
Appeal Decision

Hearing Held on 3 November 2020

Site visits made on 28 October 2020 and 10 November 2020

by David Richards BSocSci DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/Y3425/W/18/3202676

Land of Saddler Avenue, Aston Lodge Park, Stone, Staffordshire

- 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 Fradley Estates against the decision of Stafford Borough Council.
 - The application Ref 17/15759/OUT, dated 10 February 2017, was refused by notice dated 16 November 2017.
 - The development proposed is for up to 20 affordable dwellings.
 - This decision supersedes that issued on 17 December 2018. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for up to twenty affordable dwellings at Land off Saddler Avenue, Stone, Staffordshire in accordance with the terms of the application, Ref 17/25759/OUT, dated 10 February 2017, subject to the conditions contained in the schedule at the end of this decision.

Applications for costs

2. At the Hearing applications for costs were made by Fradley Estates against Stafford Borough Council, and by Stafford Borough Council against Fradley Estates. These applications are the subject of separate Decisions.

Procedural matters

3. The application was made in outline with all reserved matters of access, appearance, landscaping, layout and scale identified for future consideration. A plan showing a possible layout is for illustrative purposes only.
4. The Appeal is the subject of two Unilateral Undertakings (UUs). The first UU secures financial contributions towards off-site open space, including for the provision and/or improvement of off-site open space and its future maintenance, and for an education contribution. A second UU was submitted following consultation after the end of the original Inquiry, to secure the provision of the development as 100% affordable housing. The effect of the UU is considered below, and I have taken it into account in re-determining the Appeal. In the lead up to the Hearing the Appellant submitted a deed of variation to the affordable housing UU which introduced a further cascade. However the deed of variation was withdrawn by the Appellant before the

Hearing opened, and it was confirmed at the hearing that the appellant no longer wished to rely upon it.

5. In the time between the original Inquiry and the Hearing, the Environment Agency (EA) altered the flood risk mapping, so that part of the site now falls within flood zones 2/3. In response, the Appellant submitted a revised Flood Risk Assessment (FRA), and carried out a sequential test and an exception test in the light of advice in the National Planning Policy Framework (NPPF). These matters are considered below. In the event of my finding that the relevant tests were not met, the Appellant invited me to consider granting outline planning permission on a reduced area of the site, to avoid the areas of the site at increased risk of flooding. This would reduce the number of houses that could be built on the site, but it would remain within parameters of the description of development (up to 20 dwellings).
6. Aston Lodge Residents Association appeared at the Hearing as a Rule 6 party

Main Issues

7. The main issues are:
 - Whether or not the proposed development would accord with the development plan's strategy for the distribution of housing in the Borough, including its location, tenure and affordable housing need, with particular regard to whether it would fall within the terms of Policy C5 A of The Plan for Stafford Borough;
 - The effect of the proposed development on ecology;
 - Whether the proposed houses would be safe from flooding and whether the proposal would increase the risk of flooding elsewhere.

Planning Policy

8. The statutory development plan for the area comprises The Plan for Stafford Borough, adopted June 2014 (TPSB) and The Plan for Stafford Borough - Part 2, adopted January 2017.
9. Spatial Principle 3 (SP3) identifies a sustainable settlement hierarchy which aims to deliver the majority of future development in the County Town of Stafford, the Market Town of Stone and a number of identified key service villages (KSVs). Spatial Principle 4 (SP4) sets targets for the distribution housing development as follows: Stafford 70%; Stone 10%; KSVs 12%; Rest of Borough Area 8%.
10. Spatial Principle 6 (SP6) gives priority to supporting the rural sustainability of the Borough, including by promoting '*(iii) appropriate rural housing schemes to achieve sustainable communities*'.
11. Spatial Principle 7 (SP7) states that development in settlements not identified in SP3 or in the countryside will only be supported where it is consistent with the objectives of SP6, and Policies E2¹ and C5 in supporting rural sustainability.
12. TPSB Policy C5 A is concerned with new residential development outside settlement boundaries. It states that in areas outside the settlements identified

¹ Policy E2 permits residential developments outside of settlement boundaries which accord with Policy C5.in residential areas.

in Spatial Principle SP3, proposals for new residential development will need to meet the criteria listed in SP7, with all of the following criteria: 1. a demonstration that provision cannot be accommodated within the settlement hierarchy; 2. A parish based Local Housing Needs Assessment to accompany any planning application, proving that it will meet the defined needs; and 3. a high quality design that reflects the setting form and character of the locality and the surrounding landscape.

13. Affordable housing will be permitted on 'rural exception sites' provided that it meets the following criteria: a) the site is well related to existing development by being within or adjacent to an existing settlement; b) the site delivers 100% affordable housing (defined as social rented or intermediate housing) in perpetuity; c) provide an element of specialist housing, subject to local need; d) the housing is justified by a Parish based Local or via a Registered Provider, to ensure that the accommodation remains available in perpetuity, to meet the need for which it was permitted.
14. Stone Neighbourhood Plan, which includes the appeal site in its area, was the subject of a report by an independent examiner in August 2019. Subject to a number of recommended modifications, the Examiner concluded that the plan meets all necessary legal requirements and should proceed to referendum. In the draft neighbourhood plan, the appeal site and adjoining land to the north was proposed to be designated as a Local Green Space (LGS34). In his report the examiner recommended that only the footpath and stream course and their related spaces to the north (and not the appeal site) be included as Local Green Space. On 5 March 2020 the Borough Council approved a modified plan which accords with the examiner's recommendations to go forward to referendum, but this is now unlikely to happen until May 2021 because of the Covid pandemic. Nevertheless it is an advanced stage, and attracts significant weight.
15. The National Planning Policy Framework (NPPF) sets out advice on rural housing at paragraphs 77 and 78:

"77. In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this."

