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## Appeal Decision

Hearing held on 14 January 2020

Site visit made on 14 January 2020

**by Alison Partington BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> January 2020**

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**Appeal Ref: APP/C3430/W/19/3237890**

**Land west of 18 Shop Lane, Oaken WV8 2AX**

- 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 Housing Plus Group against the decision of South Staffordshire Council.
  - The application Ref 19/00248/FUL, dated 29 March 2019, was refused by notice dated 23 August 2019.
  - The development proposed is the construction of 5 houses and 5 bungalows.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of 5 houses and 5 bungalows at land west of 18 Shop Lane, Oaken WV8 2AX in accordance with the terms of the application, Ref 19/00248/FUL, dated 29 March 2019, subject to the conditions set out in Annex A.

### Procedural Matters

2. Since the application was originally submitted the company making the application has changed their name from South Staffordshire Housing Association to the Housing Plus Group. I have determined the appeal on this basis.
3. Some residents have indicated that the appeal site has restrictive covenants on it. No details of these have been provided but, in any case, whilst these might have implications for implementation, I have made my decision based only on the planning merits of the case.

### Main Issues

4. The main issues in the appeal are:
  - Whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework);
  - The effect of the proposal on the openness of the Green Belt and the purposes of including land within it; and
  - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations, so as to amount to the very special circumstances necessary to justify it.

## **Reasons**

### *Whether inappropriate development*

5. The appeal site is an unused field that lies adjacent to the settlement boundary for Oaken and within the Green Belt as defined by the *Core Strategy Development Plan Document (adopted December 2012)* (CS). Policy GB1 of the CS sets out the forms of development that may be considered acceptable within the Green Belt. This includes affordable housing where there is a proven local need in accordance with Policy H2.
6. Paragraphs 145 and 146 of the Framework set out the forms of development that are not inappropriate in the Green Belt. These include limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites).
7. Although part of Codsall Parish, the small settlement of Oaken is separated from this much larger settlement by an area of Green Belt that is around 1.5km wide. Whilst Codsall is defined as a main service village in the settlement hierarchy set out in Core Policy 1 of the CS, Oaken comes under "Other Villages and Hamlets". In this tier development is limited to rural affordable housing schemes provided through rural exception sites and the conversion and re-use of redundant rural buildings.
8. The appeal scheme would consist of 5 houses and 5 bungalows. The scheme is proposed as a rural exception site with all of the dwellings being affordable (a mixture of social rent and shared ownership) and for occupancy by local people. The Section 106 agreement submitted would ensure this. Policy H2 of the CS indicates support for schemes for the provision of 100% affordable housing on rural exception sites in "service villages" and "other villages and hamlets" where a need has been demonstrated in accordance with Policy H3. This policy sets out 5 criteria for rural exceptions sites which I consider in turn below.
9. Residents have referred to a guidance document on the Council's website that indicated that rural exception sites would only be permitted when they had the support of the Parish Council. However, the Council have stated that this was informal guidance and was not an adopted policy document. As such, I have not given it any weight as it does not accord with the adopted policies.

#### *Criterion (a)*

10. The first criterion is that the site must lie adjacent to the existing village development boundary. It is not disputed that the site lies immediately adjacent to the boundary for Oaken but third parties have argued that as Oaken is a hamlet not a village the site does not accord with this criterion. Nevertheless, both Core Policy 1 and Policy H2 of the CS clearly state that rural exception sites are acceptable in settlements that are classified as "Other Villages and Hamlets" in the CS. As these policies make no distinction between the appropriateness of such schemes in villages as opposed to hamlets, I consider that the use of the word "village" in this criterion is used as a generic term rather than an indication that rural exception sites are only permitted in villages as opposed to hamlets. As such, the proposal would meet this criterion.

*Criterion (b)*

11. The second criterion requires that housing need has been identified in the parish, or in one or more of the adjacent parishes for the type and scale of development proposed. A Parish Housing Needs Survey was undertaken in 2017. This was commissioned by the Parish Council and the Council have confirmed that it was undertaken in accordance with best practice for such surveys and is considered to be robust. This concluded that there is a need for 44 affordable houses for local people within the parish who have a strong local connection.
12. Whilst the Parish Council have stated they have concerns over the validity of this survey, they have not provided any further evidence regarding the nature of these concerns, nor why they were not raised when the findings were reported to them.
13. Local residents have suggested that the survey was geared to Codsall and that from their own questioning there is no housing need in Oaken itself. However, I have not been provided with details of how and when this questioning took place and so cannot ascertain how representative or accurate such findings are. Moreover, the criterion suggests that rural exception sites can be used to meet need in adjacent parishes as well as their own, so even if the local need arises mainly from people in Codsall, which is the same parish as Oaken, this does not mean it cannot be met in Oaken.
14. Whilst I note the suggestion that the return rate for the survey (17%) was low, the consultant responsible, who specialises in such work, indicates that the return rate was in fact good and large enough to produce statistically valid results. Neither the Parish Council nor the District Council have suggested otherwise. Although the survey findings are different to the figures on the housing register, the latter does not represent a comprehensive assessment of need.
15. The Council indicated that since the survey was commissioned no affordable housing has been granted permission in the parish. Whilst there are housing allocations and developments within Codsall, and affordable housing is sought as part of these in accordance with CS Policy H2, the Council could not provide any estimation of how much affordable housing such sites would yield. Furthermore, it was highlighted that such affordable housing is available to anyone who qualifies for such housing and is not restricted to people with a local connection, so it may only partially address some of the local need identified in the survey. To this end the Council confirmed that rural exceptions sites were seen as crucial in meeting local housing need identified in parish need surveys as such schemes provided greater control over occupancy.
16. Thus overall, I am satisfied that a need for affordable housing has clearly been identified within the parish and that the proposal would contribute towards meeting that need. As such the scheme meets criterion (b).

*Criterion (c)*

17. Oaken consists of approximately 76 houses. It is not disputed that it has no services or facilities and no public transport. Whilst it is close to Codsall which has a good range of shops and other facilities as well as a train station, the road between them, does not have a pavement or lighting for its full length.

Similarly, a public footpath link also lacks lighting and is unmade. As such, future occupiers are likely to be dependent on a car to meet their day-to-day needs.

18. Nevertheless, rural exception sites are by their very nature, found in places that would not normally be considered suitable as a location for housing, and where reliance on a car is likely to be necessary. Whilst some of the other settlements in the "other villages and hamlet" category may at least have some services, by virtue of being in this category these would clearly not be sufficient to meet most day to day needs and so residents would still be heavily reliant on the private car. In this case, in being relatively close to a main service village, future occupiers would only have to travel a short distance to be able to meet the majority of their day to day needs.
19. I note the concerns raised by residents about the isolation of the settlement for those without a car, and the fact that the appellant has indicated that it is proposed that the bungalows would be designated for those aged over-55. However, there is nothing to suggest that those in need of affordable housing are unable to afford a car, and many people continue driving well beyond the age of 55.
20. Residents referred to anecdotal evidence that the existing social housing in Oaken is difficult to let and has a high turnover of tenants, but no substantive evidence was provided to support this claim. Whilst living in a small rural settlement may not suit everybody, the evidence of the housing needs survey is that there are people who would like to live in Oaken. As the allocation mechanism means people choose the property themselves, it is likely that if people did not have a car they would not pick this location.
21. Whilst residents suggested that the development would result in a significant amount of affordable housing in Oaken, there is no evidence from the Council that the quantity of social housing would be disproportionate or that the resulting tenure mix would result in an unbalanced mix of dwellings in the settlement. In addition, I consider that the number of dwellings proposed can be satisfactorily accommodated and incorporated within the settlement.
22. Thus, I consider that the size and scale of the proposed development and its relationship to existing services and facilities would be acceptable, and the proposal would meet this criterion.

*Criterion (d)*

23. A Section 106 agreement was submitted as part of the proposal. In accordance with this criterion, this would ensure the long-term affordability of the scheme for local people.

*Criterion (e)*

24. Oaken comprises a varied mix of housing with little consistency in the design or appearance of the dwellings. Properties vary in age and scale, with bungalows and houses evident, both on Shop Lane and the rest of the settlement. The scheme would comprise a mix of bungalows and houses, comprising 1, 2, and 3 bedroom dwellings. Whilst these may be smaller than the majority of other housing in Oaken, it accords with the findings of the housing need survey which highlights the need for smaller dwellings. As the largest properties would be

located at the front of the site and would present an active frontage to the lane, the scheme would be sympathetic to the prevailing character of the area.

