The Planning Inspectorate

Appeal Decision

Site visit made on 21 October 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/B3438/W/19/3227971
Vacant land adjacent Railway Cottages, Creswell Old Lane, Cresswell ST11 9RF

- 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 Sanders against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2017/0829, dated 12 July 2018, was refused by notice dated 15 November 2018.
- The development proposed is the construction of 8 houses.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Staffordshire Moorlands District Council against Mr Sanders. This application is the subject of a separate Decision.

Procedural Matters

3. Although the appeal form gives a company name, since it is the applicant who has the right of appeal, I have taken the name of the appellant from the application form.

4. The appellant has submitted revised plans during the appeal process which include an amended layout, substitution of plot types and the provision of noise bunds. Within this context I am mindful of the Wheatcroft Principles derived from Bernard Wheatcroft Ltd v SSE (1982) which are further explained in the Procedural Guide: Planning Appeals - England[1]. It is my firm view, in the interests of fairness, that this appeal must be determined on the basis of the plans submitted to the Council and upon which it based its decision, which have been subject to consultation and not the suggested amendments. To do otherwise could prejudice unacceptably the interests of interested people and/or consultees who would not have been consulted on the amended plans and who may have observations to make.

5. The appellant has requested that the appeal is dealt with by way of a hearing. However, the Council has confirmed it is happy for the appeal to proceed by way of written representations and, following my assessment of the evidence I am satisfied that I have sufficient information on which to make a decision.

[1] Procedural Guide: Planning appeals – England (2019)

Main Issues

6. The main issues of the appeal are:

- Whether the appeal site is a suitable location having regard to access to local shops, community facilities and bus services and local and national planning policy; and
- Whether the proposed dwellings would provide satisfactory living conditions for future occupants with respect to noise; and
- Whether the proposed dwellings would provide satisfactory living conditions for future occupants with respect to outlook and outdoor amenity space; and
- The effect of the appeal scheme on the character and appearance of the area; and
- The effect of the appeal scheme on protected species, with particular regard to amphibians, bats, breeding birds, invertebrates and reptiles; and
- The effect of the appeal scheme on highway safety.

Reasons

Suitability of location

7. The appeal site comprises an irregular shaped plot of land which is located off Cresswell Old Lane, a winding road which is generally single track with no footpaths, in a semi-rural area in the hamlet of Cresswell. For the purposes of applying planning policy the site is located in the countryside. Within the site is an access track which loops around industrial units, and which runs parallel to the railway line. The access track also provides access to Railway Cottages and associated garages.

8. The appeal scheme would comprise 8 detached dwellings, laid out in two groupings either side of the industrial buildings. Four dwellings would be located to the north west of the industrial buildings and 4 dwellings to the south west, linked by the access track. Landscaping is proposed either side of the access road and acoustic fencing is proposed between the dwellings and the railway line and between the dwellings and the industrial buildings.

9. Policy SS6C of the Staffordshire Moorlands Core Strategy DPD (Core Strategy) sets out a strategy for the rural area and seeks to ensure, in part, that new build housing development in the countryside is restricted to that which is essential to local needs, including affordable housing. Policy SS1 of the Core Strategy seeks to ensure easy access to jobs, shops and transport services by all sections of the community. The National Planning Policy Framework (the 'Framework')(2019) encourages homes with accessible services which limit the need to travel, especially by car, although it also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas[2].

[2] Paragraph 103

10. Paragraph 78 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. There are some facilities within 1km of the appeal site, including a church, cricket club, public house and sports club, however, I consider that these are unlikely to meet the day-to-day needs of future occupants.

11. The appellant has drawn my attention to a mixed housing and employment scheme at Blythe Valley Business Park, SMD/2014/0576, which would be located on the opposite side of the railway line to the appeal site. The Council advise that the phasing for the shop contained in the S106 agreement is for it to be completed and made available prior to the occupation of no more than 100 dwellings. As such, there is no guarantee that the shop and community centre approved as part of the application will actually come forward. I have no substantive evidence that the facilities which would be provided would meet the day to day needs of future occupants of the appeal site, or that they would be easily accessible given the intervening railway. Moreover, since the facilities which would be provided by the permission could take a number of years to be provided, if they are indeed provided at all, I afford this matter very limited weight.

12. Future occupants are therefore likely to need to travel further afield to Blythe Marsh which is approximately 2.5km from the appeal site by road. Given the distance between the appeal site and Blythe Marsh, I consider future occupants are unlikely to choose to walk there. This would be particularly the case for those with limited mobility, parents with young children or at night, or in inclement weather.

