



Appeal Decision

Site Visit made on 12 October 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2022

Appeal Ref: APP/A0665/W/21/3275475

**Lees Lane Poultry Farm, Lees Lane, Little Neston, Neston, Cheshire
CH64 7TH**

- 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 Spencer against the decision of Cheshire West and Chester Council.
 - The application Ref 20/01887/OUT, dated 2 June 2020, was refused by notice dated 22 April 2021.
 - The development proposed is a mixed-use development comprising 9 dwellings (Use Class C3) and 9 commercial units (Use Class E(g)(i) offices).
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The planning application was made in outline. Evidence with the appeal indicates that access is to be considered at this stage but that all other matters would be reserved for future consideration.
3. The description of the development in the application form is 'outline planning application for the redevelopment of previously developed land (brownfield) and the construction of a mixed-use development comprising 14 dwellings (C3) and 14 commercial units (B1) together with 4 custom build serviced plots'. However, the Council accepted an amended scheme during the processing of the application. Therefore, I have adopted the description of the amended development from the decision notice in the banner heading.
4. The appellant has submitted a Unilateral Undertaking (the UU) pursuant to section 106 of the Town and Country Planning Act 1990. It contains planning obligations relating to financial contributions towards affordable housing and biodiversity net gain. It is signed and dated and I have taken it into account.
5. The appeal site is in the Green Belt. Paragraph 149 of the National Planning Policy Framework (the Framework) sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to specific exceptions, including Paragraph 149 g) the redevelopment of previously developed land (PDL) which would not have a greater impact on the openness of the Green Belt than the existing development. In this case, the appeal site is PDL and the proposal would be a substantial reduction in the spatial footprint and the volume of built development. The Council considers that the proposal would not have a materially greater impact on the openness

of the Green Belt than the existing development and therefore proposal would not be inappropriate development. I see no reason to disagree.

Main Issue

6. Therefore, the main issues are:

- i) Whether the proposal would make adequate provision for affordable housing; and
- ii) The effect of the proposal on the character and appearance of the area.

Reasons

Affordable housing

- 7. The appeal site comprises a former poultry farm, with large agricultural buildings and areas of bare ground, extending to approximately 0.99 hectares. The proposal would be a mixed use development comprising 9 detached dwellings with 9 offices provided in 3 separate buildings.
- 8. Policy SOC1 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies Adopted January 2015 (the LP1) requires new residential development, including mixed use schemes, to provide affordable housing (AH). This applies to rural development comprising 3 or more dwellings or an area of 0.1 hectares or more and the Council seek to maximise the proportion of AH up to a target of 30%. The provision should be on site unless there are exceptional circumstances to justify off site contributions.
- 9. The LP1 is now several years old and no 5 year review in accordance with paragraph 33 of the Framework has been carried out to assess whether the policies need updating. However, Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (the LP2) was adopted more recently in July 2019. The LP2 continues to highlight the issue of housing affordability and the need for new residential development to deliver a range of homes to meet diverse community needs, including AH. The LP2 explicitly supports the approach set out in LP1 Policy SOC1.
- 10. Paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date because they were adopted prior to the Framework, but rather due weight should be given to them according to their degree of consistency with the Framework.
- 11. In the context of the Government's objective of significantly boosting the supply of homes, paragraph 62 of the Framework states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including those who require AH). Paragraph 63 sets out that where there is a need for AH, this should be met on site unless there is a robust justification for an alternate form of provision. Paragraph 64 states that AH provision should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set a lower threshold of 5 units or fewer). The glossary to the Framework defines major development as, for housing, 10 or more homes or where the site has an area of 0.5 hectares or more.

12. Consequently, the aims of LP1 Policy SOC1 are broadly consistent with the Framework. Therefore, it is not out of date and significant weight can be attached to it.
13. The appellant considers that, even if Policy SOC1 is not out-of-date, it is not relevant to the proposal. This is based on the premise that the proposal would be a live/work scheme and therefore a sui generis use rather than a residential or mixed use development. In this regard, my attention has been drawn to 2 appeal decisions where no AH provision was apparently deemed necessary.
14. The Europa House scheme (ref APP/D5120/C/18/3206359) relates to an unauthorised mixed use development including live/work units. In that case, the AH policy referred to housing provision in the ordinary sense as it relates to dwellinghouses and accommodation within Use Class C3. The policy did not apply to the live/work units because they did not fall within the definition of a dwellinghouse and they fulfilled a different function to general housing. The units were in the upper floor and roof space of a non-residential building. They were very small and the work space was not segregated from the living space. That scheme is not directly comparable to the proposal, which would be ordinary dwellinghouses physically and functionally separate from their offices.
15. Decoy Farm (ref APP/A0665/W/15/3140690) is a mixed use development of up to 24 dwellings and 24 associated commercial units. Full details have not been provided, but it appears to be the provision of dwellings to be occupied in association with commercial business premises (Use Class B1 offices, research and development, or acceptable industrial process use). I accept that the planning permission does not secure AH provision and it was not an issue in the appeal. However, notwithstanding the similar description of the development, I cannot be certain that it is directly comparable to the proposal, which would be residential dwellings with ancillary offices for home-working.
16. My attention has also been drawn to recent residential planning permissions where no AH was provided. Notwithstanding the scheme that was allowed on appeal, the evidence in relation to Hanns Hall (ref APP/A0665/W/19/3232921 and ref 20/04319/REM) indicates that it was originally considered on the basis of custom build serviced plots and not market housing. The Nessun Dorma scheme (ref 18/02994/FUL) followed an earlier planning permission, apparently resulting in a net increase of 3 dwellings. The Council has not explained why no AH provision was delivered. However, on the basis of the limited information before me I cannot be certain that it is directly comparable to the appeal proposal including in terms of the size or affordability of the dwellings or its viability. I am not persuaded that these schemes provide a reasoned justification to set aside the requirements of LP1 Policy SOC1.
17. Notwithstanding, the UU contains an obligation for a financial contribution to be used to deliver AH elsewhere. This is contrary to the expectation in both the local and national planning policy that the need for AH should be met on site unless there is compelling justification for alternate provision. There is little before me in relation to any site- or scheme-specific exceptional circumstances that would justify a financial contribution rather than on-site AH provision. The proposal fails to explain why AH could not be delivered as part of the scheme.
18. The justification for a financial contribution rather than on site AH provision appears to be solely based on the fact that planning permission was granted at Lyndale Farm (ref 18/03263/FUL) for a mixed use development of 23 dwellings

