
Appeal Decision

Site visit made on 8 May 2018

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: 16th May 2018

Appeal Ref: APP/H1840/W/17/3191109

**Land adjacent to Willow Park, Murcot Road, Childswickham, Worcs
WR12 7HR**

- 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 Mrs Rachel Turner against the decision of Wychavon District Council.
 - The application Ref 17/01287, dated 5 June 2017, was refused by notice dated 31 October 2017.
 - The development proposed is for the erection of new dwelling.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The address of the appeal site shown in the application does not correspond to that shown on the Council's decision notice. I have retained the road name as described by the appellant as the site location plan does not include street names and is therefore inconclusive.
3. The application was submitted in outline with all matters other than access and scale reserved for future approval. I have considered the appeal on this basis.

Main Issues

4. The main issues in this appeal are firstly, whether the proposed development would be in a suitable location having regard to national and local planning policies that seek to restrict new housing outside defined development boundaries and secondly, whether future occupants would be adversely affected by noise from nearby commercial and industrial uses.

Reasons

Suitability of location

5. The appeal site comprises a modest parcel of land adjoining Willow Park, a group of commercial buildings on its southern side and a building plot under construction beyond the hedgerow boundary to the north. The site is presently grassed with an open aspect onto the access road that serves the workshop units. There is an existing right of way that jointly serves the appeal site and the adjoining workshop complex. However, it is intended to relinquish this right of way and provide a new purpose built access directly from Murcot Road.

The proposed dwelling in terms of scale would be substantially smaller than the dwellings under construction to the north. It would nevertheless occupy a similar building line. The site enjoys a degree of containment given the presence of buildings either side of the plot and by a hedge located along the rear boundary.

6. 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. It states that the open countryside is defined as land beyond the development boundary, and that development in such locations will be strictly controlled and will be limited to certain categories that include dwellings for rural workers, rural exception sites and replacement buildings.
7. Childswickham is identified as a Category 4a village in the Village Facilities Survey and the Rural Public Transport Hierarchy of Settlements that contains a limited range of services and facilities. According to the appellant, the proposal would be sited some 25 metres outside the defined development boundary although with reasonably good access to services and facilities, including a public house, village hall, recreation ground and church. The delegated officer report explains that there are limited public bus services to nearby towns and villages; however, according to the appellant, the nearest bus stop is about a mile away.
8. I would agree with the appellant that the site should not be considered isolated in the meaning of paragraph 55 of the Framework. Whilst it could be viewed as an infill development as it adjoins existing dwellings on Murcot Road, the small grouping was allowed at a time when the Council could not demonstrate a five year's supply of deliverable housing sites. There appears to be no disagreement between the parties that the Council is now able to demonstrate a five year housing supply 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.
9. 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.
10. 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.

Noise

11. From my own observations during the site visit, there are a number of commercial uses located at Willow Park. These include industrial type buildings and areas of external storage and parking.
12. No noise assessment has been provided in relation to this appeal. The appellant suggests that this could be reserved for future consideration by way of a suitably worded condition. However, in the absence of evidence to the contrary, there would be no guarantee that nuisance would not occur in the future particularly if the commercial uses have no restrictions in terms of operational hours.
13. I am also mindful of the Council's ability under public protection legislation to exercise powers of abatement of nuisance. This may threaten the viability of businesses located at Willow Park. This would be contrary to paragraph 123 of the National Planning Policy Framework (the Framework) which states that existing businesses should not be unduly burdened by unreasonable restrictions on the basis of changing land use patterns on nearby land.
14. I conclude that there is a degree of uncertainty that occupants of the proposed development would be adversely affected by noise from adjoining uses. It is unfortunate that neither party has provided robust evidence to support their respective positions. However, in the absence of evidence to the contrary and given the close juxtaposition of potentially conflicting land uses, I must adopt a precautionary stance and conclude that the proposal would conflict with policy SWDP 31 of the SWDP that seeks to ensure that significant adverse impacts on health and wellbeing do not arise as a result of new development. In the absence of evidence to the contrary, I am unsatisfied that adequate mitigation can be achieved through the use of planning conditions.

Planning Balance

15. 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 dwelling may provide a market dwelling within reasonable reach of village facilities and services. However, paragraph 47 of the Framework explains that housing provision should follow through from a plan-led system. It is acknowledged that the appeal site lies outside the development boundary for the village. There are no exceptional circumstances that would meet the criteria set out in policy SWDP 2. Further, 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. This was a key conclusion in the judgment in the Barwood case¹
16. Clearly, the development of this site would support employment and economic development during and post development. However, the Framework does not adopt a narrow definition of sustainability. The development would provide an additional dwelling but this level of contribution to the housing stock would

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

have limited consequences in terms of the social dimension. In environmental terms, a dwelling at this location could lead to significant harm to the living conditions for future occupiers of such dwelling.

17. However, fundamentally, the proposed development would give rise to a dwelling that would not be within the recognised development boundary for the settlement and would therefore the proposal would not accord with the development plan in this regard. Overall, there is no justification for reducing the weight that should be given to Policy SWDP 2 of the SWDP and the proposal would be also be likely to cause significant harm to the living conditions of future occupiers, contrary to policy SWDP 31 of the SWDP.
18. These harms would significantly and demonstrably outweigh the limited benefits that have been identified. Consequently, the proposal would be contrary to the Development Plan and the Framework and would not represent sustainable development.

Conclusion

19. Having regard to the above reasons and to all other matters raised in this appeal, I conclude that permission should not be forthcoming.

Gareth W Thomas

INSPECTOR