78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby."

The glossary to the NPPF defines rural exception sites as follows:

"Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning

authority's discretion, for example where essential to enable the delivery of affordable units without grant funding."

Planning History

16. The SoCG sets out the long planning history of the site in some detail at Section 5. It was included in the outline planning application for residential development of the Aston Lodge Park estate in 1983. A further outline planning permission was granted in 1990, subject to a supplemental Section 52 Agreement, which includes a clause 'withdrawing and/or revoking' without compensation the permission for any residential development of the appeal site and requiring the developer to culvert the watercourse crossing the appeal site and to grade, seed and maintain the appeal site until it is developed as a local centre.
17. The Aston Lodge Park site – including the appeal site – was allocated for residential development in the Stone Area District Plan, a statutory plan adopted by the Borough Council in 1980. Related supplementary planning guidance including the site was adopted in 1981. The site was shown as being within the residential development boundary of Stone on the Stafford Borough Council Local Plan 2001 proposals map.
18. However, it is agreed in the SOCG that in the current development plan, the appeal site is located outside the settlement hierarchy (TPSB Policy SP3) outside the settlement boundary of Stone (TPSB Policy SP7) and lies in the 'rest of Borough Area'.

Reasons

19. The appeal site extends to 0.67 ha. An incised stream course was culverted and filled in to carry Saddler Avenue across the stream/valley so there are now two culverts beneath the site, the routes of which are shown on the application plan.
20. The sites slopes gently down from the Saddler Avenue frontage to the back of the site. Generally grassed in accordance with the requirements of an earlier legal agreement, the site has an open appearance with few features to distinguish it from other areas of countryside save for an overgrown remnant hedgerow and some tree to the north-east and south-east boundaries. Two culvert headwalls have been erected; an informal track of hardcore has been laid on the site to give access to the headwalls/culverts for maintenance purposes.
21. The footpath running just inside the north-west boundary is not a public right of way. Blackies Lane, which is a public right of way, runs just inside the south-east boundary. Both footpaths are to be retained, unaltered. The site is privately owned land over which, apart from the two footpath alignments along the north-west and south-eastern edges of the site, the public has no right of access. It is evident that parts of the site have nevertheless been used by the public for dog-walking and recreational purposes.
22. The appeal site is adjoined by residential development that is Aston Lodge Park Estate to three sides with open countryside to its north east.

Applicability of Policy C5

23. The original decision was quashed on the basis that the decision letter does not contain adequate consideration of whether the site in question was a rural exception site.
24. The appeal site lies adjacent to the settlement boundary for Stone as defined in the TPSB and has residential development on three out of four sides. Its north-eastern boundary is open to the countryside. It appears from the planning history that it was originally intended to provide a local centre for the area, but that development has never been forthcoming.
25. The Appellant and the Borough Council agree in the SoCG that TPSB Policy C5 is applicable in principle to such sites which lie in the countryside adjacent to the main towns of Stafford and Stone, and also to sites on the fringes of the Potteries conurbation in the north of the Borough. They agree that Policy C5 is therefore the relevant policy for determining applications for residential development (market and affordable) outside the settlement hierarchy including sites on the edge of settlements (but outside the settlement boundary).
26. The Aston Lodge Residents Association (ALRA) argued strongly in its statements and at the hearing that this Policy applies to rural settlements only, and clearly not to sites on the edges of the two principal settlements of the Borough, described in TPSB as the County Town of Stafford and the Market Town of Stone, respectively.
27. In support of its position, ALRA argues that the development plan makes a clear distinction between Stafford, Stone, the named Key Service Villages and the rest of the Borough Area located in the rural parts of the Borough. This forms the settlement hierarchy set out in TPSB SP3.
28. In the areas outside of Stafford and Stone, ALRA highlights the key objective is 'to provide new high quality homes, including new affordable homes, on appropriate sites in existing villages, to support sustainable rural communities in the future'. Achieving rural sustainability through appropriate rural housing schemes (amongst other things) is the aim of Policy SP6, and Policy C5 is referred to as one of the means by which this will be achieved.
29. The wording of the second part of Policy C5 explicitly refers to 'rural exception site' in quotation marks, which indicates that it is a defined term. The definition then provided in the glossary is that a 'rural exception site' is '*a site to be used specifically for affordable housing in communities that would not normally be used for housing*'. Accordingly ALRA contends that, in order to comply with Policy C5 the site must provide for rural communities, in accordance with the Policy aim of Policy SP6 to promote rural communities and achieve rural sustainability. This aim would not be met if Policy C5 permitted housing which promoted or supported urban communities, such as Stone. ALRA further contend that this interpretation accords with the policy set out in the NPPF in paragraphs 77 and 78.
30. On a proper interpretation of Policy C5A, ALRA considers that the Inspector must determine whether the appeal proposal will provide affordable housing in a rural community. In ALRA's submission, it plainly will not. The appeal site

is within the Stone Town boundary². As the Council concluded in its second Committee report, housing on the appeal site would support the market town of Stone and would not therefore provide housing in a rural community. The appeal proposal does not lie within Policy C5 and accordingly is not supported by the spatial principles in Policies SP6, SP7 and E2 of the plan. It is thus incontrovertible that the proposal is contrary to the development plan, and permission should be refused, unless material considerations indicate otherwise.

