countryside.

5. Both parties agree that the appeal site is a village located within the open countryside for planning purposes and where Part C of that policy would apply. The policy further explains that development will be strictly controlled and limited to dwellings for rural workers defined by policy SWDP 19 and rural exception sites defined by policy SWDP 16. I concur with the Council that this policy is broadly consistent with the guidance set out in paragraph 55 of the Framework. There is no evidence to suggest that the proposal would fulfil any of the exceptions listed in the policy.
6. The appellant makes the case that the proposal would result in a benign form of development that would be unlikely to place any undue strain on local services. Further, he has garnered the support of the local community on the basis that the development would allow a young family to continue living within the area, which in turn would help bolster local services and facilities, including helping to support the local school, village pubs and other marginal rural services. The appellant claims that this would represent an acceptable form of sustainable development and moreover, lead to the meeting of a key tenet of Government policy that is directed at significantly boosting housing supply.
7. There are fundamental problems however in adopting an ad hoc approach to housing development, particularly where there is an up-to-date development plan policy that has only very recently been the subject of extensive scrutiny through the plan adoption process. There appears to be no disagreement between the parties that the Council is able to demonstrate a five year's supply of deliverable housing sites and, as such, paragraph 14 of the Framework is not engaged. Consequently development plan policies are deemed to be up-to-date. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine this appeal in accordance with the development plan unless material considerations indicate otherwise. This is clearly set out in paragraphs 196 and 197 of the Framework.
8. I note that the Examining Inspector in his report for the SWDP found that the Council's settlement hierarchy to be robustly evidence-based and properly reflects the relative capacity of settlements to support new development. Given the acceptance that the site lies outside the defined settlement limits as set out in the Policies Map of the SWDP and that none of the exception circumstances set out in policy SWDP 2 would apply, I have to conclude that allowing this appeal would seriously undermine the spatial dimensions of the development plan. Although I sympathise with the appellant and his desire to remain within the community, I have to agree with the Council that personal circumstances can only very rarely impinge on planning decisions and accordingly, I can attach only limited weight to those that have been identified in my determination of this appeal.
9. Having regard to the above factors and as the site is by definition classified as falling within a village in open countryside, the proposed development would directly and unacceptably conflict with Policies SWDP 1 and SWDP 2 of the SWDP and thereby seriously undermine the established settlement hierarchy. Consequently, it would not accord with the development plan.

Living conditions

10. The existing flat roofed sun lounge extension to the existing property that also incorporates a balcony at first floor is located at the furthestmost point away from the part of the dwelling to be sub-divided. Once so sub-divided, both

properties would benefit from relatively spacious rear gardens with the principal and extensive views facing south over open countryside. However, given the proposed access and parking associated with the proposed house labelled No.1 on the submitted drawings, this would mean that the remaining garden area at the southern end of the plot would become the principal private outdoor living space for this property.

11. At less than 10m from the nearest point of the balcony to the garden area to House 1, it is inevitable that the use of the existing balcony would result in some degree of overlooking of the more useable parts of the garden area to that property. There is presently limited screening between the two properties and given the height of the existing balcony, it is unlikely that an effective screen could be accommodated that would ameliorate this potential concern. At this distance moreover, neighbours would be conscious of persons sitting outside which would further exacerbate the feelings of being overlooked.
12. As a result, I consider that the proposed development resulting in the use of the property as two separate dwellinghouses would mean that the balcony would also be used separately and would lead to conditions that would adversely harm the living conditions of the occupiers to House 1 with particular regard to loss of privacy. This would be contrary to policy SWDP21 of the SWDP that seeks to ensure that new developments do not create conditions that would have a significantly adverse effect on the amenities of neighbouring properties.

Conclusions

13. As the Council can demonstrate a five year housing supply, the development plan is up-to-date and thus paragraph 49 of the Framework is not engaged. I acknowledge that the Framework is charged with significantly boosting the supply of housing. However, paragraph 47 of the Framework explains that this should be done through a plan-led system. The status of the hamlet of Rye Street as a village in open countryside is not disputed. There are no exceptional circumstances that would meet the criteria set out in policy SWDP 2 or within paragraph 55 of the Framework. While both parties have referred me to the Barwood case¹ in support of the respective arguments for and against the appeal proposal, there is consensus that there is an up-to-date development plan for the area and therefore the presumption in favour of sustainable development should not override the well-founded settlement policies contained therein.
14. Although there are some social and economic benefits that would accrue from an additional dwelling, the Framework does not adopt a narrow definition of sustainability. The appeal proposal would result in an additional dwelling in a relatively unsustainable location in a countryside setting. Future occupants would be heavily reliant on the use of the private car in order to access services and facilities, which would be contrary to policy SWDP 4A that seeks to minimise demand for travel other than by sustainable means. These are significant disadvantages of the appeal proposal that cannot be mitigated or made acceptable. The proposal would also give rise to unacceptable harm to living conditions. Whilst the proposal would meet the personal and understandable

¹ East Staffordshire Borough Council v SSCLG & Barwood Strategic Land II LLP [2016] EWHC 2973 (Admin), dated 22nd November 2016

needs of the appellant, these considerations do not outweigh the harms that I have identified.

15. For these reasons I conclude that the principle of the development proposed would not be acceptable with particular regards to the site's countryside location and the unacceptable adverse impact on living conditions. The appeal is therefore dismissed.

Gareth W Thomas

INSPECTOR