
Appeal Decision

Site visit made on 6 August 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2019

Appeal Ref: APP/W1850/W/19/3222406

Woodyatts Field, Woodyatts Lane, Madley HR2 9NN

- 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 Michael Amos against the decision of Herefordshire Council.
 - The application Ref 181825, dated 16 May 2018, was refused by notice dated 22 August 2018.
 - The development proposed is described as: 'New build 4 bedrooms low level dwelling to meet the needs of a local family wishing to move back to the local area to live'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal is acceptable having regard to local policies on the location of housing, in respect of accessibility to services and facilities by sustainable transport modes; and, if any harm arises whether or not this is outweighed by any other considerations.

Reasons

Location of the site

3. The appeal site lies along Woodyatts Lane ('the Lane') accessed off the B4352. The site comprises a rectangular plot of land with a gate to the Lane and hedgerows to other boundaries. It forms part of the garden serving Woodyatts Field, which is an existing dwelling.
4. In terms of new housing provision across the county Policy RA1 of the Herefordshire Local Plan-Core Strategy (CS) identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. These dwellings are to be broadly distributed across the seven Housing Market Areas (HMA's). Madley lies within the Hereford HMA and is listed as being one of the 'settlements' which will be the main focus of proportionate housing development.
5. Policy RA2 of the CS states the minimum growth target in each rural HMA will be used to inform the level of housing development to be delivered in the various settlements. Further, that Neighbourhood Development Plans (NDPs) will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets. Amongst other criteria, this Policy and the supporting text to Policy R1, specify the need for the development site to be

located within or adjacent to the main built up area of the settlement. Where appropriate, settlement boundaries (or a reasonable alternative) for those settlements listed in Policy RA2 will be defined in either NDPs or the Rural Areas Sites Allocation Development Plan Document (DPD).

6. The site falls within the Madley Neighbourhood Development Plan area, as designated in April 2015. Madley Parish Council submitted the draft Madley Neighbourhood Development Plan (dMNDP) to Herefordshire Council on 11 July 2019 with the consultation on this scheduled to end on the 9 September 2019. The dMNDP incorporates the proposed settlement boundary¹ based on an assessment of the village's main built up form. The site is located outside the proposed settlement boundary.
7. However, having regard to paragraph 48 of the National Planning Policy Framework (the Framework), at this time only limited weight can be afforded to the dMNDP, because the extent of unresolved objections is unknown, and it has not yet been assessed for its conformity with the Framework and the CS. Consequently, and in the absence of a DPD the proposal needs to be assessed against its relationship to the main built-up form of the settlement².
8. In assessing the appeal, I have been mindful of the Braintree judgment, upheld in the Court of Appeal³. Given that the site is near to other properties along the lane, a new dwelling here would not be isolated in terms of its spatial or physical relationship to other buildings. Therefore, the proposal would not result in the creation of an isolated home in the countryside, within the meaning of Paragraph 79 of the Framework. Nevertheless, from my observations and on the available evidence the site is clearly separated by fields and the lane from the main built-up area of Madley which is concentrated around a number of key roads to west of the site. Therefore, the site is not within or adjacent to the main built up area of the settlement and for planning policy purposes is located within the countryside.
9. Policy RA3 of the CS supports certain types of residential developments in the countryside, including rural exception housing under Policy H2 of the CS, this supports proposals for affordable housing schemes in rural areas on land which would not normally be released for housing, subject to certain requirements. Nonetheless, other than reference to the lack of affordable properties locally for the appellant's family there is no substantive evidence of a proven local need for affordable housing. Furthermore, although, it has been suggested that the affordable housing would be secured in perpetuity by a condition, I have not been provided with any wording for this. In any event, the Planning Practice Guidance (PPG)⁴ advises that the use of a positively worded condition requiring the appellant to enter into a planning obligation is unlikely to pass the test of enforceability.
10. The village of Madley contains some services and facilities including a shop, pub, school and church. It also provides a bus service to Hereford. However, in terms of accessibility from the site, by road the distance separation is some 300 metres to the eastern limits of Madley, this would be mainly via the B4352. Due to the nature of traffic and speeds along this 'B' classified road and the lack of a footway this would be an unsafe and unappealing environment for pedestrians

¹ Plan 4 Madley village policies

² Paragraph 4.8.23 of the Herefordshire Local Plan-Core Strategy

³ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

⁴ Paragraph: 010 Reference ID: 21a-010-2019072

and inexperienced cyclists. Furthermore, I have not been made aware of any nearby bus service from the site to Madley.