13. The appellant advises that there are bus stops within approximately 500m of the site which provide services along bus route 249. However, the appellant's own evidence indicates that the services provided would be limited. Whether or not the service is now defunct, such limited services are unlikely to enable future occupants to utilise public transport to meet their day to day needs. Whilst future occupants would be able to cycle to Blythe Marsh, I consider it likely that they would be highly reliant on private car.

14. Whilst the number of daily movements which would be generated by the appeal scheme would be modest, future occupants would have a limited choice of transport mode, contrary to the objectives of the Framework, and the overall aim of the Core Strategy to reduce the need to travel. This is a significant factor weighing against the scheme.

15. For all the above reasons I therefore conclude that the appeal site is not a suitable location for a new dwelling. It would fail to enhance or maintain the vitality of Cresswell and would conflict with the overall aims of the Core Strategy to locate new development in areas with access to jobs, shops and transport services. Thus, the proposal would be contrary to Policies SS1 and SS6C of the Core Strategy and the Framework, as detailed above.

Living conditions: Noise

16. There are a number of noise sources in close proximity of the appeal site, industrial units, the railway line and the road. To the east of proposed Plots 1-4 is a wood working unit which the Council assert, use various loud pieces of machinery and are unrestricted in terms of hours of operation. Policy SD4 of

the Core Strategy seeks to avoid unacceptable amenity impacts by refusing schemes which are pollution-sensitive adjacent to polluting developments. Paragraph 180 of the Framework states that decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions, amongst other things.

17. A noise assessment has been submitted in support of the appeal scheme. Continuous unattended long-term noise measurements were obtained at a location to the east of the industrial units. It is stated that short-term measurements were also taken along positions representative of the proposed façade locations during dominant noise source (railway) activity, however, the location of the short-term monitoring locations are not clear from the noise assessment.

18. Given the size of the site and the distribution of different sources of noise, I would have expected a number of monitoring locations to have been selected, including monitoring locations which would be representative of Plots 1-4, particularly given the proximity of Plot 4 to the wood working unit. Since the proposed dwellings would be set out in two groups, it has not been demonstrated that there would be no adverse amenity impacts experienced by future occupants of the dwellings proposed to the west of the industrial units.

19. The noise assessment concluded that the highest average daytime ambient noise level is 55.1dB L_{Aeq} and that, subject to mitigation, including the provision of ventilation via trickle vents and glazing would enable the dwellings to meet the World Health Organisation Guideline Values for Community Noise. Whilst it would be possible to design the dwellings with glazing and an acoustic trickle ventilator, future occupants of the proposed dwelling may still choose to open windows, irrespective of the efficiency of the ventilation system, particularly during the summer months. This would significantly reduce the effectiveness of the mitigation proposed and, could result in sleep disturbance for future occupants. I have considered whether it would be reasonable to secure mitigation through condition, including that all windows to the property shall be non-opening. However, I am not persuaded that this would be reasonable, particularly given the likely need to ensure means of escape.

20. It is asserted that existing residents have no concern with the noise arising from the industrial units. However, it is not clear which residents are unconcerned and whether the location of their properties can be considered comparable to the proposed dwellings. I am therefore unable to afford this matter any weight.

21. Paragraph 80 of the Framework states that decisions should help create the conditions in which businesses can invest, expand and adapt. In the event the future occupants complained to the Council this could lead to the Council being obliged to use its statutory powers in respect of the adjacent industrial units, which would frustrate the Framework's aim of building a strong, competitive economy.

22. Thus, the proposed dwellings would fail to provide satisfactory living conditions for future occupants with respect to noise, contrary to Policy SD4 of the Core Strategy and the Framework, as detailed above.

Living conditions: Outlook and outdoor amenity space

23. Policy DC1 of the Core Strategy seeks to protect the amenity of the area, including residential amenity, in terms of outlook and privacy, amongst other things. The proposed dwellings would be located either side of industrial units. Plot 4 would be directly adjacent to a substantial industrial building which sits in an elevated position and is constructed predominantly of breeze block and metal cladding.

24. There would be limited space between the dwelling of plot 4 and the adjacent industrial unit. As a consequence, the industrial building would appear dominant and overbearing, harmful to the living conditions of the future occupants of Plot 4. This would be contrary to Policy DC1 of the Core Strategy.

