



Appeal Decision

Site Visit made on 6 July 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2021

Appeal Ref: APP/R0660/W/21/3271467

Two Oaks Whitchurch Road, Spurstow, Tarporley CW6 9TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Alex Clifford against the decision of Cheshire East Council.
 - The application Ref 20/2999N, dated 13 July 2020, was refused by notice dated 21 September 2020.
 - The development proposed is construction of 3 family homes and revision to existing driveway.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, I have taken the site address to be 'Two Oaks' than 'Two Oakes', as this appears to be incorrect on section 1, site address on the application form.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In the interests of natural justice both main parties have had the opportunity to make representation. In reaching my decision I have had regard to the revised Framework.
4. As part of the appeal, the appellant has included a tree report¹. The Council has had the opportunity to comment on the report. I do not consider that its interests would be prejudiced if I take this tree report into account. I shall therefore determine the appeal for outline planning permission on the basis of the plans at the time of determination, as well as the tree report submitted as part of this appeal.
5. The application was submitted in outline with some matters reserved. The application form indicates that approval was sought for layout, with the matters of access, appearance, landscaping and scale reserved for future approval, the Council dealt with the application on this basis and so shall I. The appellant has provided indicative plans and information relating to the access, driveway and visibility splays to illustrate how the properties could be accessed at the site. I have therefore taken these into account in so far as establishing whether it would be possible, in principle, to erect the dwellings on the site.

¹ Arboricultural Survey and Implication Assessment; Lowther Forestry Group; Dated 12 March 2021

Main Issues

6. The main issues are (i) whether the appeal site forms a suitable location for development having regard to national and local Planning Policies; and (ii) the effect of the development on non-protected trees.

Reasons

Suitable location

7. The appeal site comprises of an area of land positioned to the east side of Whitchurch Road and is associated with the detached dwelling known as Two Oaks. It falls outside of the settlement boundary of Spurstow and is therefore within the designated open countryside.
8. Policy PG6 of the Cheshire East Local Plan, Local Plan Strategy 2010-2030, 2017 (CELPS) sets out the Council's approach to development within the open countryside. Development will be permitted that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area. The policy allows that certain exceptions can be made, where it would meet the criteria. This includes at criteria 3(i) *where there is an opportunity for limited infilling in villages; the infill of a small gap with one or two dwellings in an otherwise built up frontage elsewhere.*
9. The Council contend that there are various policy exceptions to consider, including whether the proposal represents 'infill', if the development is 'limited' and whether the site is located in a 'village'. They maintain that the appeal site is not considered to form part of the village of Spurstow, even though it is adjacent to the settlement boundary, as it is separated by the A49 Whitchurch Road, which acts as a barrier to the very little amenities within Spurstow.
10. I have had regard to the judgement², in considering whether a settlement is a village or whether a site is in a village as the local plan boundary of a village is not determinative for that purpose. Therefore, it is necessary to consider the situation "on the ground" as well as any relevant policies. It is a matter of judgement depending on those factors.
11. In this case, although the appeal site falls outside of the settlement boundary, Spurstow does contain a significant number of residential properties, albeit sporadic in part. The Local Plan identifies Spurstow as being a village with a defined settlement boundary. The settlement boundary finishes along the east at the boundary of Two Oaks but continues along the west to properties along Back Lane / Nursery Lane. Therefore, the appeal site would not be seen in isolation to those properties, the restaurant opposite and Lowdown Cottage.
12. Neither, do I consider that the A49 stifles the site location or could be considered as a buffer preventing the site from being within a village. Particularly, due to the width of the road and that there is built development along both the east and west at this part and adjoining the site.
13. There is no definition of infill within the Framework, and it is therefore a matter of planning judgement. However, the glossary within the CELPS, defines infill development as *'the development of a relatively small gap between existing*

² Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

buildings'. Whitchurch Road is characterised by residential dwellings and towards the north of the appeal site these are positioned in close proximity to each other, with no significant or small gaps. The neighbouring dwellings, between the appeal site, of Two Oaks and Lowdown Cottage are a considerable distance from each other taken from north to south. The Council confirm this to be over some 100m, with the appellant marginally disagreeing between building and site gaps.

14. Even if, I was to consider that only 3 dwellings would constitute limited development, taking into consideration the site context, either of the figures, this leads to a significant distance between those dwellings located on the east between the appeal site. It could not be characterised as being an infilling which would constitute a relatively 'small gap' between existing dwellings or that the site lies within a group of dwellings or forms part of a row of existing dwellings.
15. Furthermore, the existing pattern of development along the east side of Whitchurch Road does not have an otherwise built-up frontage. Two Oaks is set within its own grounds and set back from the roadway. This is inconsistent with the group of semi-detached properties further to the north. Moreover, this is added to, by the significant gap already identified between the appeal site and existing dwellings. As such, the proposal fails to meet the exceptions at 3(i).
16. There appears to be very little in day-to-day services within the village of Spurstow. The appeal site is located almost at the furthest point of the settlement. Despite, a restaurant being located adjacent to the site with a car park, there were no footpaths at the appeal site, its proposed access, and there are none on both the east and west side towards the south. Neither was there any identifiable street lighting serving the site or along the roadway.
17. Furthermore, I have been provided with limited evidence of nearby shops or day-to-day services. The appellant has made reference to a local bus service. However, I did not observe any nearby bus stops within the vicinity of the appeal site and any such service would likely to be limited. Moreover, Bunbury Aldersey C of E Primary School, appears to be some distance from the appeal site and would be a tedious walk for families wishing to access the school facility.
18. On this basis, the proposed development would not enhance or maintain the vitality of the rural community, leading to the use of unsustainable travel modes and likely to heavily rely on the private car. Resulting in minor negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services.
19. Consequently, I conclude the proposed development would not amount to a suitable location for residential development and occupiers of the dwellings would likely be heavily reliant upon the use of private transport to access basic facilities and services. It would be contrary to Policies SD1 and PG6 of the CELPS. Which amongst other things requires development to prioritise the most accessible and sustainable locations, access to local jobs, services and facilities, ensure development is accessible by public transport, walking and cycling and restricts development within the countryside unless it meets an exception.

