



Appeal Decisions

Site visit made on 19 March 2019

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14 August 2019

Appeal A - Ref: APP/J3720/W/18/3214939

Home Holdings, Lane End, Lower Tysoe CV35 0BZ

- 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 Thorne against the decision of Stratford on Avon District Council.
 - The application Ref 18/02303/FUL, dated 11 May 2018, was refused by notice dated 3 October 2018.
 - The development proposed is change of use to domestic and erection of 3 dwellings.
-

Appeal B - Ref: APP/J3720/W/18/3210871

Home Holdings, Lane End, Lower Tysoe CV35 0BZ

- 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 Thorne against the decision of Stratford on Avon District Council.
 - The application Ref 17/03730/FUL, dated 14 December 2017, was refused by notice dated 9 March 2018.
 - The development proposed is change of use to domestic and erection of 5 dwellings.
-

Decision – Appeals A & B

1. The appeals are dismissed.

Procedural matters

Appeals A & B

2. In relation to both appeals the position of the appellant was that the local planning authority could not demonstrate a five year housing land supply. This was contested by Stratford on Avon District Council. However, in written correspondence the appellant subsequently agreed a five year housing land supply exists and I have dealt with the appeals on this basis.

Appeal B

3. The appellant has submitted a plan (Proposed access arrangement and new 2m footway with vehicle tracking, ref 20062-01 Rev A) that did not form part of the application to address highway safety concerns. This plan does not amount to a material change in the development, and the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans. As a consequence, I do not consider that their interests would be prejudiced if I was to take the submitted plan into account. My consideration of Appeal B therefore takes this plan into account.

4. Other documents and supporting information were also submitted at appeal stage in relation to highway safety and biodiversity mitigation measures. This occurred in response to the Council's reasons for refusal and the information has not materially amended the scheme. Given that, in the normal way, the Council and local objectors have had the opportunity to view and comment on this information as part of the appeal process, I shall also take these documents and supporting information into account in the determination of the appeal.

Main Issues

5. The main issue in Appeal A is whether the appeal site would be a suitable location for the proposed dwellings having regard to the spatial strategy for the area and the effect of the proposed scheme on the character and appearance of the area. This also forms the first of three main issues in relation to Appeal B.
6. The other two main issues in relation to Appeal B are the effect of the proposed development on highway safety and service access, and whether the measures to mitigate the effect of the development on badgers, which are a protected species, can be fully implemented with the proposed layout.

Reasons

Appeals A & B

Location of development

7. The development plan for the area includes the Stratford on Avon District Core Strategy ('Core Strategy') which was adopted in 2016. In order to further sustainability objectives, policy CS.15 of the Core Strategy seeks to focus development on Stratford on Avon with some development in Local Service Villages (LSVs) such as Tysoe. In LSVs policy CS.15 advises that housing development will take place on sites identified in a Neighbourhood Plan and in small scale schemes on unidentified but suitable sites within the Built-Up Area Boundaries (BUAB) (where defined) or otherwise within their physical confines.
8. I have been provided with the pre-submission consultation version of the Tysoe Neighbourhood Development Plan (NDP). It proposes that the appeal site should be allocated for 3 houses. It also proposes a policy requiring that 95% of new dwellings in a scheme have 3 bedrooms or less. In delivering five houses solely of four bedrooms or above the scheme in Appeal B would fail to comply with both aspects of the NDP, and with only one of the three houses proposed in Appeal A with less than four bedrooms that scheme would fall short of the housing mix sought. The appellant states that most respondents were supportive of the allocation of the site for housing. However, the NDP is at consultation stage, and may well change markedly. Thus I consider that little weight can be attached to it at present.
9. The appeal site is outside the proposed BUAB for Tysoe on the basis that Lower Tysoe is physically separate from Upper & Middle Tysoe and so in the local planning authority's assessment is not a sustainable location for residential development. Although the proposed BUAB has been subject to public consultation it does not form part of the development plan and as part of the plan making process may be subject to change. As a result, I only attach limited weight to it. The question which therefore remains is whether the appeal site lies within the physical confines of the village. It is to that question which I now turn.