31. In contrast, the Appellant argues that whilst the site adjoins Stone, it is outside of Stone's settlement boundary and therefore in policy terms falls into the rural area where paragraph 6.60 of the Plan confirms that Policy C5 provides specific guidance on residential developments. With regard to ALRA's position the Appellant responds that the interpretation of policy is a matter of law. Counsel's opinion written by David Manley QC confirms that Policy C5 does not require a rural exception site to be specifically 'in' a rural community – especially as this would be a more onerous test than that found in the NPPF. Moreover, it cannot be correct that the policy says that a development must be '*in a rural community*' and yet under criterion (a) of Policy C5 it allows for sites that are adjacent to a settlement. The policy cannot be sensibly interpreted as both requiring a site to be both within a rural settlement and yet only adjacent to it.
32. In any event, the Appellant considers that the site is in a rural community. Paragraph 2.22 of TPSB recognises that Stone is the second largest market town within the Borough and provides a range of sport, recreation and community facilities, as well as providing a focus for the wider rural area. In policy terms the Appellant considers that the site is in the rural area, being outside the settlement boundary of Stone. Thus it must of necessity be part of the wider rural community outside of Stone that is referred to in paragraph 2.22. On any view, the development constitutes a rural exception site.
33. The Appellant states that the site is well related to existing development and adjacent to an existing settlement i.e. Stone. The site is in a sustainable location, on a bus route, and relatively close to amenity. The Inspector's Report on Part 2 of the TPSB acknowledged that the site was in a sustainable location, but concluded it was not required to meet the strategic distribution of new housing. Accordingly the development complies with criterion (a) of Policy C5.
34. With regard to criterion (b) – the appeal application proposes 100% affordable housing which would be provided and managed by a registered provider (RP). The mix of dwelling type and sizes and mix of tenures would be negotiated with the Council and would be secured in perpetuity through the affordable housing UU. This would give the Council control as to which areas of the Borough's affordable housing need are to be met by the proposal.

² Stone has two Parish Councils: Stone Town and Stone Rural. The site lies within the boundary of Stone Town parish (though as established above, it is not within the settlement boundary defined in TPSB – Part 2. The boundary of Stone Town parish hereabouts runs along Blackies Lane on the south-east side of the appeal site

35. With regard to criterion (c), 10% of the dwellings will be constructed to wheelchair accessible standard, thus providing an element of specialist housing.
36. With regard to criterion (d) a parish based Local Housing Needs Assessment is not required in this case, as the initial and subsequent occupancy would be controlled by an RP and secured through the UU.
37. Accordingly the Appellant concludes that the proposal fully satisfies the relevant criteria of Policy C5. This position was accepted by the Council at the previous Inquiry and is confirmed in the SoCG.
38. Having regard to Counsel's opinion, the Appellant suggests that ALRA is in effect attempting to import an additional criterion into Policy C5 which it is not entitled to do. Instead of reading the plain wording of the policy in its proper context, ALRA is trying to assert an alternative meaning which is not found from reading the plain wording of the policy and importantly which is not the meaning adopted by the Council in respect of its own Development Plan. In fact, ALRA's approach conflicts with the judgment in the case of *Tesco Stores Ltd v Secretary of State* [2012] 1 WLR 759, 780 in that *'planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.'*

Inspector's conclusions on the applicability of Policy C5

39. Guidance on the interpretation of policy was given by Lord Reed in the judgment in *Tesco Stores Ltd v. Dundee CC* [2012] UKSC 13:
'... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.' (paragraph 18)

That has to be balanced by the rider that:

"That is not to say that such statements should be construed as if they were statutory or contractual provisions.' (paragraph 19)

And the recognition that:

'... development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case, one must give way to another .. many of the provisions of development plans are framed in language whose application to a given set of facts requires an exercise of judgment' (paragraph 19)
40. In this case, the nub of the argument is whether a site located on the edge of an urban settlement can be regarded as a 'rural exceptions' site.
41. Policy C5 allows development outside the towns and key service villages in the Borough provided it meets the criteria listed in Spatial Principal SP3, and it is demonstrated that provision cannot be accommodated within the settlement hierarchy, it is accompanied by a parish based local housing needs assessment and an appraisal of the scheme proving that it will meet the defined needs, and the development is of a high quality design. Affordable

housing will be permitted on 'rural exception sites' provided that it meets specified criteria, which I now consider in turn.

Criterion a.

42. I consider that the appeal site is well related to existing development, being adjacent to the existing settlement of Stone.
43. Stone is clearly a town as TPSB makes clear. Nevertheless the site, being outside the settlement boundary lies in the area defined in SP3 as 'remainder of Borough' and is part of the countryside outside of defined settlements. Policy C5 itself does not preclude rural exception sites being on the edge of urban areas. In principle, I do not see any reason why rural housing needs should not be provided for on sites adjacent to the larger settlements, even where they are properly characterised as urban settlements, provided they are in a sustainable location. TPSB describes Stone as providing a range of sport, recreation and community facilities, as well as providing a focus for the wider rural area (paragraph 2.22). The supporting paragraph to Policy C5 states that the Policy relates to residential development proposals outside of the settlement hierarchy (Paragraph 11.17)
44. I accept that 'rural exception sites' are defined in TPSB as '*Sites used specifically for affordable housing in rural communities that would not normally be used for housing because, for example, they are subject to policies of restraint*'. In my judgment however the definition is broad enough to encompass the appeal site. Stone is a market town lying in a rural part of the Borough which provides a focus for other rural communities. As a matter of judgment, there is nothing unreasonable in the position adopted by the Appellant and the Council in the SoCG.
45. I have also taken into account the NPPF advice in paragraphs 77 and 78. The site lies in a rural area (albeit adjacent to Stone Town) and provides an opportunity to bring forward a rural exception site that will provide affordable housing.
46. The glossary to the NPPF provides a definition of rural exception sites as: "*Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding*".
47. I consider the question of whether the proposal meets identified local needs below in relation to C5 d. However, I do not consider that the proposal gives rise to any conflict of principle with relevant advice in paragraph the NPPF or the glossary definition. The site is in a sustainable location in a rural area, and is capable of meeting the needs of the local community subject to the detailed arrangements contained within the affordable housing unilateral undertaking (UU).