25. Although just outside the development boundary, the site is surrounded by housing and other built development, and so the proposal would appear as a natural extension of the built form and would not represent a significant incursion of the settlement into the open countryside. The majority of the hedge along the Shop Lane frontage would be retained which would help to maintain the rural character of the lane.
26. The site lies adjacent to the boundary of Codsall and Oaken Conservation Area which covers the historic core of what was originally an agricultural village. At the hearing the Council confirmed that the proposal would not cause any identified harm to the setting of the conservation area. Nothing I have seen, heard or read leads me to a different conclusion.
27. I have not been made aware that there is a Village Design Guide Supplementary Planning Document for Codsall and/or Oaken but given the above I am satisfied that the development would respect the scale and character of Oaken. Thus, it would meet this criterion.

*Conclusion on inappropriate development*

28. Overall, I consider that the proposal would accord with Policy H3 and so would be a rural exception site. As a result, it would not be inappropriate development in the Green Belt. Consequently, the appeal scheme would not be contrary to Policy GB1 of the CS or the Framework.
29. In the light of this conclusion, as the effect of development on openness is not expressly stated as a determinative factor in gauging inappropriateness for proposals that fall under paragraph 145 (f) of the Framework, there is no requirement for me to separately assess the impact of the development on the openness of the Green Belt.

Other Matters

30. Local residents and the Parish Council drew my attention to flooding and drainage issues in the area. However, the site lies in Flood Zone 1 and there is no technical objection to the scheme from the Council in either of these respects. Moreover, conditions can be used to ensure the adequate drainage of the site.
31. I note the resident's concerns regarding speed of traffic along Shop Lane and the fact that it is used as a cut through from the A41, as well as regarding the impact of additional traffic movements on the local highway network. Nevertheless, there is no objection to the proposal from the highway engineer and conditions can be used to ensure that adequate visibility splays would be provided at the access.
32. Residents have highlighted that the consultation on the proposal only took place with them after considerable discussion had already taken place with the Parish Council and much of the scheme had been finalised. However, it is clear that consultation took place with residents both before and during the application process so they have had the opportunity to put forward their views. Whilst I appreciate the desire of some to see this site used to create

some form of open space for the benefit of residents, it is my responsibility to determine the proposal that is before me.

33. The Council have stated that the proposal would accord with their minimum separation distances. As such, I am satisfied that the proposal would not result in unacceptable levels of overlooking.
34. A Preliminary Ecological Survey was submitted with the application which concluded that the site was of 'low' ecological value with the 'moderate' assets (on site trees and hedges) being retained. Given this, I see no reason to differ from the Council's conclusion that subject to certain mitigation measures which can be secured by condition, the proposal would not have a detrimental impact on wildlife or ecology.
35. In support of their cases all parties have drawn my attention to other appeals. I do not know the full circumstances of any of these cases, but as none of them were for a 100% affordable housing scheme on a rural exceptions site in the Green Belt they do not represent a direct parallel to the appeal scheme. Moreover, none of them are in this district and so the development plan policies applicable are different. In any case I have determined the appeal on its own merits based on the evidence before me and my own observations.

#### *Section 106 agreement*

36. As well as ensuring the development would provide affordable housing and occupancy for local people, the Section 106 agreement makes a contribution towards off-site open space. I have considered this in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations and the Framework.
37. It is agreed that due to the size of the site an off-site contribution to open space is appropriate. Such a contribution is supported by Policy SAD7 of the *Site Allocations Document (adopted September 2018)* (SAD). The justification for the costings are set out in the Open Space Background Topic Paper produced for the examination of the SAD and were agreed by the Inspector. The Section 106 agreement ensures that the money would be used for the provision, maintenance or improvement of open space within the Parish. I consider that the contribution sought by the Council in this respect is directly related to the development and is fairly related in scale and kind. As such it would accord with the statutory tests

#### **Conclusion and Conditions**

38. For the reasons set out above I conclude the appeal should be allowed.
39. As well as the standard implementation conditions, to provide certainty it is necessary to define the plans with which the scheme should accord. In the interests of the character and appearance of the area conditions to control the external appearance of the dwellings and the landscaping of the site are necessary. However, in terms of the former, as the site is not within the conservation area and in the absence of any evidence to show that such details are a significant feature of the conservation area, I consider the level of detail suggested by the Council is unnecessary. In terms of the landscaping condition I have made some amendments to the implementation clause.