10. Lower Tysoe is a loose assortment of farms and houses that stands alone away from the densely developed and more closely related Middle and Lower Tysoe. The appeal site is open grassland located at the northern end of Lower Tysoe behind its last few houses. Open countryside in the form of fields surround the site on three sides and fields on the opposite side of Kineton Road face the houses that front the site.
11. The Historic Landscape Characterisation Map locates the appeal site within the settlement. Although this document formed part of the evidence base for the Core Strategy it is not in itself definitive.
12. On the basis of what I have read and seen, I am satisfied that the grassland of the appeal site bounded by hedges has far more in common with the surrounding countryside than the finger of residential development along Kineton Road and so lies outside, rather than within, the physical confines of the settlement. In reaching this finding I have also taken into account the permission for two houses positioned one behind the other on the northern side of the proposed access to the site. As these dwellings are bounded on two sides by adjacent residential plots or Kineton Road they do not lend material support to housing further beyond to the rear that would be surrounded on three sides by open countryside.
13. Accordingly, I therefore conclude that the proposed developments would be in conflict with the spatial strategy for the District and thus cause harm to it, contrary to policies CS.15 and AS.10 of the Core Strategy. Policy AS.10 only supports small scale housing schemes with the physical confines of LSVs such as Tysoe.
14. Other appeal decisions have been referred to where it was found that sites either lay within or outside the physical confines of other settlements in the District. The Inspectors in each of these appeals would have exercised their judgement based upon the circumstances of each and their observations during their site visits, as have I in relation to this appeal. These decisions therefore are not considerations of material weight in favour of the proposal.
15. The appellant states that the majority of housing land in the District is located outside of settlement boundaries or the physical confines of villages. In the absence of further information it is unclear why this is the case. It may well be that on occasions in the past the Council has had less than a 5 year supply of housing land and so in accordance with the National Planning Policy Framework ('the Framework') has treated relevant policies as being out of date and granted permission for housing on land contrary to the development plan. As in relation to this appeal it is common ground that the Council can demonstrate a 5 year housing land supply such circumstances do not exist here. Consequently, the presence of housing land in the District outside the settlement boundaries or the physical confines of villages has not altered my findings in relation to this issue.
16. An appeal decision¹ in a different local planning authority area has been referred to in support of the appeal. In that decision the Inspector found that a policy that restricted development in the open countryside by applying blanket protection to the countryside frustrated the ability of the local planning authority to provide an adequate housing land supply. As a result, he found the policy, with reference to the Framework, to be out of date which was a

¹ APP/P0240/W/17/3190584

significant factor in his decision to allow the appeal. However, unlike that appeal, here the development plan was examined and adopted after publication of the Framework and so its policies are consistent with it. As a result, circumstances are materially different and the decision referred to does not mean that policies of the Core Strategy that govern its spatial strategy and restrict development in the open countryside are out of date.

17. The Framework recognises that where there are groups of smaller settlements development in one may support services in a nearby village and that transport solutions vary between urban and rural areas. In light of this, a recent appeal decision has been referred to in relation to 'The Orchards'² where the Inspector found because local services and facilities in Middle Tysoe were accessible on foot, and with the little weight he attached to the BUAB, the site was in principle acceptable for development.
18. On the basis of my site visit, the site in the appeals before me is over 1 km from Middle Tysoe. In comparison 'The Orchards' is considerably nearer. As a result, whilst services and facilities are within a reasonable walking distance of 'The Orchards' this is not true of the appeal site. Consequently, future occupiers of the proposed houses would be reliant on cars to access services and facilities in the village. Moreover, as I have found that the site is not within the physical confines of the village – a matter which the Inspector in relation to The Orchards appeal did not address – the proposals before me are in conflict with the spatial strategy of the development plan. Reference to this decision therefore has not altered my findings in relation to this issue.