Criterion b.

48. Criterion b. requires that the site delivers 100% affordable housing in perpetuity.
49. The s.106 unilateral undertaking (UU) governing affordability was negotiated between the Applicant and the Council at the request of the previous Inspector. An updated UU was provided by the Appellant following the close of the Inquiry. The Inspector was satisfied that the UU would provide a suitable mechanism to secure the dwellings as affordable housing.
50. The Council and the Appellant are in agreement that the UU ensures that the initial and subsequent occupancy of the proposed dwellings would be controlled by a registered provider (RP) to ensure that the site will deliver 100% affordable housing in perpetuity.
51. The UU contains cascade clauses. The aim of the cascade is to ensure that priority would be given to applicants from the rural parts of the District, outside of Stafford, Stone and the Key Settlements. In the event of such applicants not being forthcoming, the secondary catchment would allow Applicant's from the key service villages to be considered. If the properties could still not be filled, the tertiary catchment would allow applicants from Stone to be considered (but not Stafford).
52. ALRA considers that the way in which the UU is framed does not comply with the requirement in Policy C5 for the proposal *'to ensure that the accommodation remains available in perpetuity, to meet the need for which it was permitted'*. In ALRA's view the cascade mechanism represents a commercial consideration which has no place in the consideration of whether a proposal meets and identified local need. To my mind, however, there has to be an element of realism and pragmatism to give potential RPs confidence that affordable properties can be let once they have been built. There has been no RP interest in a nearby rural exception site at Lichfield Road, Stone granted permission by the Borough Council after the previous (now quashed) appeal decision in this case was issued (but before it was successfully challenged). I was informed at the hearing that this was because the UU was too restrictive. In previous cases involving rural exception sites I was informed that the Borough Council was content to rely on an obligation which allowed Applicants from the whole of the Borough to be considered as a fall back.
53. In this case the UU is more targeted as it excludes potential Applicants from the town of Stafford. To my mind this degree of flexibility is essential to secure interest from RPs in the implementation of the site. I doubt whether affordable housing provision can realistically be targeted with the precision accuracy implied by ALRA's position. It would not be possible to guarantee that a particular affordable housing scheme would only ever be occupied by qualifying applicants from a specific settlement or group of settlements in perpetuity, without a risk of, from time to time, maintaining vacancies which would deprive a person in need of available affordable housing simply because they did not live in the specified community. On this basis I consider that the position adopted by the Appellant and the Council in the SoCG is, as

a matter of judgement, a reasonable interpretation of the requirements of criterion b. of Policy C5A

Criterion c.

It is not disputed that the proposal would provide an element of specialised housing (10% wheelchair accessible). A local resident suggested that the site was not suitable for wheelchair users as it is some distance from the town centre, not served by a bus route to the door, and separated from the town centre by a level crossing over a busy railway line. I acknowledge that the railway line represents an obstacle for wheelchair users. However, wheelchair users are not necessarily dependant on public transport, and the site is accepted as being a sustainable location for housing in general, and it is reasonable to expect a proportion to be suitable for specialist use.

Criterion d.

54. ALRA considers that a parish led local housing needs survey is a pre-requisite for identifying affordable needs in the context of rural exceptions policy. However the wording C5 d. is clear that housing is to be justified on the grounds of local needs, unless the initial or subsequent occupancy of such developments is controlled through planning agreements or conditions via a Registered Provider, to ensure that the accommodation remains available in perpetuity, to meet the need for which it was permitted.
55. I have set out above why I consider that some flexibility with regard to the cascade is required for pragmatic reasons, and this has been recognised by the Borough Council in determining other exceptions sites schemes. With regard to need, the Appellant states that the scheme would provide for needs in Stone Rural Parish, a large rural area with a number of small settlements (but no key service village). I accept that no survey of local need has been carried out to demonstrate the need for affordable housing in this location. On the basis of C5 d. the Appellant considers there is no requirement to carry out a needs survey, and relies on the statement in TBSP that *'Demand for housing in Stafford Borough is high from a combination of natural demographic change, an increased growth in single person households and inward migration from adjoining areas. Affordability is particularly acute in rural areas and Stone Town, due to an influx of more affluent residents seeking a rural setting and relatively good accessibility. This has led to the exclusion from the housing market of particular groups, including young people, single parent families and those on below average wages. Therefore, the provision of affordable housing is a key priority to be addressed by the new Local Plan.'* (TPSB Key issues and challenges, paragraph 4.1).
56. TPSB does make provision for affordable housing to be delivered on sites within development boundaries and allocated sites. Policy C2 requires that 40% of dwellings on sites of 12 dwellings or more in Stone should be affordable housing. In the Key Settlements the proportion varies between 30% and 40%. In the rest of Borough Area 30% affordable housing should be provided on sites of 3 dwellings or more.
57. The Council can demonstrate a five-year housing supply, and there is no suggestion that any of the most important policies relevant to the delivery of

housing are out of date. It is agreed that the tilted balance is not engaged in this case. The distribution of housing completions to date is generally in line with the plan's targets (SoCG para 10.5). Affordable housing provision to date is covered in Section 11 of the SoCG. The Council's 'Stafford Borough Authority Monitoring Report 2019' shows that since the start of the plan period (2011 – 2031) affordable housing delivery has fallen short of the annual target of 210 affordable dwellings per year. The cumulative shortfall over the nine years of the plan period is 412 units in the 2018/19 monitoring year³.

