
Appeal Decision

Site visit made on 4 July 2019

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Appeal Ref: APP/A0665/W/19/3226848

The Old Tennis Club, London Road, Davenham, Cheshire CW9 8HN

- 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 Professor and Mrs Frank Read against the decision of Cheshire West and Chester Council.
 - The application Ref 18/03652/FUL, dated 17 September 2018, was refused by notice dated 27 March 2019.
 - The development proposed is construction of dormer bungalow and garage.
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Decision

1. The appeal is dismissed.

Preliminary Issue

2. Since the application was determined, the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies Plan (July 2019) (LPP2) has been adopted by the Council. Along with the Cheshire West and Chester Local Plan (Part One) Strategic Policies (2015) (LPP1), and the Davenham and Whatcroft Neighbourhood Plan (2017) it forms the development plan for the area. The policies in the LPP2 replace those in the Vale Royal Borough Local Plan referred to in the Council's decision notice. I sought the views from the main parties in relation to the LPP2 and I have had regard to the representations received in reaching my decision.

Main Issue

3. The main issue is whether the site is a suitable location for housing, with regard to the development strategy for the area.

Reasons

4. The appeal site comprises the former Davenham tennis club, located behind existing houses (Nos 393-397) fronting London Road with access from an existing grass lane adjacent 393 London Road. Although the site adjoins existing housing to the north and west, open countryside lies to the south and east. The appeal proposal is for the construction of a single dwelling and garage which is described in the application as being on a self-build basis. A signed and completed planning obligation under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted and gives effect to this.

5. There is no dispute between the parties that the appeal site is located outside the defined settlement boundary of Davenham. Land outside settlements is identified as countryside where development will be considered in the context of LPP1 Policy STRAT 9 and LPP2 Policy DM19. Only certain specified uses, listed in those policies, will be supported. New market housing is not identified as a form of development permitted in the countryside, save where supported in a Neighbourhood Plan. This applies equally to self-build as to other types of housing; self-build housing is not 'exceptional' as suggested by the appellant. The appeal site is not identified for development in the Davenham and Whatcroft Neighbourhood Plan (2017) and the appeal proposals are therefore plainly in conflict with the development plan.
6. Amongst other matters, the purposes of the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) (the Act) is to allow individuals wishing to build their own home to register their interest in acquiring a suitable plot of land with the relevant authority. Specifically, the Act makes provision for Local Authorities to maintain a register of people who are seeking to acquire a serviced plot in their area in order that they may build houses for them to occupy as homes; and for Local Authorities to have regard to the demand for custom build housing as evidenced by the registers when exercising certain functions including those relating to planning and housing.
7. The Council is required by the provisions in Section 2A of the Act to give suitable development permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding which arises in each base period. At the end of each base period, the Council have 3 years in which to give permission to an equivalent number of plots. In this case, the Council have confirmed that 97 people and 2 groups were added to the self-build register for the base period 31 October 2017 to 30 October 2018, of which 87 expressed an interest in an individual plot for a detached property. The Council have further confirmed that 125 permissions for single units on individual plots were granted within this timeframe and therefore more than sufficient suitable development permissions have been granted to meet demand.
8. I note that the Council has not provided information to demonstrate whether there are provisions in place to ensure a significant proportion of the permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Act. However, Section 2A(6)(c) of the Act defines development permission as 'suitable' if it is a permission that '*could include self-build and custom housing*'. I am satisfied that the permissions for single units on individual plots, as described by the Council, meet this definition and their duty is met for the base period.
9. I have also had regard to the Planning Practice Guidance (PPG) which says that there is no duty on a relevant authority to permission land which meets the requirements expressed by those on the register, only to use it to guide decisions. The appellant refers to the PPG where it seeks to ensure relevant authorities permission land '*which people are actually keen to develop*'. I am not, however, persuaded nor do I have any substantive evidence before me that the permissions to which the Council refer would not be attractive to those wishing to self-build, including the appellant.

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10. The appellant also refers to paragraph 61 of the National Planning Policy Framework (the Framework) where it says that housing needs of different groups, including *'people wishing to commission or build their own homes'* should be assessed and reflected in planning policies. The PPG also outlines that one way in which relevant authorities can increase the number of planning permissions suitable for self-build is to develop policies in the Local Plan.
11. The appellant's case, as originally submitted, was that the Council's development plan is silent in relation to self-build and therefore could not be considered up-to-date. The appellant now accepts that the statutory duties of the Act and paragraph 61 of the Framework are recognised and addressed in the LPP2, at least in the explanatory text. LPP2 Policy DM20 specifically requires applications for major housing development to address the demand for self-build and custom build housing, which I consider will undoubtedly assist delivery. I find the policies most important for determining the appeal to be up-to-date and therefore the 'tilted balance' at paragraph 11 of the Framework is not engaged in this case.

Overall Planning Balance

12. The proposed dwelling would be located on the front half of the appeal site behind Nos 393-397 London Road, but broadly in line with No 391 London Road (No 391), a large detached house to the immediate north. I note that the garden of the proposed dwelling would not extend beyond its neighbours at No 391 and the rear part of the site would be planted as an orchard. Whilst there would be some encroachment into the open countryside, the development would be reasonably well integrated with existing built development and views into the site would be largely contained by existing mature trees and hedgerows.
13. I have also had regard to the findings of the previous appeal Inspector⁽¹⁾ for the appeal site who concluded that the development would preserve the character and appearance of the area. I also find there to be an absence of harm to the countryside, but equally consider this a neutral factor, rather than a benefit that weighs in favour of the scheme.
14. It is not in dispute between the parties that the Council can demonstrate a 5-year housing land supply. The appeal site is not therefore required to meet the identified housing needs of the area and I therefore attach little weight to its release for housing. Although I do not consider the appeal proposal is necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the Act, I do acknowledge that it would make a small contribution towards meeting the demand for self-build or custom housing building. I attach moderate weight to this benefit.
15. The proposed dwelling would adjoin the settlement, located a reasonably short walk from the centre of Davenham which offers a range of services and facilities. The proposal would generate some modest economic benefits during the construction phase and the future occupiers would make a valuable contribution to existing local businesses in Davenham. There would, therefore, be social and economic benefits to which I also afford moderate weight.

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16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. For the reasons above, I conclude the appeal proposals would conflict with LPP1 Policy STRAT 9 and LPP2 Policies DM19 and R1 because it proposes new market housing outside the settlement boundary and in the countryside. In this case, the benefits of the proposals I have identified above are not exceptional and would not outweigh the substantial harm that would arise from the conflict with the up-to-date development plan.

Other Matters

17. A number of appeal decisions have been referred to by the parties in support of their respective cases. I have taken these into consideration, where relevant. They all have particular combinations of site-specific and policy factors that means they are not directly comparable to the appeal before me. This includes cases where the policies most important to the determination of the appeal were out-of-date, including cases where the Council was unable to demonstrate a 5-year housing land supply, evoking the 'tilted balance' of (now) paragraph 11 of the Framework. Further, I am mindful that all proposals must be considered on their individual merits, which is the approach I have taken in determining this appeal.

Conclusion

18. For the reasons set out above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

R. Jones

INSPECTOR

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