



Appeal Decision

Site Visit made on 24 August 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/R0660/W/21/3273762

Alsager Court, Sandbach Road North, Church Lawton, Alsager ST7 3RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Malvern Homes Limited against Cheshire East Council.
 - The application Ref 20/4313C, is dated 29 September 2020.
 - The development proposed is demolition of an existing care home and the erection of thirteen dwellings and access drive.
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Decision

1. The appeal is dismissed and planning permission for demolition of an existing care home and the erection of thirteen dwellings and access drive is refused.

Procedural Matters

2. 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.
3. The Council have not issued a refusal notice. However, I have had regard to the Council's accompanying statement of case, in so far that it provides clarity in terms of the reasons why the Council would have refused planning permission had it been able to do so.
4. Reference has been made to the '*Site Allocations and Development Policies Document (SADPD) (Revised Publication Draft October 2020)*', however this document has not yet been examined in public. As such, in accordance with paragraph 48 of the Framework, I have afforded these policies limited weight

Main Issues

5. The main issues are:
 - whether the appeal site forms a suitable location for residential development having regard to national and local Planning Policies;
 - the effect of the proposal on the character and appearance of the area, with particular regard to design and layout; and
 - whether the proposal would make adequate provision for affordable housing and other infrastructure contributions.

Reasons

Suitable Location

6. Policy SD2 of the Cheshire East Local Plan, Local Plan Strategy 2010-2030, 2017 (CELPs) sets out development expectations, including that residential development should provide access to a range of forms of public transport, open space and key services and amenities, and incorporate measures to encourage travel by sustainable modes. The justification for Policy SD2, provides a guide to the appropriate distances (table.9.1) for access to services and amenities. In assessing the distances to services and amenities, consideration will be given to the quality of the routes.
7. The appeal site comprises of a former care home located on the eastern side of Sandbach North Road (B5078). It lies within the Lawton Heath End infill boundary as designated within the Congleton Borough Local Plan, First Review 2005, Saved 2008 (CBLP). The proposal is for new residential development incorporating 13 detached dwellings, consisting of 2 three-bed and 11 four-bed homes.
8. Despite the location of the appeal site being within the infill boundary line, there appears to be very little in day-to-day services within Church Lawton. The Council confirm that the extent of village services range to a post box and a public house. I have no evidence to the contrary, and I have been provided with limited evidence of nearby shops or day-to-day services for future residents of the development. The town of Alsager is towards the south, a considerable distance and is designated as a key service centre, providing facilities and services including shops, bus stops, train station, schools, medical centre and sports provision.
9. The appellant refers to the site being within walking distance to a number of public transport options. However, I did not observe any nearby bus stops within the vicinity of the appeal site or other public transport options, and any such service would likely to be limited. I also acknowledge the strategic transport comments, that the site remains poorly connected for non-car travel. Furthermore, there were no continuous footpaths at the appeal site to the south at the access point, and to the north this terminated at Rowan Close. The main carriageway at the site access is narrow and falls on a bend. There was limited identifiable street lighting serving the site or along the B5078.
10. Given that the proposal is for three and four bed homes, these are likely to be occupied as family homes and any future residents would have to walk within the roadway along the B5078 to reach those footways, which would not be in the best interests of public safety. Moreover, any journeys on foot or by cycle would be tedious and treacherous journeys to get to those day-to-day facilities and services within Alsager.
11. On this basis, although the proposed development would not be 'isolated' due to the small cluster of surrounding residential development. 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.

12. Consequently, I conclude the appeal site 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 SD2 of the CELPS and Saved Policy GR15 of the CBLP. These policies, taken together ensure residential development is accessible by public transport, walking and cycling; provide access to a range of forms of public transport, open space and key services and amenities; and incorporate measures to encourage travel by sustainable modes of transport and refuses permission which fails to adequately take account of its implications for pedestrian movement.

