
Appeal Decision

Site visit made on 22 July 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 August 2019

Appeal Ref: APP/A0665/W/19/3228710

Land at Chester Road, No Man's Heath, Malpas SY14 8DZ

- 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 Mr Mervyn Parry-Jones of Fifth Wheel Company Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 18/02216/OUT, dated 6 June 2018, was refused by notice dated 9 May 2019.
 - The development proposed is the erection of 13 dwellings and creation of access.
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Decision

1. The appeal is dismissed.

Main Issues

2. All matters save for access are reserved for later consideration, and the Council does not raise any objection to the access arrangements, subject to the imposition of a number of conditions. I have therefore treated most of the application plans as illustrative, as they are described, the exceptions being the site analysis, concept layout, and swept path analysis plans as they relate to the proposed access arrangements. The main issues in the appeal are: (i) the suitability of the site as a location for housing development; and (ii) the effects, notwithstanding the absence of detailed proposals at this stage, of the proposed development on the character and appearance of the area.

Reasons

Suitability of the site for housing

3. The appeal site lies to the western end of the small settlement of No Man's Heath near Malpas in Cheshire. It lies within (but does not extend to all of) a triangular area of land that appears to be bound by 3 existing and former Whitchurch-Chester roads. To the east is the 'Old Coach Road'. To the south is 'Chester Road'. To the north is the existing A41 Whitchurch to Chester Road.
4. The old Chester Road, most recently bypassed by the existing A41, is the location of the proposed access to the development, approximately opposite 'The Hamptons' which is a small residential development on the site of a former garage. Further dwellings lie to the east of those, culminating in 'The Firs' which is a substantial detached dwelling that is separated from the 'central' settlement area of No Man's Heath, further to the east, by a field. On the same side of the road as the appeal site, and further west, is a field

containing sheds in what appeared to be an equine-related activity. To the north and east lies a roughly L-shaped field, then a small stream, and then the dwellings known as 'Pasadena' and 'Wyvercote'. The former is accessed from the Old Coach Road and the latter stands at the junction with Chester Road. To the rear of them both, to the east of the small stream, lies another small field facing onto Chester Road.

5. Inspectors deciding previous appeals at the nearby Pasadena and The Firs, and, as I understand it, The Hamptons although I have not seen that decision in full, have concluded that those sites lie within the settlement area of No Man's Heath. They appear to have done so against a policy context that sought to concentrate development within settlements, but without any proposals or policies maps that defined the limits of such settlements. Thus it was a question of judgement in each case. Since the adoption of, first, the Neighbourhood Plan for No Man's Heath and its area in July 2018 ('the NP') and, secondly, Part 2 of the Cheshire West and Chester Local Plan ('CWCLP2') in July 2019, which includes the Policies Map, the development plan for the area rests on settlement boundaries that are drawn, for policy purposes, on the Policies Map. The appeal site lies outside of the No Man's Heath settlement boundary on that map. It also lies outside the settlement boundary drawn by the NP.
6. CWCLP2 Policy R1 supports development within the settlement boundaries of local service centres, as identified on the Policies Map, where it constitutes infilling, redevelopment or a change of use of existing buildings. Outside but adjacent to such boundaries, a development proposal will be supported only where supported by CWCLP2 Policy DM24, constituting a rural exception site to provide for local affordable housing needs, or otherwise is for community development, results from a development order, or has been allocated through a Neighbourhood Plan.
7. The appeal proposal constitutes none of these, and accordingly I find that it is contrary to CWCLP2 Policy R1. By extension, it lacks the support of Part 1 of the Cheshire West and Chester Local Plan ('CWCLP1') Policy STRAT2 that is supportive of an appropriate level of new development in local service centres, but only as they are identified in the CWCLP2 Policies Map. The CWCLP1 Policy STRAT9 reference to 'identified settlements' is explained in the supporting text to mean land within the CWCLP2 settlement boundaries appearing on the Policies Map, with the result that for present policy purposes the appeal site is classified as 'countryside'. Therefore, the appeal proposal is not of a type of development in the countryside of which Policy STRAT9 is permissive. By conflicting with up to date policies in the development plan, the proposals would also necessarily conflict with CWCLP1's overarching sustainable development policy, Policy STRAT1.
8. The supporting text to CWCLP2 Policy R1 identifies that local service centres such as No Man's Heath have a limited level of sustainability and are not the most appropriate locations for significant new development, and that neighbourhood plans are an appropriate means to identify and promote local development needs. NP Policy H1 identifies that small scale development would be supported and in NP Policy H4 states that development within the plan area should be focussed within the development boundary for the settlement.