40. To ensure the adequate drainage of the site and to reduce the risk of flooding, conditions are required to control both foul and surface water drainage from the site. These both need to be pre-commencement conditions as they relate to work that needs to take place during the construction phase and may affect the design and layout of the scheme.
41. A condition requiring a scheme of investigation is necessary to ensure the recording of any archaeological interest and remains on the site, as is one to report any findings from this work. The investigation condition needs to be a pre-commencement condition as the archaeological interest and remains could be lost during the construction phase and so need to be recorded prior to any construction work.
42. For reasons of highway safety, conditions to ensure the provision of the access road and parking area, the provision and maintenance of the visibility splays and the submission of an off-site traffic management scheme are needed. The latter needs to be a pre-commencement condition as it mitigates the effects of the construction phase.
43. In the interests of nature conservation and ecology conditions are required to control how the development proceeds, to control lighting on the site and to ensure the provision of bird and bat boxes on the site. In terms of the last two there is no need for these to be pre-commencement conditions, so I have altered this and have also altered the wording to ensure their implementation.
44. The Planning Practice Guidance makes clear that conditions to restrict permitted development rights should only be used in exceptional circumstances. Whilst the site is in the Green Belt, this does not in my opinion represent an exceptional circumstance. In the absence of any other specific justification I am not persuaded that it is necessary to remove the rights suggested by the Council.
45. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.

*Alison Partington*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

|                            |                                          |
|----------------------------|------------------------------------------|
| Sian Griffiths MRTPI MRICS | Director - RCA Regeneration Ltd          |
| Lesley Birch               | Development Manager – Housing Plus Group |
| Steve Faizey               | Architect                                |

### FOR THE LOCAL PLANNING AUTHORITY:

|                        |                                                                     |
|------------------------|---------------------------------------------------------------------|
| Paul Turner MATP MRTPI | Planning Consultant acting on behalf of South Staffordshire Council |
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### INTERESTED PERSONS:

|                  |                                                   |
|------------------|---------------------------------------------------|
| John Webb        | Resident                                          |
| Terry Carless    | Resident                                          |
| Paul Burton      | Resident                                          |
| Janet Burton     | Resident                                          |
| Jan Jeffries     | Resident                                          |
| Kevin McElduff   | Resident                                          |
| Jeffrey Silk     | Co-Chairman Oaken Residents Group and Resident    |
| Cllr Bob Spencer | District Councillor – South Staffordshire Council |
| Shane Jenkinson  | Resident                                          |

### DOCUMENTS SUBMITTED AT THE HEARING:

1. Minutes from the Parish Council meeting of the 28 February 2018 submitted by the appellant
2. Plan showing Bilbrook and Codsall Parishes submitted by the Council
3. Policy SAD7 from the Site Allocations Document (September 2018) submitted by the Council
4. Extract from Inspector's Report for the Site Allocations Document relating to Policy SAD7 submitted by the Council
5. Site Allocations Document Open Space Background Topic Paper submitted by the Council