Character and appearance – Design and layout

13. Existing buildings remain on the site and are of single storey appearance. The site is unmaintained and heavily overgrown around areas of the former care home and its gardens. The proposal incorporates the construction of 13 two-storey detached dwellings of traditional design and materials. The site levels change considerably within the site with properties along Denford Place sited at higher levels. Due to the constraints of the land levels within the site the majority of the proposed dwellings would be sited towards the south, with four facing towards Sandbach North Road. The proposed density would be around 25 dwellings per hectare. The density, design and layout are considered against the context of Policy SD1, SD2 and SE1 and The Cheshire East Borough Design Guide, 2017 (SPD).
14. The SPD requires consideration of density and that adequate separation is provided between dwellings. It discourages 'zero plotting' in housing layouts. The proposed dwellings would be sited in close proximity to each other. Despite this, it appears to be a typical characteristic of the existing built form in the area including Cherry Lane and Denford Place. Nonetheless, this does not mean that such characteristics of the wider area should be replicated where they would result in pastiche developments awkwardly reflecting the past.
15. I accept that the layout is somewhat constrained due to the difference in ground levels within the site, and that densities are similar to those in the area. However, the dwellings in their current position and layout would appear as a cramped form of residential development. They would not positively sit within the locality and not provide a good quality living environment due to the inadequate spacing between each dwelling. The proposed landscaping and open space between boundaries with the dwellings fronting Rowan Close and Denford Place would do little to offset this. Therefore, there would be conflict with the guidance in the SPD, and the proposal would constitute a poor layout and design resulting in no sense of place.
16. Furthermore, due to the cramped nature and layout of the dwellings, car parking would be provided to the front of each of the dwellings. This would be seen as overly dominant and would leave little landscaping space available between each of the plots to soften the built form, driveways and car parking. The SPD guidance expects to see a variety of parking solutions to ensure balance parking where the car is part of the street scene, but not dominating it. It acknowledges that frontage parking is the most efficient form of parking layout, however when overused and badly laid out with little or no soft landscaping associated with it can be harsh and dominate the street scene with cars.

17. Therefore, the guidance sets out this type of parking should be used in a limited way and no more than five properties in one group should be served by frontage parking and landscaping should subdivide bays. The proposed layout would not provide this. Although the appellant has provided a detailed landscaping plan, advises all landscaping would remain as a high standard and well maintained by virtue of a provision of a proposed service charge to residents. This landscape mitigation would take time to fully establish, and I have limited evidence of any service charge or maintenance by future residents. Moreover, the matter of a service charge to residents would fall outside of the planning regime.
18. Nevertheless, the proposed landscaping to other areas of the site would not address the harm caused to the street scene by the lack of soft landscaping between plots or along their frontages. The lack of this, and the over dominant car parking provision would not complement the proposed landscape areas to the opposite side of the road.
19. In regard to the access road within the site, this would be private. Concerns are raised by the Council in terms of its design and it being over-engineered. Despite finding that the layout of dwellings would result in no sense of place. It would appear from the evidence before me that amendments to footways and the access road were required to satisfy strategic transport. They were welcomed improvements over the existing situation and overall designed to combine with highway safety. Furthermore, I have no substantive evidence as to why a shared surface would be more appropriate or that the road should be creatively designed. Therefore, the access road itself, and connected footways would be appropriately designed for the scale / type of development. This, however, does not outweigh the harm I have already identified.
20. I acknowledge the appellant's reference to the topographical survey. The Council has not raised any design concerns in regard to existing trees and hedges. However, it would appear that there is limited evidence that the Arboricultural Impact Assessment was informed by levels data, and that the accompanying plans did not include scaled site sections.
21. For the reasons given above, I conclude that the proposed development would be harmful to the character and appearance of the area, with particular regard to design and layout. It would be contrary to Policy SE1, SD1 and SD2 of the CELPS. Amongst other things, these policies set out that proposals should achieve high standard of design and wherever possible, enhance the built environment; ensuring design solutions achieve a sense of place. It would also be at odds with the guidance contained within the Council's SPD, as I have already set out.
22. There would also be conflict with the Framework, Chapter 12, achieving well-designed places. Particularly, paragraph 130 advises, where development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

Affordable Housing and other infrastructure contributions

23. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations) set out that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
24. Paragraph 58 of the Framework and Planning Practice Guidance (PPG) sets out that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date. All viability assessments, should reflect the recommended approach in national planning guidance, including standardised inputs.
25. CELPS Policy IN1 relates to infrastructure and requires new and improved social and community facilities, and other infrastructure to be provided in a timely manner to meet the needs of new development as they arise so as to make positive contribution towards safeguarding and creating sustainable communities, promote social inclusion and reduce deprivation. Policy IN2 seeks developer contributions to make sure that the necessary physical, social, public realm, economic and green infrastructure is in place to deliver development. Contributions will be used to mitigate adverse impacts of development. Proposals will be expected to provide a contribution towards the cost of infrastructure.
26. Policy SC5 requires that developments of 11 or more dwellings in Local Service Centres and all other locations at least 30% of all units are to be affordable. In exceptional circumstances, where scheme viability may be affected, developers will be expected to provide viability assessments to demonstrate alternative affordable housing provision.
27. Therefore, on the basis of Policy SC5 there would be a requirement for 3.9 affordable dwellings on the site. However, as the former care home closed some years ago and the site is vacant. The main parties agree that by applying the vacant building credit the provision of 1.33 (1) affordable dwelling is required onsite. The Council advise this should be provided as shared ownership through a registered provider (RP), shared equity or as a discounted sale via the Council.
28. The Council's, School Organisation and Capital Strategy department have advised that the proposal seeks an education contribution on the basis that the development would generate 2 primary school children and 2 secondary school children. On this basis there is sufficient capacity at local primary schools but not at secondary schools and a contribution of £32,685 for 2 places is required to mitigate the impact upon secondary schools. Policy SD1 and SD2 of the CELPS requires development to provide appropriate infrastructure, including education.
29. A contribution for open space has been requested towards a combined play space and amenity green space of £3,000 per family dwelling to be used to enhance the open spaces in Alsager. A green infrastructure connectivity

contribution of £1,125 per family dwelling to improve green links as laid out in the Green Space Strategy. An entrance hub and key service centres within the Congleton Area are sought at £1,000 per family dwelling. This is in accordance with CELPS Policy SE6 and SC2.

30. A financial viability assessment¹ (FVA) was submitted with the application in support of the proposal, which at that time, concludes that the appraisal shows a deficit of -£1,190,562 based on the assessment of benchmark land value (BLV) and -£895,562 based on the BLV used in the Local Plan viability assessment. The FVA acknowledges the need for 1 affordable dwelling to be provided but there is limited detail within the FVA, and limited evidence from the appellant on the requirement for the other specific infrastructure contributions set out by the Council.
31. The FVA states it would be unlikely that any RP would be interested in acquiring 1 affordable unit, so the obligation would best be delivered as a commuted sum payment towards offsite affordable housing provision. However, on either basis of figures it concludes that there would be no surplus to generate an affordable housing contribution or other infrastructure contribution.
32. The Council commissioned a separate FVA² to review the appellant's viability evidence. They consider that the main difference between the parties is the build cost of the development, of which the appellant disagrees. In addition to the difference in the build costs the appellant contends there are differences in the gross development values (GDV), which the Council adopted in their FVA.

GDV

33. The PPG sets out that GDV is an assessment of the value of development. For residential development, this may be total sales and/or capitalised net rental income from developments and other funding. The appellant submits that the GDV of the site is £4,501,000, a figure provided in the FVA. This is based on a net sales area of 1,583 sqm (17,034sqft).
34. Both of the FVA assessments assume the same sales rate but the appellant contends that the terms of the gross internal floor area differ and are incorrect. The Council's FVA has applied a figure to a gross internal floor area of 19,162sqft. It would appear that this figure has been taken from the appellant's 'Schedule of Accommodation (for Construction Cost Calculations)' and the 'Estimate Summary', which gives the total gross floor area as this. The net internal areas would normally be the useable space within a building measured to the internal finish of structural, external or party walls, it would normally exclude such areas as toilets, stairs and car parking areas.
35. I acknowledge that the Council's report advises that the assessor has not had sight of the detailed plans for the houses, only the layout. Nevertheless, it would appear that the figure has been taken from the appellant's FVA, which is supported by the 'Order of Cost Estimate'. Moreover, I have not been provided with any substantive evidence that the integral garages should have been excluded or that the two figures differ because of this. On the basis of the evidence before me, I find that the GDV has not been overly assessed by the Council.