58. While not resiling from the SoCG, the Council stated that it has been successful in achieving the delivery of 100% affordable housing sites in a number of locations, including Manor Rise in Stone, 4 sites in Key Service Villages, and three sites in the rest of the Borough. In addition it identified 7 other schemes totalling 197 units which are either yet to complete or have not started on site. This figure includes the scheme at Lichfield Road, Stone, for 20 units, which the Council says has not proved to be attractive to registered providers due to the restrictive cascade mechanism contained within the UU.
59. I note also that the Council considers that existing completions and commitments (including sites with planning permission and Strategic Development Locations where planning permission has not yet been granted) indicate an oversupply in relation to the distribution of development in the Borough in accordance with SP4, although I note that the projected oversupply in the 'Rest of Borough' is only some 2%. However, I do not consider that permitting a development of this scale as a rural exception would have any significant implications for the projected distribution of development in TPSB.
60. In summary I conclude that, read in the light of the Tesco judgement, and subject to the affordable housing UU, the proposed development would comply with the provisions of Policy C5 A. I acknowledge that there are elements in TPSB (including the glossary definition of rural exception sites, and the references in the policy to local housing needs survey) which pull in different directions. I have some sympathy with arguments that rural exception schemes should relate to specific rural settlements, should be accompanied by a demonstration of local need based on a local housing survey and ideally should have an identified RP on board. However, the policy itself does not say that. As the Council acknowledge, it states in clear terms that *'Housing is to be justified on the grounds of local needs, unless the initial and subsequent occupancy of such developments is controlled through planning agreements or conditions via a Registered Provider, to ensure that the accommodation remains available in perpetuity to meet the need for which it was permitted'*.

Flood Risk

61. The approach to flood risk is set out in the NPPF (paragraphs 157 – 161), which requires a sequential, risk-based approach to the location of development so as to avoid, where possible, any flood risk to people and

³ The 2019/20 updated monitoring report was published shortly before the hearing. It was agreed at the hearing that it made no substantive difference to the cases being argued.

property. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. If it is not possible for development to be located in zones with lower risk of flooding (taking into account wider sustainable development objectives) the exception test may have to be applied. For the exception test to be passed it should be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
62. Both elements of the exception test should be satisfied for development to be allocated or permitted.
63. As a consequence of the amendment to the Flood Map by the EA and the inclusion of part of the site in Flood Zones 2/3, the sequential test and exception test are now engaged. The Appellant submitted a report entitled 'Land off Sadler Avenue, Stone: Sequential Test and Exception Test' and a 'Position statement: Flood Risk' prepared by Weetman.
64. The sequential test looks for alternative sites assessed by the Council in its up to date Strategic Housing and Employment Land Availability Assessment (SHELAA) dated December 2019. It considers sites located within Stone Rural Parish and in that part of Stone Town Parish lying between the Stone Town Parish lying between the defined settlement boundary and the (inner) Stone Rural Parish boundary. The sites were evaluated using some 9 criteria derived mainly from the criteria in Policy C A
65. The Appellant's conclusion is that no sequentially preferable reasonably available sites appropriate for the proposed development located within Stone Rural Parish with a lower risk of flooding have been identified. It is argued that, as a general rule, potential sites are not located within or on the edge of a settlement or are too large or too small to accommodate the development that is the subject of this appeal and none propose affordable housing.
66. All SHEELA assessed sites (14 sites) within the Stone Town Parish area were then assessed using the identified criteria. Four of these sites are located within the urban area, and were discounted as not being in the rural area.
67. The remaining 10 were on the outer edge and immediately adjoining the built up area boundary as defined in TPSB. 8 were considered too large to accommodate the appeal proposal. Several were farms owned by Staffordshire County Council where the whole farm was put forward as being available for development. Another failed because of conflict with HS2 safeguarding and conflict with an extant employment allocation. None of the sites are put forward for 100% affordable housing. In all the Appellant concludes that 29 sites identified in the SHELAA were assessed against the criteria of Policy C5A in accordance with the advice in NPPF paragraph 158 and no reasonably available sites appropriate for the proposed development

in sites of lower flood risk of flooding, were identified. On this basis the Appellant considers that the site satisfies the sequential test.

68. With regard to Part A of the exception test, the Appellant concludes as follows:

- There would only be a minor, short term impact on local well-being as a result of the loss of permissive access to the site for recreational purposes.
- Provision of 100% affordable housing in a rural area (including specialist housing) would ensure wider sustainability benefits, particularly in the light of the current underprovision of affordable and specialist housing in the Council's area and the lack of delivery on rural exception sites.
- The flood risk mitigation measures proposed by the Appellant and endorsed by the EA will not only mitigate the impact of the development on flood risk, but would also mitigate the impact of climate changes on neighbouring properties without which they could suffer adverse flooding effects as a consequence of climate change.
- The proposal delivers on-site biodiversity benefits by providing enhanced linkage between the two habitat corridors
- The use of a site which was raised and profiled as a development site would obviate the use of greenfield land elsewhere.