## **Annex A**

### **Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan Dwg No 06056/1; Site Plan Dwg No 06056/2H; Land Survey Dwg No 06056/3; Site Layout Dwg No 06056/4B; Plot 1 Plans and Elevations Dwg No 06056/5B; Plans Plot 2 Dwg No 06056/6C; Plans Plots 3 and 4 Dwg No 06056/7B; Plans Plots 5 and 6 Dwg No 06056/8B; Plans Plots 8 and 9 Dwg No 06056/9C; Elevations Plot 2 Dwg No 06056/10D; Elevations Plots 3 and 4 Dwg No 06056/11C; Elevations Plots 5 and 6 Dwg No 06056/12C; Plans Plots 9 and 10 Dwg No 06056/14B; Elevations Plot 7 and 8 Dwg No 06056/15C; Elevations Plot 9 and 10 Dwg No 06056/16B; Streetscenes Dwg no 06056/17; External Levels Strategy Dwg No 18063-100 Rev C; Drainage Strategy Dwg No 18063-101 Rev D; Operation and Maintenance Plan Dwg No 18063-102 Rev A; and Landscaping Dwg No ADL245 Rev B.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The landscape scheme shown on the approved plan Dwg No ADL245 Rev B shall be implemented concurrently with the development and completed within 12 months of either the occupation of the last dwelling, or the completion of the development, whichever is earlier. The local planning authority shall be notified when the landscaping scheme has been completed. The planting, hard landscaping (and any other introduced features shown on the approved plan shall be retained and maintained for a minimum period of 10 years by the property owner from the notified completion date of the scheme. Any plant failures that occur during the first 5 years of the notified completion date of the scheme shall be replaced with the same species within the next available planting season (after failure).
- 5) No development shall take place until drainage plans for the disposal of foul water flows have been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling.
- 6) No development shall take place until a detailed surface water drainage design has been submitted to, and approved in writing by, the local planning authority. The design must be in accordance with the overall strategy and key design parameters set out in the Preliminary Drainage Strategy (Mucklow and Harris Drawing Number: 18063- 101, Revision D). The design must demonstrate:
  - Surface water drainage system(s) designed in accordance with national and local standards, including the non-statutory technical standards for sustainable drainage systems (DEFRA, March 2015).

- SuDS design to provide adequate water quality treatment, depending on receptor, in accordance with the CIRIA SuDS Manual Simple Index Approach and SuDS treatment design criteria.
- Limiting the discharge rate generated by all rainfall events up to the 100 year plus climate change critical rain storm to 2l/s. Evidence to be provided for STW agreed point and rate of discharge to public sewer.
- Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- Root protection system and no-planting easement to be included in property deeds for the protection of the attenuation tank.
- Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system. Site layout and levels should provide safe exceedance routes and adequate access for maintenance.
- Provision of an acceptable management and maintenance plan for surface water drainage to ensure continued performance of the system for the lifetime of the development. This should include a schedule of required maintenance activities and frequencies, and contact details for the organisation responsible for carrying out these duties.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme.

- 7) No development shall take place until a written scheme of archaeological investigation has been submitted to, and approved in writing by, the local planning authority. The scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication. The archaeological site work shall thereafter be implemented in full in accordance with the approved scheme.
- 8) No dwelling hereby permitted shall be occupied until the site investigation and post-excavation assessment has been completed in accordance with the written scheme of archaeological investigation approved under condition 7 and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
- 9) No dwelling hereby permitted shall be occupied until the access road, parking and turning areas have been provided in accordance with the approved plan Dwg No 06056/2H.
- 10) No dwelling hereby permitted shall be occupied until the visibility splays shown on Dwg No 06056/2H have been provided. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600 mm above the adjacent carriageway level.
- 11) No development shall take place until an off-site traffic management scheme has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of:
  - the routing of construction vehicles;
  - wheel washing facilities;

- measures to remove any mud or other deleterious material deposited on the highway;
- car parking facilities for staff and visitors; and
- a timetable for implementation.

Development shall be carried out in accordance with the approved scheme.

- 12) During the construction phase, the development must comply with the series of precautionary recommendations set out in Section 4.3b of the submitted "Phase 1, Preliminary Ecological Appraisal, Shop Lane, Oaken, Document Reference: Shop0518\_PEA1" received 29th March 2019.
- 13) No dwelling hereby permitted shall be occupied until plans have been submitted to, and approved in writing by, the local planning authority, showing the type and location of 5 no. bird boxes and 5 no. bat boxes to be installed on buildings. The bird and bat boxes shall be installed in accordance with the approved details, prior to the first occupation of any dwelling and retained as such thereafter.
- 14) No dwelling hereby permitted shall be occupied until a scheme for the lighting of the site has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme and retained as such thereafter. Any external lighting included in this scheme must be designed in accordance with Bat Conservation Trust / Institution of Lighting Professionals "Guidance Note 08/18 Bats and artificial lighting in the UK". Additional lighting or alterations to the approved scheme shall not be carried out other than with the written approval of the Local Planning Authority.