25. It is asserted that the garden size of the proposed dwellings is not inconsistent with those prevalent in the locality, however, this would not justify lesser space standards in the appeal scheme. Plot 1 would have very limited outdoor space to the rear, with the majority of external space to the front and side. Given the need to ensure adequate visibility splays, I consider it highly likely that only low-level fencing would be suitable around much of the side garden of Plot 1. This would result in very limited private amenity space, contrary to Policy DC1 of the Core Strategy.

Character and appearance

26. The appeal site is located in a semi-rural area off Cresswell Old Lane. There are a limited number of dwellings which front onto the road, located close to its junction with Creswell Lane. Cresswell Old Lane, with its relatively narrow carriageway, hedge and tree lined edges, provides a transition to the countryside beyond. Although there are a number of industrial units located off Cresswell Old Lane, they are set well back from the road behind intervening vegetation. This vegetation, including the vegetation within the appeal site, contributes towards the rural character of the road.

27. Policy DC1 of the Core Strategy seeks to ensure that development is designed to respect the site and its surroundings and promote a positive sense of place and identity through its scale, density, layout, siting, landscaping, character and appearance. The proposed dwellings would front onto the access track, with Plots 1-4 backing onto Cresswell Old Lane and Plots 5-8 backing onto existing development located off Cresswell Old Lane. Dwellings in plots 1-4 would have a staggered layout, with limited setback from the highway. As a consequence, the dwellings would appear a dominant and incongruous feature along Cresswell Old Lane which would unacceptably diminish the rural character of the area.

28. Given the substantial setback of Plots 5-8 from the highway and their setback from other buildings, including Railway Cottages, the erection of dwellings on these plots would not diminish the rural character of Cresswell Old Lane. Nevertheless, the dwellings would appear a dominant, incongruous feature set between Railway Cottages and the industrial units and would fail to relate well to the dwellings located in Plots 1-4.

29. The appellant asserts that there would be no adverse impact to existing hedges and trees as they would be protected throughout the construction period. However, I have no substantive evidence that the proposed dwellings could be

constructed without the need to remove some of the hedgerow along Cresswell Old Lane. Furthermore, in order to facilitate the proposed access, I consider it highly likely that a substantial section of hedgerow would need to be removed. Moreover, in order to achieve sufficient visibility splays in an easterly direction along Cresswell Old Lane, it is likely that additional vegetation which currently bounds the site would need to be removed. This hedgerow makes a significant contribution towards the character of the area. Its removal would significantly diminish the rural character of the area.

30. Thus, for the reasons give above, the appeal scheme would harm the character and appearance of the area, contrary to Policy DC1 of the Core Strategy, the requirements of which are set out above.

Protected species

31. The appellant has provided a number of assessments through the appeal process which seek to address the Council's reason for refusal. Policy NE1 of the Core Strategy seeks to protect and enhance habitats and species of principal importance for the conservation of biodiversity as identified in legislation. Paragraph 175 of the Framework states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

32. The invertebrate survey submitted in support of the appeal scheme identified that a high number of cinnabar moths were recorded on site and that the site meets the criteria of Natural England's 'open mosaic habitat on previously developed land' which is listed as a UK BAP priority habitat. To mitigate for this a series of recommendations are made, including that an area of 1000m3 is maintained for the population of invertebrates found on site. The area proposed coincides with Plots 1-4 and could not therefore reasonably be secured via condition.

33. In respect of birds, as nesting birds, including UK BAP species, were found on site, species specific compensation was recommended, including planting and restoration of hedgerows, shrub and scrub and nest boxes. However, it is likely that substantial sections of hedgerow would need to be removed to facilitate the development. Whilst it may be possible to secure some of the recommendations by condition, given the above, it has not been demonstrated that there would not be significant harm to biodiversity from the proposed development, contrary to Policy NE1 of the Core Strategy and the Framework.

Highway safety

34. The appeal site would be accessed off a derestricted section of Cresswell Old Lane, a generally single-track road with limited passing places, which serves a limited number of residential properties and industrial units. The appeal site is bound by a mature hedgerow which significantly limits visibility at the junction of the access track with Cresswell Old Lane. Whilst there is a sign stating that the road is unsuitable for lorries, I am not aware that it is subject to any form of weight restriction.