¹ Development Viability Report, S106 Affordable Housing (Hampshire) Ltd, dated 24 November 2020

² Viability Assessment, Fifield Glyn Ltd, dated 21 July 2021

Costs

36. The PPG sets out that an assessment of costs should be based on evidence which is reflective of local market conditions. Build costs should be based on appropriate data, for example Building Cost Information Service (BCIS). This should also include the total cost of all relevant policy requirements including contributions towards affordable housing and infrastructure. These costs should be taken into account when defining BLV.
37. The Council's FVA advises that the build costs should be £144psf, incorporating the effective abnormal cost for the road. This would be a much lower figure in comparison to the appellant's conclusions and would enable the required 1 affordable dwelling and infrastructure contribution. It would appear from the evidence before me, the appellant's figures are ranging towards the upper quartile figures as set out in the upper comparable evidence and the BCIS. Which suggests that the dwellings would be of unique higher specification than what would be expected for the type and design proposed within the site.
38. Even if, I was to consider the appellant's argument that the proposed roof forms, bay windows and incorporating render justifies that the design would be of a unique higher specification. I have no evidence that the finer detail of internal specifications of fixtures and fittings, as this appears to be standard in the features in the construction works, would justify increasing such build costs. The accompanying design and access statement, states that the dwellings would use a mix of brick and cladding, varied in appearance but reflective of other dwellings within the locality.
39. Furthermore, there seems to be some discrepancies between plots in the 'order of cost' that have similar design features, bedroom numbers and specification, rather than being bespoke. Neither, have I been provided with any substantive evidence of inflating material costs due to Brexit. Nonetheless, it appears that the build cost of open market housing does include some contingency costs, reflecting abnormal costs, materials and site circumstances which is set out in the appellant's FVA.
40. Whilst the 'actual' cost of the development given by the appellant cannot be verified, based on the evidence presented to me, I conclude that this figure is inconclusive. I am therefore not satisfied on the 'actual' cost of development given by the appellant. Moreover, due to the layout of the development with houses only being facilitated on one side. It would appear that the proposals would be disproportionately expensive to build.
41. Consequently, having regard to these documents, I am concerned that the appellant's FVA is likely to understate the scheme's viability such that at least some form of affordable housing provision and/or other infrastructure contributions is likely to be affordable without rendering the scheme unviable. In coming to this conclusion, I have had particular regard to a number of considerations. For instance, the Council's evidence regarding build costs, which suggests that these costs are likely to be over-estimated in the appellant's FVA.
42. I have also given weight to the fact that the appellant's FVA does not appear to take full account of development plan policies, such as IN1, IN2, SC2 and SE6 of the CELPS, which seek the provision of other infrastructure in association with development of the type proposed.

43. Overall, therefore, in the absence of any further evidence it appears that the development would be able to support at least some form of affordable housing provision and other infrastructure contributions to make the development acceptable. On this basis the development would conflict in this regard with, Policy IN1, IN2, SD1, SD2, SC2, SC5, and SE6 of the CELPS.

Other Matters

44. I acknowledge the previous appeal³ decision at the site. Accordingly, as that proposal was for the replacement with a new care home the circumstances and main issues are not directly comparable with those which apply in this appeal. The Council refer to this being a genuine 'fallback' for the appellant that should weigh against the proposal. The appellant has stated that the suggested fallback is no longer a viable option. I am not aware of any forthcoming application for the future matters which were reserved. As such, on this basis the likely hood of the development being carried out is limited and the 'fallback' position would be unlikely to take place. I have, in any case, reached my own conclusions on the appeal proposal on the basis of the evidence before me.
45. Although the proposed development would not cause any harm to the living conditions of neighbouring properties, highway safety, flood risk and ecology. These considerations do not outweigh the harm caused by the development. The appellant raises concerns over how the application was dealt with by the Council. I note the appellant's comments and frustration with no/limited response on viability, but I have given this limited weight.
46. I recognise that the development would bring a number of benefits including the regeneration and redevelopment of this previously developed, underused and rather unsightly site. It would represent a windfall development and contribute to the supply of housing by providing market dwellings in a rural area. Nonetheless, I have no evidence that it would meet an identified local housing need and that the Council cannot demonstrate a 5-year housing land supply, whilst that should not be treated as a cap, the 13 houses would be a relatively small contribution.
47. Some economic benefits would arise from, for example, the purchase of building materials during the construction period. Future occupiers would also contribute to the local economy and towards the viability of local key centre services. Given the modest scale of the development such benefits would be limited. In this context, all of the benefits that have been brought to my attention do not outweigh the substantial identified harm, the lack of adequate provision for affordable housing and other infrastructure contributions.

Conclusion

48. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

K A Taylor

INSPECTOR

³ APP/R0660/W/20/3264375