20. Furthermore, these policies are consistent with the aims and objectives of the Framework, and as such the proposed development would be at odds with the sustainable development principles of the Framework.

Trees

21. A large number of trees lie within the site boundaries. The tree report, which accompanied the appeal was carried out with a survey of the area within the appellant's ownership. The report indicates that there is around 0.32ha of neglected plantation containing approximately 130 semi-mature broadleaf and conifer trees. The plantation surrounds the appeal site along with dense conifer hedges adjacent to the highway. The report indicates to facilitate the proposal, plantation trees would be removed of some 0.27ha, with the roadside conifer hedges remaining. Adjoining the appeal site is approximately 1.6ha of healthy canopy cover consisting of a diverse mix of trees and age ranges.
22. Trees have been identified as 6 groups (G1-G6) and 2 hedgerows (H1 and H2) and have been assessed as category C trees of low quality and value. The Council have indicated that there appears to be some discrepancies in the approach to the categorisation of the grouping of the trees in reference to the term plantation and BS5837:2012, which could lead to distortion of assessment categories. I have no reason to disagree with that assessment.
23. Table 2 of the report, the arboricultural implication assessment sets out that G1 (Larch, English Oak) and G3 (Ash, Silver Birch, English Oak, Cherry) would be felled as these are not considered sustainable due to poor form and suppression, it recommends replanting to be considered. G4 (Ash, Silver Birch, English Oak, Cherry) would be thinned and G5 (Larch, English Oak) to fell, but only selective trees to benefit those within the group with better form. The hedgerows, H1 and H2 would be pruned and managed so that their height does not become a potential issue yet maintaining some form of screening. There are no recommendations for G2 (Norway Maple) and G6 (Crab Apple, Hazel).
24. Although, the tree report sets out recommendations these seem to be reflective of arboricultural reasons for carrying out the necessary works to the trees and not the proposal. The report lacks detail and does not assess or identify how the proposed 3 dwellings would be accommodated within the site and the relationship with existing and remaining trees. Moreover, these have not been clearly identified or individually within the report with reference to G2, G5 and G6.
25. An application for outline planning permission allows for a decision on the general principles of how a site can be developed. In this case, 'layout' is a matter for consideration: *"the way in which buildings, routes and open spaces within the development are provided, situated and orientate in relation to each other and to buildings and spaces outside the development"*³.
26. Therefore, I have no substantive evidence including a proposed site plan or any evidence for comparison of the proposed dwellings in relation to their position, the 'layout' and the position of trees on the site. In the absence of any evidence to the contrary I am unable to clearly establish how the site can be developed, having regard to the amenity value of trees, their contribution to the character of the area and the proximity to the dwellings including any plot

³ Planning Practice Guidance (PPG) Paragraph: 006 Reference ID: 14-006-20140306; Revision date: 06 03 2014

dominance. Furthermore, there is no substantive evidence in regard to root protection areas or consideration of daylight/sunlight, including any future pressures of pruning or felling works to those remaining and existing trees if integrated into the development.

27. For the reasons given above, I conclude in the absence of insufficient evidence to demonstrate that the proposal would not cause significant harm to the amenity value of non-protected trees at the site. I cannot be certain that the proposed development would comply with Policy SE5 of the CELPS and as such I must find it does not.
28. The proposal would also be in conflict with the Framework in conserving and enhancing the natural environment. Paragraph 180 advises that when determining applications, the following principles should be applied, if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other Matters

29. In coming to my decision, I have had regard to the appeal decision at Peckforton⁴, the appellant has put forward within their statement of case. I have been provided with limited details of that case. Although, there may be some similarities with the appeal scheme, I do not consider this is directly comparable with the appeal site with regard to the layout, location of built development, trees and infilling of a small gap. In any case I have considered the appeal proposal on its own merits.
30. Although the proposed development would not cause any harm to living conditions, highway safety, flooding and contaminated land. This consideration does not outweigh the harm caused by the development
31. I recognise the appeal proposal would have benefits with regard to the supply of housing in the Borough, and the contribution both construction opportunities and any future occupiers would make to the local economy. These matters, however, do not outweigh my findings in respect of the main issues nor the conflict I have found with the development plan read as a whole.

Conclusion

32. The proposed development would not be a suitable location for residential development and insufficient evidence has been provided to demonstrate there would be no harm to trees. As a result, it would be contrary to the development plan taken as a whole. There are no material considerations that indicate that the appeal should be determined other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

KA Taylor

INSPECTOR

⁴ APP/R0660/W/20/3255489