Character and appearance

19. Lower Tysoe has a markedly rural character with clusters of farm buildings set at varying distances from the main road and sporadic linear housing development along the roads within it.
20. Reference has been made to a number of sites where development in depth within Tysoe has occurred in recent years. However, on the basis of the limited details I have been given they appear to be within other parts of Tysoe that are more densely developed and so do not alter my assessment of the pattern of development that characterises Lower Tysoe.
21. As open grassland bounded by hedges free of built development with open fields on three sides, the appeal site forms part of the green and pleasant setting of the village. The value of the site in this regard is readily visible from the public footpaths that run directly to its rear and cross the site. Whilst the scheme in Appeal A would occupy less than half the depth of the site, and the scheme in Appeal B would occupy it in full, both schemes would result in development in depth in the form of residential cul-de-sacs that would urbanise the site and be out of keeping with the pattern of development that characterises the area. The harm that would be caused would be readily apparent from the public footpaths described. By virtue of the location of the appeal site to the rear of residential development along the highway, the schemes would not constitute limited infilling as claimed by the appellant.
22. Moreover, in comparison to the narrow rectangular plan form of the houses that typify development along Kineton Road and Lane End, a number of the houses in both appeals would have far deeper and larger plan forms and so be of significantly greater scale and mass. As a result, these houses would be at

² Ref APP/J3720/W/18/3213626

odds with the more modest houses typically found along the road which would amplify the urbanising effect of the schemes.

23. Reference has been made to permission that was granted for three houses approximately 100m away on Lane End. However, as the houses in that scheme replaced three redundant farm buildings, and built development encloses it on two sides, that site is materially different to the appeal schemes before me. As a result, reference to it has not altered my findings in relation to this issue.
24. The proposed schemes therefore would cause demonstrable harm to the rural character and appearance of the area and would not constitute high quality design. As a result, the schemes would be contrary to policies CS.5, CS.9 and CS.15 of the Core Strategy which, amongst other matters, require that new development is sensitive to its setting and is well related to and integrates with the existing forms of the settlement.

Appeal B

Highway safety and service access

25. The proposed development of five houses would intensify the use of the existing substandard access to the extent that it would require upgrading. A footway would also be needed to link the site to the existing pedestrian network. Furthermore, given that the houses would be set a significant distance back from the road adequate access would need to be provided for service vehicles. On the basis of the submitted information it is clear to me that a suitably designed access and footway could be provided to the appeal site that would satisfactorily address highway safety and access concerns. If permission was to be granted provision of such an access and footway could be secured by suitably worded conditions. Accordingly, I therefore find that the proposed development would comply with policy CS.26 of the Core Strategy which seeks to prevent harm in this regard.

Biodiversity

26. Badgers are a protected species. An active badger sett is located in the northern hedgerow of the site with the footings of the house on plot one located approximately 10m to 15m from one of its entrances. A method statement (Cotswolds Wildlife Surveys, July 2018) has been prepared to protect the badgers which involves a minimum 30m buffer between the excavations and the nearest sett entrance. In practice this would be achieved by using ground screws to create the footings for the dwelling on plot one. Given the detail and examples provided in the submitted method statement, I am satisfied that its implementation would safeguard the nearby sett and protect the badgers that use it. The proposed development therefore would comply with policy CS.6 of the Core Strategy which seeks to protect the natural environment.

Other matters – Appeal A & B

27. The appeal site is located to the rear of Home Holdings which is a stone built Grade II listed building. The significance of this building it appears to me is architectural and historical. The statutory test in relation to a listed building is that special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Council is of the view that as the building would retain its

spacious setting the proposal would not harm this heritage asset. I agree with this assessment.

Overall Conclusions

28. I have found that the proposals would be contrary to the Core Strategy by virtue of their conflict with the spatial strategy for the District and effect on the character and appearance of the area. As a result, I find that the proposed developments would be contrary to the development plan considered as a whole.
29. The schemes would result in the payment of a significant community infrastructure levy. However, as the levy is designed to mitigate the effect of new development on local infrastructure this is not a benefit to be weighed in favour of the scheme. The proposed developments would also trigger the payment of a New Homes Bonus. In accordance though with the advice in Planning Practice Guidance³ there is no evidence of a connection between the payments and the proposals to enable this to be taken into account.
30. I attach some weight to the economic and social benefits of the scheme. These include construction employment on a smaller site which is suitable for smaller builders and so can often be built out more quickly, the spend of future households which would benefit local businesses and services, provision of a pedestrian link from the site to wider footway network and the likely increased demand for places at the local school. However, these considerations are insufficient to outweigh the harm that would be caused to the spatial strategy for the District and the character and appearance of the area, and the resulting non-compliance with the development plan. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeals should be dismissed.

Ian Radcliffe

Inspector

³ Paragraph: 011 Reference ID:21b-011-20140612 'When should a 'local finance consideration' be taken into account as a material planning consideration?'