9. Whilst NP Policy H4 would not necessarily preclude development outside the settlement boundary, NP Policy H1 requires any development to be 'small scale'. The Council and the Parish Council, by reference to the Examining Inspector's report, assert that the appeal proposal could not be considered small scale, with the Council suggesting a limit of 5. Given the limited size of the existing settlement at No Man's Heath, I consider that 13 dwellings would amount to a moderately sized, rather than small scale, development, and accordingly the proposal draws no support from NP Policy H1.
10. The appellant has drawn to my attention CWCLP1 Policy STRAT8 that supports an appropriate level of development in each local service centre that is appropriate to the scale and character of the settlement and to the services available. Policy STRAT8 however refers to the Policies Plan (now Map) to be found with CWCLP2, and its reference to supporting developments 'in' and 'at' local service centres needs to be read in that context.
11. The appellant also cites the case of Wood¹ and asserts that, in order for policies to be properly applied, a judgement must be made about the extent of the settlement area. However, in my view, the adoption of CWCLP2 and the Policies Map, that I appreciate did not prevail at the time the planning application was made or when the Council determined it, fundamentally alters the position as to whether such a judgement is required in this case.
12. Wood concerned the provisions in the National Planning Policy Framework ('the Framework') whereby 'limited infilling in villages' in the Green Belt is an exception to the usual principle that new buildings in the Green Belt are to be considered as inappropriate development. It was common ground in the case that what amounts to limited infilling, or to a village, is a question of planning judgement. Whilst a settlement boundary drawn on a plan would be relevant to the question of what constitutes a 'village' for these purposes, it would not necessarily be determinative. An assessment on the ground would be required. That is very different from the position here, concerning when planning policies will support new development within or outside settlements, and those policies are specifically expressed to apply according to the boundaries that have been drawn on the Policies Map. The relevant current planning policies do not require a judgement to be made as to what constitutes the extent of the settlement, and thus my opinion about whether or not the site falls within or outside the settlement area of No Man's Heath would not alter the policy outcome for the appeal proposal in this regard.
13. On this issue, as the appeal site falls outside the settlement boundary of No Man's Heath as drawn on the Policies Map, the appeal proposal draws no support from the recently adopted CWCLP policies for the area concerning the location of new developments. Although expressed permissively, I consider those policies are supportive of, and consistent with, Government policy in the Framework, at Chapter 15, to recognise the intrinsic character and beauty of the countryside, and so to avoid the unnecessary development of it. As a result, I consider that, beyond a mere lack of policy support, the proposal would conflict with these policies, namely CWCLP2 Policy R1 and the strategic policies STRAT1, STRAT2 and STRAT9 in CWCLP1. I do not consider that the

¹ Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195

development would directly conflict with NP Policy H4, but I find that it is not a proposal of a small scale, and so it is not supported by NP Policy H1.

14. Therefore, I conclude on this issue that the appeal site is not a suitable location for new housing development because it conflicts with development plan policies for the area seeking to direct new development to the most suitable and sustainable locations.

Character and appearance

15. CWCLP1 Policy ENV2 seeks to protect and where possible enhance landscape character. It also requires developments to take account of the relationship of the site with its surroundings, and to incorporate features of landscape quality into the design. CWCLP1 Policy ENV6 promotes high quality design, and requires development to respect local landscape character and achieve a sense of place. CWCLP1 Policy STRAT9 recognises the intrinsic character and beauty of the countryside. NP Policy LAN1 seeks to retain local character and not harm important views, and NP Policy H2 seeks to achieve local residential densities of no more than 18 – 20 dwellings per hectare.
16. The appeal site presently appears derelict and rather overgrown. It is presently accessed from its western end, where the access leads to a sizeable area of hardstanding on the site that the appellant identifies as having previously been used for the storage of road plantings for the A41 works. An extensive bund and row of tree cover binds its northern side, to the A41. Its western side backs onto the sheds on the adjoining site. Its southern side largely looks across the road to the countryside, but there would be some overlap of the development area with the frontages of The Hamptons on the opposite side of Chester Road.
17. The appeal site has readily identifiable boundaries on its northern, western and southern sides, consisting of the 2 roads and the existing sheds of the neighbouring site. There is thus no real scope to provide a transitional development here. The eastern part of the appeal site, however, and much of the field adjoining it to the east, appears to be undevelopable because of flood risks. A watercourse enters the site from the north at its eastern side. Concentrating the development area to the western end of the site, away from the main settlement area, would potentially result in the development being seen as a somewhat isolated cluster of dwellings. However, the remaining boundaries of the site, together with a clear relationship with the dwellings at The Hamptons, could, with effective landscaping, avoid this being the overwhelming impression of the site. I consider that a reasonable functional and visual relationship with the settlement could be established.
18. I agree with the Parish Council and the Council that the proposed density over the developable area of the site would be unlikely to enhance the appearance of the settlement. Technically, given the size of the appeal site, the density would not exceed the requirements of NP Policy H2 but, having regard to the actual developable area, the amount of development proposed would be unlikely to result in an impression of spaciousness, as also required by the policy. However, bringing the site into a functional use (and depending on the details approved at the reserved matters application stage) could in my view result in visual improvements to the currently unkempt appearance of the