35. Policy DC1 of the Core Strategy seeks to ensure that proposals provide for safe and satisfactory access, amongst other things. A new access is proposed to the west of the existing access. The appellant has provided a series of photographs

which seek to demonstrate that adequate visibility can be achieved at the junction with Cresswell Old Lane, and the junction with Cresswell Lane.

36. Although the appellant has provided visibility splays onto Cresswell Lane[3] (referred to in the appellant's statement as Cresswell Road), it is not clear how these visibility splays have been arrived at or whether they take into account the likely speed that vehicles would travel along the road. During my visit I saw that visibility from Cresswell Old Lane onto Cresswell Lane is limited to the north east by a hedgerow and to the south west by the railway line. The appellant asserts that the railway crossing functions to reduce traffic speed on Cresswell Lane, however, I have no substantive evidence of this.

37. The appellant has drawn my attention to a planning permission which has been previously granted on the site for an industrial unit, reference SMD2016/0137, which included details of an access. However, I have no substantive details of this planning permission, nor is it clear whether the access proposed would be the same as the access proposed for the appeal scheme. These details are therefore insufficient for me to draw a conclusion regarding the adequacy of the access proposed in the appeal scheme.

38. The appellant has requested that a condition is imposed to secure visibility splays. Whilst vehicle speeds along this section of Cresswell Old Lane are likely to be low due to the curvature of the road and the proximity to the junction with Cresswell Lane, I have no substantive evidence that the visibility splays suggested by the appellant would be sufficient to ensure a safe access onto Cresswell Old Lane.

39. Whilst it would be possible to secure further details of an access via condition, I do not consider it would be reasonable to do so in this instance since it has not been demonstrated whether or not satisfactory visibility splays can be achieved on land within the appellant's control. Furthermore, since the hedgerow has both ecological and visual merit, it should be known prior to determination what extent of hedgerow would need to be removed to enable a satisfactory access to be achieved.

40. Given the above, I am unable to conclude that the appeal scheme would provide safe and satisfactory access, contrary to Policy DC1 of the Core Strategy, the requirements of which are set out above.

Planning Balance

41. The Council is unable to demonstrate a five-year supply of housing. In such circumstances, the Framework states that where the policies which are most important for determining the application are out of date, that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

42. Paragraph 68 of the Framework states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should, amongst other things, promote the development of windfall sites through their policies and decisions

[3] Figure 8 of the appellant's Statement of Case

– giving great weight to the benefits of using suitable sites within existing settlements for homes.

43. It is asserted that part of the appeal site comprises brownfield land. The Framework defines previously developed land as 'land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes, amongst other things, land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. It is not clear to me, either from the evidence provided by the appellant, or from my site visit, that the appeal site would meet the definition of previously developed land. Although I saw that the site has been used for the deposition of stone, I have no substantive evidence that the use of the site for this purpose is lawful. Accordingly, I afford this matter very limited weight.

44. The appellant has drawn my attention to section 1 of the Self Build and Custom Housebuilding Act 2015 and asserts, in light of this, he should be afforded some positive support. However, I have no evidence of a mechanism before me which would secure the delivery of self-build and custom housebuilding on the plots and am therefore unable to afford this matter weight. The appellant asserts that the market housing provided will be affordable in terms of unit size, however, I have no substantive evidence that the proposed dwellings would meet the definition of affordable homes as set out in the Framework and am therefore unable to afford this matter weight.

45. I accept that small sites can make an important contribution to the delivery of an area's housing requirement. However, as the proposal is for 8 dwellings, the social benefits would be minimal. The proposal would provide some limited economic benefit during the construction phase and result in a slight increase in spending in the local area. The delivery of the dwellings would also deliver limited financial benefit through increased council tax receipts and the New Homes Bonus.

46. I accept that the aim of the Framework is to significantly boost the supply of housing. However, as the proposal is for eight dwellings, the contribution it would make to housing supply in the area would be limited. I have found that there would be environmental and social harm arising from the site's unsuitable location with poor access to local facilities and services. Furthermore, I have found that there would be harm to the living conditions of future occupants of the proposed dwellings, harm to the character and appearance of the area, harm to biodiversity and harm to highway safety. These adverse impacts would significantly and demonstrably outweigh the limited benefits associated with the provision of eight additional dwellings. I therefore conclude that the development does not benefit from the presumption in favour of sustainable development.

47. For the reasons given above, and having regard to all matters raised, I conclude that the proposal would conflict with the development plan. There are no other material considerations that outweigh that conflict. I therefore conclude that the appeal should be dismissed.

M Savage

INSPECTOR