and 23 commercial (B1) units subject to a s106 agreement that secured an AH contribution. While the proposal would also be a mixed use scheme, Lyndale Farm appears to differ including in terms of the amount of development, the commercial uses, and the integration of the commercial units with the dwellings. Moreover, that permission follows an earlier outline planning permission for up to 24 dwellings and associated work units, full details of which have not been provided including how Policy SOC1 was applied to the decision. Irrespective, the subsequently adopted LP2 and the Framework both emphasize that AH should be delivered on site and that financial contributions should only be accepted in exceptional circumstances.

19. The AH financial contribution in the UU is £129,098.52. This is based on 30% of 9 dwellings and £40,000 per dwelling. The appellant believes that this sum would be consistent with the financial contribution agreed for the Lyndale Farm scheme. However, the supporting text to LP1 Policy SOC1 states that in seeking to negotiate the AH on each site, the Council will have regard to evidence in relation to the economic viability of site development, likely costs and market conditions. Therefore, the level of contribution should be informed by the particular circumstances of the scheme and not simply by the level of contribution agreed for schemes elsewhere.
20. Setting aside that AH provision should properly be delivered within the scheme, I have considered whether the planning obligation would meet the 3 tests set out in the Framework and in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. AH provision would be necessary to make the development acceptable and it would be directly related to the residential mixed use development. However, the AH contribution is related to the Lyndale Farm scheme and it has not been demonstrated that it would be fairly and reasonably related in scale and kind to the appeal development. For this reason, the submitted planning obligation would not meet the tests.
21. Therefore, I conclude that the proposal would fail to provide on site affordable housing. There are no demonstrably exceptional circumstances for an alternate form of provision. The AH contribution proposed has not been robustly demonstrated to be appropriate or proportionate with reference to the proposal. The proposal would conflict with the aims of LP1 Policy SOC1. It would conflict with the affordable housing aims of the Framework.

Character and appearance

22. The appeal sites comprises large agricultural sheds and associated hardstanding immediately adjacent to Lees Lane. It is bordered by agricultural land to 2 sides and it is widely separated from the A540 by woodland and the large grounds of a rest home on Chester High Road. It is in an area of sparsely developed countryside characterised by agricultural land with hedgerows, mature trees and patches of woodland. The 2 properties on the opposite side of Lees Lane are substantial detached 2 storey dwellings in different styles and materials, widely spaced and set in large mature plots.
23. The scheme is in outline and matters of appearance, landscaping, layout and scale would be reserved for future consideration. However, the evidence indicates that the 9 dwellings and 3 office blocks would have a combined building footprint of 2,641sqm. While this would be a reduction in the footprint of the existing buildings, nevertheless it would be a significant quantum of residential development. The proposal would utilise the existing highway access