11. A section of the Lane, including alongside the site, is part of a public right of way (PRoW) MY13 which links to other paths allowing access to services and facilities in Madley. Nevertheless, these paths are in parts uneven, along unmade ground and unlit. Therefore, I am not persuaded that these would be suitable on a daily basis, particularly during inclement weather, winter periods when daylight hours are reduced and for those having to carry shopping or using prams and buggies. Moreover, and notwithstanding the ability to prepare for such circumstances, future occupants are more likely to choose the convenience of travelling by private vehicles.
12. Furthermore, when in private vehicles, occupiers of the proposed dwelling would be likely to drive to Hereford to access the better range of services and facilities there, in preference to Madley and other villages nearby. Consequently, the proposal is unlikely to support services in rural villages, as paragraph 78 of the Framework envisages, given the site's poor accessibility by suitable sustainable modes of travel.
13. Taking into account the above factors and the advice in the Framework⁵ on sustainable transport solutions varying between urban and rural areas, in this case the location of the site for housing does not offer suitable sustainable travel choices in respect of accessibility to services and facilities. Future occupants of the proposed dwelling would therefore be highly reliant on car travel, resulting in adverse environmental effects.
14. In light of the above reasons, the proposal is unacceptable having regard to local policies on the location of housing, in respect of accessibility to services and facilities by sustainable transport modes. Consequently, in that regard it would conflict with CS Policies RA1, RA2, RA3, SS4, SS7 and MT1, which amongst other things seek to locate development where it would be accessible by means other than private car in order to reduce carbon emissions and mitigate against the impact of climate change.

Other considerations

15. The appellant advises that his family have the resources to construct the proposed dwelling at low cost, making it affordable for his daughter, who for personal reasons⁶ requires an independent dwelling of the size proposed close to her immediate family. Although I am sympathetic to such personal circumstances, there is no compelling or supporting independent evidence for such housing need. As such, I attach only limited weight to these personal circumstances, bearing in mind that in general the Courts have taken the view that planning is concerned with land use in the public interest, rather than private interests.
16. It is also suggested that the proposal would be a self-build project. There is some disagreement between the main parties over the availability of serviced plots to meet the demand locally for self-build and custom-building. Irrespective of this, the appellant has not registered on the Council's self-build and custom-building register. Moreover, other than suggesting a condition, the proposal contains no mechanism to ensure that the proposed dwelling would be developed in a

⁵ Paragraph 103

⁶ As set out in the appellant's evidence

manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding Act 2015 (as amended). Therefore, this consideration attracts only limited weight.

17. As the Council cannot demonstrate a 5-year housing land supply paragraph 11 of the Framework is engaged. In light of the above reasons the proposal would facilitate a single open-market dwelling, for which there is some local support. This would make a modest contribution towards the housing shortfall locally and although it would increase the residents in the area, given the sites poor accessibility to the village's local services and facilities, support for these is unlikely. Moreover, given the modest scale of the proposal (single dwelling) any associated benefits would be limited.
18. The lack of objections in respect of environmental matters, technical highways issues and design are neutral factors which do not weigh in support of the proposal.
19. On the other hand, I have found that the location of the dwelling would not promote sustainable modes of travel leading to an increased reliance on the private car resulting in adverse environmental effects. Given that the Framework seeks to promote sustainable transport modes and one of its key environmental aims is mitigating and adapting to climate change, I attach great weight to such environmental harm. Therefore, the adverse impacts would significantly and demonstrably outweigh the benefits and so the proposal would not represent sustainable development. Consequently, the harm I have identified is not outweighed by any other considerations.

Other matters

20. There are existing dwellings in Madley where occupiers would need to cross the B4352 or are located where there are no nearby footpaths or paths that are unlit. However, these are generally closer to the facilities and services in Madley than the appeal site and are therefore not comparable. In any event, I have determined this appeal on its merits and the existence of these and other properties in the area does not alter my findings on the main issues.
21. The site falls within the Impact Risk Zone of the River Wye Special Area of Conservation (River Wye SAC) and the Lugg Site of Special Scientific Interest (Lugg SSSI). On the available evidence including Natural England's response⁷, I am satisfied that the proposed mitigation⁸ would safeguard against any discharge of water or liquid waste including to mains sewer from the development, and the adverse effects associated with this on the integrity of the River Wye SAC and the interest features for which the Lugg SSSI has been notified. The proposed mitigation could be secured by condition if the appeal were to succeed.

Conclusion

22. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR

⁷ Email dated 11 June 2018

⁸ Package treatment plant with a final outfall to a soakaway drainage field on land under the appellant's control as shown on drawing 145P(0)100 Revision A dated 10 August 2018