site. Although the development would no doubt be visible from the adjoining roads, it would not conflict with the requirement of NP Policy LAN1 to avoid the loss of important views.

19. However, although some improvements to the overall appearance of the site might result from the proposed development, it would nevertheless change the character of the site from an existing undeveloped field to that of a densely-built housing estate. This would conflict with NP Policy LAN1 and with CWCLP1 Policy ENV2 which seek to protect the existing landscape character. The proposal would also conflict with CWCLP1 Policy STRAT9 which recognises the intrinsic character of the countryside and seeks to protect it from unnecessary development.
20. Therefore on this issue I conclude that the prospect for improving the appearance of the site, and achieving a reasonable relationship with the surrounding area, weighs in its favour. The overall development of the site would however be harmful to the existing countryside character of the site, and conflicts with CWCLP1 Policies STRAT9 and ENV2 and NP Policy LAN1 for these reasons.

Other matters

21. In its Appeal Statement the Council raised the matter of a planning obligation not then having been submitted to overcome the impacts of the proposed development on local amenities and service provision. The appellant has since submitted a planning obligation purporting to require contributions to be made towards improving open space and local educational facilities in the vicinity of the appeal site.
22. Although the Council is not committed to the terms of the planning obligation, it having been made unilaterally, given the consultation responses received on these issues from the relevant officers I would be satisfied that the contribution would be spent towards its intended purposes. Unfortunately, and perhaps owing to a typographical error, there is no definition in the planning obligation of the "Planning Permission" upon which the obligations are expressed to be contingent. Therefore, I cannot be satisfied that the deed as presently drafted is enforceable. I have not pursued this further as I am dismissing the appeal for other reasons.
23. The appeal proposals are expressed to deliver 30% affordable housing, which the main parties consider to be a benefit of the proposal, and I concur with that assessment. The main parties consider that this could be secured by a planning condition. However, I have no details of such a condition before me. Without details of how a provider of the affordable housing would be secured, the relevant split of shared ownership or social rented housing, the stage of development at which the affordable housing should be made available, or the arrangements to ensure that the housing remains affordable in perpetuity, the information required that might form the subject of a planning condition is deficient.
24. Such detailed matters would usually entail a legal agreement, in which case the Planning Practice Guidance advises that a planning condition to secure such arrangements would usually only be appropriate where the delivery of

the development would otherwise be at serious risk². I have no evidence that such is the case here. Again, as I am dismissing the appeal for other reasons, I have not pursued the matter further but I am unable to give any weight to the benefit of securing affordable housing, despite the appellant's case on the existing shortfall of such provision.

25. The appellant points to the considerable economic and social benefits that the proposal would bring, constituting a contribution to the Government's policy objective of significantly boosting the supply of housing on a small (<1ha) site, and creating construction jobs in the process. The Council's position is that a 7.56 year supply of housing exists in the local area and, given that healthy position, I find that these benefits attract only moderate weight in the appeal scheme's favour.

Planning Balance and Conclusion

26. For the reasons explained above, I am unable to support the appellant's submissions in respect of the Wood judgment and I find that the appeal site lies beyond the settlement boundary of No Man's Heath identified in the NP and in the recently adopted CWCLP2. As a result, the proposal conflicts with strategic policies directing housing to within settlements and avoiding the loss of the countryside. Further harm would accrue from the loss of the site's undeveloped countryside character.
27. Benefits of the proposal include an opportunity to improve the visual appearance of the site and the contribution that the proposed development would make to economic and social policy objectives. I give limited weight to the purported benefits of affordable housing, open space and local educational facilities, due to my findings in respect of the planning obligation and there being no mechanism before me to secure the affordable housing provision.
28. However, in considering the appeal scheme on its own planning merits, I do not find any of these benefits, or any other matters drawn to my attention, to amount to material considerations of sufficient weight to outweigh the development plan for the area. Overall the proposal conflicts with the development plan, and consequently I conclude that the appeal is dismissed.

Laura Renaudon

INSPECTOR

² Paragraph: 010 Reference ID: 21a-010-20190723