Accordingly, the Appellant concludes that the proposal would provide significant wider sustainability benefits to the community that outweigh the flood risk in this case.

69. With regard to Part B of the exceptions test, the EA has recommended a number of conditions based on the flood risk assessment, including easement definition, enhanced maintenance of the existing culvert and trash screens; specified minimum finished levels; safe routes in the event of flood; a surface water drainage strategy incorporating a sustainable drainage system and an appropriate management and maintenance programme. An additional condition withdrawing permitted development rights seeks to ensure that overland flows are not interrupted. Subject to these conditions the development would be safe for its lifetime and flood risk to nearby properties will be likely to be reduced. On this basis the Appellant concludes that Part B of the exception test is satisfied.

70. I am not persuaded that the Appellant's application of the Sequential Test is a clear demonstration that there is no sequentially preferable site which could accommodate the proposed development. The current development plan makes provision for a range of housing needs, including affordable housing on allocated sites, including sites in Stone and in the Rural Settlements. These have been the subject of flood risk assessment as part of the development plan process and may be assumed to be compliant with the flood risk provisions set out in National Guidance. Other potential future housing sites identified in the SHELAA may be suitable for accommodating affordable housing as part of larger developments.

71. I do not consider that the guidance in the NPPF and PPG on the application of the sequential and exceptions tests provides any justification to restrict the assessment to sites of similar size, and only sites suitable for 100% affordable housing. The elimination of other sites from consideration artificially limits the range of sites in the Borough where rural affordable housing needs could be met. In my opinion the evidence fails to demonstrate that there are no other potential sites suitable for the development proposed at lower risk of flooding.
72. Even were the sequential test met, which I do not accept, the exception test requires flood risk to be weighed against wider sustainability benefits of the proposal. I accept that there is a sustainability benefit from the provision of 100% affordable housing, including 10% wheelchair suitable housing. However the Appellant has put forward an option of developing part of the site, excluding that part in Flood Zones 2/3. The appeal proposal is considered a 'major development' in flood risk terms. While the amount of housing achievable would be slightly reduced (and the consequent sustainability benefit) I do not consider that inclusion of that part of the site in Flood Zone 3 within the development is justifiable by reference to either the sequential test or the exception test. Accordingly I conclude that if the eventual planning balance favours allowing the appeal, it should be on the basis that no development should take place on the land within Flood Zones 2/3. This could be achieved by an appropriate condition.
73. I am aware that the Environment Agency did not change its advice on the development following the change to the flood mapping. This was confirmed in a letter dated 16 July 2018 which stated that 'This change in our Flood Mapping does not change our stance detailed in [a letter of 19 April 2017] where we recommended conditions to ensure flood risk did not increase elsewhere and the development is safe for future occupants.' The EA confirmed that the position remained the same by e-mail dated 14 September 2020. However it is for the local planning authority (and the Inspector on appeal) to be satisfied that the sequential and exceptions tests are met, and for reasons given above I have concluded they are not.
74. The FRA identifies that historic flood events at the site are accounted for by the lack of, or inadequacies in the maintenance regimes for the culverts. The culverts are not proposed to be enlarged, though conditions put forward by the EA would require access to the watercourse side-walls and culvert trash screens to be maintained, together with an appropriate management and maintenance plan to ensure continued performance of the scheme. There remains a risk of obstruction and flooding events affecting the land in Flood Zones 2/3. While the Appellant considers that the site is not particularly vulnerable from a flood risk point of view, Flood Zone 2/3 land should not be used for more vulnerable uses such as housing unless the sequential and exception tests mean that no other options are available. That has not been demonstrated here.
75. Concern was raised at the hearing about the potential for the development to exacerbate flooding of neighbouring existing properties which has been experienced in the past. This matter was addressed in detail in the Council's first Committee Report. The EA advised at the time that the development would not increase flood risk to off-site existing dwellings during all flood

events up to the 1 in 100 annual probability fluvial event including a 20% allowance for climate change. A technical design solution could be required by condition to mitigate a potential off-site flood risk effect. A sustainable drainage scheme would ensure that discharge rates from the site would not increase as a result of the development so that they will not increase the flood risk downstream. While it was noted that a neighbouring property is currently at risk of flooding, that risk would not be increased by the proposed development subject to the imposition and subsequent compliance with the conditions proposed by the EA and the Lead Local Flood Authority.

76. As discussed in paragraph 5 above, in the event of my finding that the relevant tests were not met, the Appellant invited me to consider granting outline planning permission on a reduced area of the site, to avoid the areas of the site at increased risk of flooding. This would reduce the number of houses that could be built on the site, but it would remain within parameters of the description of development (up to 20 dwellings).

Effect on Ecology

77. The appeal site comprises an area of open rough grassland bounded by regenerated hawthorn hedge along Blackies Lane, on its southern boundary with the adjoining agricultural fields. The site includes areas of bramble adjacent to these boundaries, but for the most part the site is rough grassland. The western boundary is open and abuts Saddler Avenue and the northern boundary, which includes a tarmac path and lighting abuts residential properties.
78. A report submitted by Dr Emley, set out a summary of his observations of the site from regular visits over the past 25 years. It includes details of sightings made up to September 2020 and includes a number of species that are of significance in a county and national context. Dr Emley has a keen interest in the natural world and has been active in a number of local natural history societies. He identifies a number of features including the fence line and bordered by deep brambles along the eastern boundary of the site, which he describes as an important habitat for breeding summer migrants, and a nectar source for many insects. The bulk of the site is grassland of varying heights, dominated by False-oat grass, Cock's foot Grass, perennial Rye Grass and Yorkshire Fog but with a number of other species supporting a diversity of insect life. The hedgerow adjacent to Blackies Lane supports the White-letter Hairstreak, one of our rarer butterflies. The annexes to Dr Emley's report detail 90 plant and tree species, 21 butterflies, seven types of bumblebee, two cricket species and 40 bird species which have been observed within the site. While only a small area, rough grassland like this is considered to be a valuable habitat which provides a valuable habitat for many species, especially grassland butterflies. It has considerable wildlife, educational and recreational importance and also functions as a wildlife corridor.
79. In addition Staffordshire Wildlife Trust (SWT) commented that the grassland area contains species that are characteristic of high ecological value MG5 grassland with potential, through sympathetic management (e.g. annual hay cut removing arisings), for an increase in floral diversity. However it was acknowledged that these species were not present in high enough

abundances to warrant the grassland being classed as a habitat of principle importance.

80. These submissions were reviewed by Haslam Ecology on behalf of the Appellant. The high ecological value of the hedgerow along Blackies Lane, and the need for hedgehog mitigation is agreed. These could be secured by condition. The proposal also includes planting of a new hedge along the fence line which would benefit ecology.
81. However, they state that due to the high frequency of bulky grass species, the site is considered to comprise MG1 grassland. This type of grassland is very common on a local, regional and national scale and is recognised as a habitat of low ecological value. The habitat is associated with compacted, previously disturbed substrates and tends to be a sign of enrichment. Contrary to the view of SWT annual cutting, even with the arisings removed, will not diversify the grassland species composition.
82. The Appellant considers that the habitats of high ecological value will be retained with a buffer zone, so that the associated species, including the White-letter Hairstreak will be retained and the impact on them from development will be negligible. The site is currently well used by the public, which gives rise to a high level of disturbance and reduces its value for breeding species. Invertebrates and birds are in any event highly mobile species. The surrounding area contains similar habitats suitable for the range of species present on the appeal site. The evidence of Dr Emley and SWT does not confirm that the site would meet the criteria for identification as a Local Wildlife site.
83. The Appellant considers that the high ecological value of the site will be retained and enhanced. The new hedgerow and habitat enhancement will strengthen habitat connectivity around the site. The restriction of unauthorised public access will reduce the disturbance pressure on local bird populations during the breeding season and that there is likely to be an overall net gain in biodiversity as a result of the scheme. Due to the small site area, the low ecological value of the dominant habitat, the retention and enhancement of high ecological value habitats and their associated species there is no need for additional surveys to inform the decision.
84. The previous Inspector concluded that he was satisfied that the proposed development would not result in material harm to the ecology of the area and would therefore be in accordance with TPSB policy N4 which seeks to protect the natural environment and green space and with paragraph 175 of the Framework. He found that the ecological information before him did not demonstrate that the site is of such value and importance that, containing habitat and species that would significantly elevate its level of protection. Where important species are identified there is suitable mitigation and there would not be a loss of significant or important habitat. This part of the decision was not the subject of the High Court challenge which resulted in the quashing of the first appeal decision.
85. The Council's Biodiversity Officer has raised no objections to the current proposal subject to the attachment of conditions requiring that the

recommendations included in the ecological appraisal undertaken in April 2016.

86. Having considered the updated evidence of Dr Emley and the submissions by SWT, and the response by Haslam ecology I consider there is no reason for me to disagree with the previous Inspector on the effects of the proposed development on ecology. While I appreciate the value placed on such areas by members of the public, those parts of the site where there is a right of public access will be retained, and the ecological value enhanced. I also understand that any site has potential for its ecological value to be enhanced by appropriate management techniques designed to promote bio-diversity. However, there is currently no obligation on the site owner for any part of the site to be managed in such a way.

Other matters

87. A number of residents expressed concern about highway safety and considered that the additional vehicle trips generated by the dwellings would be harmful to the safety of road users and pedestrians. However I note that the proposal was supported by a Transport Statement and this was considered by the Highway Authority which raised no objections and advised that the development was acceptable, and highway safety did not form part of the reasons for refusal. These matters can be addressed satisfactorily through reserved matters applications.

Conditions

88. A draft list of suggested conditions was prepared and discussed at the Hearing. I have considered the conditions in the context of the advice in the Planning Practice Guidance.
89. Conditions 1 to 3 are the standard outline conditions and there is no reason to vary these. Condition 4 relates to the identification of the approved plan which the PPG advises is good practice.
90. Condition 5 provides for a Construction Method Scheme to safeguard the living conditions of the surrounding residents and in the interest of highway safety. Conditions 6 through to 9 are required to ensure the development is appropriately drained and to mitigate the potential flood risk. Condition 10 is also required to ensure the development is appropriately drained. Condition 11 is required in the interests of local ecology.
91. Condition 12 would require planning permission to be obtained for the specified classes of development (which would otherwise be permitted development), in the interests of avoiding off-site flood risk. Condition 13 is an additional condition proposed by the Appellant in the event of my finding that the sequential test and exceptions tests are not passed, and is necessary to ensure that no development takes place on the parts of the site that are identified as lying within Flood Zones 2/3. Condition 14 is necessary to ensure that a proportion of the dwellings permitted are suitable for wheelchair users.
92. Conditions 5, 6, 8 and 10 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all

cases the matters they address are of an importance or effect and need to be resolved before construction begins.

93. ALRA drew attention to a number of other drainage and flood-risk conditions which were canvassed by consultees at the time of the application. However I am satisfied that the conditions put forward by the Appellant and agreed by the Council have fully addressed all drainage and flood-risk matters, and would ensure that the scheme would be satisfactory in this respect.

Overall conclusions and planning balance

94. I have concluded that although outside the settlement boundary of Stone, the proposed development, which is for 100% affordable housing would comply with Policy C5 of the Plan for Stafford Borough, for reasons set out at length above. In view of the small number of dwellings and its status as an exception site it would not involve prejudice to the development plans strategy for the distribution of housing in the Borough as set out in Policies SP6, SP7, and E2 of TPSB, and would comply with the development plan as a whole.
95. With regard to the question of flood risk, while I have not accepted the Appellant's conclusion that the sequential and exception tests are passed, I accept that, subject to a condition preventing development from taking place within land identified as being within Flood Zones 2 and 3, and other conditions mitigating any potential flood risk, the development would be acceptable in flood risk terms.
96. Planning law requires that planning applications are determined in accordance with the development plan, which is up to date, and the Framework advises that in such circumstances, permission should be approved without delay. Subject to the attachment of conditions discussed above I consider that the scheme would not cause material harm in respect of flood risk and ecology. The provision of affordable housing to meet an acknowledged need in this part of the Borough, including a proportion of wheelchair suitable housing, is a significant benefit which supports the granting of permission in this case.
97. For the reasons given above I conclude that the appeal should be allowed.

David Richards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Sharpe
Grant Anderson

Paul Sharpe Associates
Solicitor, Hill Dickinson

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader
John Holmes
Anna Nevin

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Development Manager
Health and Housing Manager

FOR ASTON LODGE RESIDENTS ASSOCIATION:

Anjoli Foster
Matthew McFeeley
Robert Townsend
Helen Townsend
Joe Stripp

of Counsel, Landmark Chambers
Richard Buxton and Co.
Resident
Resident
Resident

INTERESTED PERSONS:

Sir William Cash M.P.

Member of Parliament for Stone

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans : PSA/FE/001.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:-
 - i) a site compound with associated temporary buildings;
 - ii) the routing of construction vehicles to and from the site;
 - iii) the parking of vehicles of site operatives and visitors;
 - iv) loading and unloading of plant and materials;
 - v) storage of plant and materials used in constructing the development;
 - vi) measures to prevent the deposition of deleterious material on the highway including wheel washing facilities;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) measures to control the emission of dust and dirt during construction;
 - ix) no burning on site during the development;
 - x) all site works and construction works together with deliveries to the site shall only take place between the hours of 08.00 and 18.00 on Mondays to Fridays inclusive and between 08.00 and 14.00 on Saturdays and not at all on Sundays or on Bank Holidays and other Public Holidays. In addition any equipment that must be left running outside the permitted hours of work shall be inaudible at the boundary of occupied residential properties.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) No development shall take place until a site layout scheme to provide a minimum 5 metre easement to each side wall of all watercourses on site and suitable vehicle access to culvert inlet trash screens, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

- 7) The development hereby approved shall only be carried out in accordance with the approved Flood Risk Assessment (FRA), Draft Report v2.0, dated 23 December 2016 approved Flood Risk Assessment (FRA), Draft Report v2.0, dated 23 December 2016 and the following mitigation measures detailed within the FRA:
- (i) Demonstration within the FRA that the improvement/protection and maintenance of existing culvert and inlet trash screens will be provided – Section 5.1.1;
 - (ii) Finished floor levels are set no lower than 102.29m above Ordnance Datum (AOD) – Section 5.1.2;
 - (iii) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven – Section 5.1.3;
 - (iv) Provision of compensatory flood storage to ensure there is no loss of flood storage capacity for all flood events up to the 1 in 100 annual probability fluvial event including 20% for climate change, critical flood event – sections 5.1.4 and 5.2. Upon completion of the compensatory flood storage scheme an “as built” topographical survey of the area of flood plain compensation shall be submitted to and approved in writing by the local planning authority.
- The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme.
- 8) No development shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall be based on the design parameters and proposed strategy set out in the Flood Risk Assessment (Ref 2958/FRA_v2.0, December 2016). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- 9) Provision of an appropriate management and maintenance plan and programme for the surface water drainage scheme to ensure continued performance of the system for the lifetime of the development shall be submitted to and approved in writing by the local planning authority before any dwelling is occupied and shall be implemented thereafter in accordance with the agreed programme.
- 10) 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 development shall subsequently be implemented in accordance with the approved details before the development is first brought into use.
- 11) The mitigation measures set out in the Recommendations & Mitigation section 5 of the Preliminary Ecological Appraisal submitted as part of the application, undertaken by Haslam Ecology dated December 2016 shall be undertaken in full accordance with the appropriate timings and any timescales associated with the implementation of the associated landscaping scheme.
- 12) Notwithstanding the provisions of Schedule 2 Parts 1 and 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015

(or any order revoking and re-enacting that Order with or without modification) development of the following Classes shall not take place without the prior permission of the local planning authority:

Part 1 – Classes A, D, E & F

Part 2 – Class A

- 13) No development shall take place on the land shown as Flood Zone 2/3 on the plan attached as Appendix 13 to the Appellant's Statement of Case to the hearing.
- 14) A minimum of 10% of dwellings shall be designed and constructed to wheelchair standard; details of the location and design of which shall be set out in the first application for approval of reserved matters submitted pursuant to condition 2.