- and the single storey dwellings and buildings would be arranged around the single internal access road. The generic cul-de-sac layout would be a typically suburban form of development.
24. The 3 commercial buildings would be located at the front of the site close to the road. Each would accommodate 3 offices, presumably with associated facilities. Taking into account their likely size, their elevation above the road and their siting, the office buildings would be prominent and conspicuous features that would contribute to the urbanising effect of the proposal. Irrespective of the size of the gardens, small housing estates comprising large single storey dwellings are not characteristic of the rural landscape. By virtue of its degree of separation from settlements or similar building groups, the proposal would be a discordant form of development that would be out of keeping with the surrounding rural pattern of development.
25. The former poultry buildings on the site are typical agricultural development. However, they are very large structures and they do not make a positive visual contribution to the area. Nevertheless, their removal does not provide a justification for a scheme that would fail to respect the rural character of the area and that would erode local distinctiveness and sense of place.
26. The existing mature trees to the site boundaries make a strong positive contribution to the character and appearance of the landscape. Their retention would result in a degree of screening to the proposal, particularly when the trees were in leaf. However, the mature trees on the south west boundary would partially overhang the rear gardens of several dwellings with consequent shadowing and loss of light to private outdoor space and habitable room windows. Future occupiers would be likely to seek to prune or remove the tall spreading boundary trees. This would open up views of the site and it would further erode the rural landscape setting. The central landscaped area and residential garden planting, including internal hedgerows, would create an attractive development and the landscaping would help soften the built environment. However, internal landscape planting and ornamental garden planting would not mitigate the adverse urbanising effect of the proposal.
27. I accept that the proposed site layout is illustrative only and it seeks to demonstrate that an acceptable form of development could be achieved at this site. However, no alternative plans have been provided to demonstrate any other layout or pattern of development. Therefore, irrespective that all matters except access would be considered at a later stage, the outline proposal fails to demonstrate a scheme that would harmonise with its rural surroundings, that would make a positive contribution to local distinctiveness, and that would not result in the urbanisation of the countryside.
28. Therefore, on the basis of the evidence, I conclude that the proposal would harm the rural character and appearance of the area. It would conflict with the visual amenity aims of LP2 Policies DM3 and DM19. It would also conflict with Policies NNH1 and NND1 of the Neston Neighbourhood Plan 2010-2030 Adopted March 2016 which require, among other things, that development should be appropriate to its local context, reflecting and reinforcing local character.
29. My attention has been drawn to schemes elsewhere in the countryside which the appellant considers set a precedent for the proposal. In the case of Hanns Hall (APP/A0665/W/19/3232921), dwellings are set back from the road around

an internal access road. I accept that the Inspector considered it would be possible to design dwellings in keeping with the countryside setting. However, notwithstanding its layout, it differs from the proposal including in terms of its surrounding context which includes neighbouring residential development.

30. The Nessun Dorma scheme (ref 18/02994/FUL) is 4 closely spaced dwellings around an internal access road, but it does not have a roadside frontage and it is set back behind other buildings. The Woodville scheme (ref APP/17/01086) is in the countryside in a neighbouring administrative area and it was considered in a different policy context.
31. The Storeton Hall Farm scheme (ref APP/W4325/18/3201869) includes the conservation of a Grade II* listed building and Scheduled Monument on the Heritage at Risk Register, enabling new residential development, and equestrian uses. It is in the countryside, but it is a markedly different scheme in a different surrounding context that includes Storeton Hall, barns and equestrian buildings, and numerous residential dwellings and a settlement.
32. Lyndale Farm (ref 18/03263/FUL) is in the countryside at the end of a ribbon of development that screens the site from views. Detached, semi-detached and terraced buildings are arranged in simple linear form around courtyards, resulting in a relatively traditional development akin to a converted farmyard.
33. There is little compelling evidence that these schemes are directly comparable to the appeal scheme, either in terms of the scheme itself or its surrounding context. They do not provide a visual context or a justification for it.

Other Considerations and Planning Balance

34. The Framework states that planning policies should allow for new and flexible working practices (such as live-work accommodation). While the Framework does not define live-work accommodation, I understand it to be dual purpose space with living accommodation and work space physically and functionally integrated. In contrast, the proposal would be dwellinghouses with physically and functionally separate ancillary office space.
35. There is evidence before me in relation to the high level of home-working during the coronavirus pandemic. On the basis that the trend for home-working is likely to continue, the proposal would be attractive to people who want to work from home rather than attend a workplace. However, there is little to suggest that the offices would function in a materially different way, or that they would deliver any wider economics benefits, than for example a home office in a dwelling or residential outbuilding. Therefore, they do not weigh in favour of the scheme to any significant degree. Nevertheless, the 9 dwellings would contribute to boosting the overall supply of housing and this is a matter that weighs to a moderate degree in favour of the scheme.
36. In addition to the AH contribution, the UU contains an obligation for the provision for a commuted sum of £11,179 to be used to facilitate the delivery of Biodiversity Net Gain. The Council's ecological adviser confirms that the level of contribution is appropriate to provide offsite compensation for the loss of woodland habitat. As I have found the scheme unacceptable for other reasons, there is no requirement for me to consider this matter in further detail. However, compensation for loss of biodiversity, and compliance with policy in this regard, would in any case carry neutral weight.

37. The Council considers that the proposal would be acceptable in respect of all matters other than AH provision and character and appearance. On the basis of the evidence before me, I see no reason to disagree. Compliance with some policies in the development plan and the Framework does not weigh in favour of the scheme. The proposal would provide 2 footways adjacent to Lees Lane to connect the development to the footway along the Chester High Road to the north and to the Wirral Way footpath to the south. This would primarily be a benefit to future occupiers of the scheme. Any limited wider public benefit would be offset by the urbanising effect of the footways on the rural road.
38. Taking all matters into account, the benefits of the scheme would not outweigh the harm that I have identified in relation to the delivery of affordable housing and the character and appearance of the area.

Conclusion

39. For the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict.
40. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR