



Appeal Decision

Site visit made on 31 January 2022

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2022

Appeal Ref: APP/P3420/W/20/3263918

Land to the north of the A51, South of Chorlton Mill Lane and West of the Railway, Stableford, Newcastle Under Lyme, ST5 5JH, 381332, 339036

- 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 Skye Property Group Limited against the decision of Newcastle-under-Lyme Borough Council.
 - The application Ref 19/00961/OUT, dated 4 December 2019, was refused by notice dated 13 November 2020.
 - The development proposed is 11 Open Market Dwellings (including 9 Self-Build) and 21 Affordable Dwellings (including 13 Self-Build Bungalows and 2 Self-Build Houses). All matters of detail (appearance, landscape, layout, scale and access) are reserved for subsequent approval.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Skye Property Group against Newcastle-under-Lyme Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording to that used on the Application Form and Decision Notice has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. However, as it is a much clearer description of the development proposed, I have used it in my heading above.
4. The application was made in outline with all matters reserved. Illustrative plans were submitted, and I have treated these as such.

Main Issues

5. The main issues are i) whether the site is a suitable location for the development proposed, having regard to its accessibility, the agricultural quality of the land and the character and appearance of the area, and ii) whether the proposal would make appropriate contributions towards the provision of affordable housing and education provision in the area.

Reasons

Accessibility

6. The site is an open field, in a rural area neither within or adjacent to any settlements. It is surrounded and crossed by a number of public rights of way, which themselves connect to the wider network and provide routes to nearby settlements, notably Baldwins Gate, and ultimately, the services within them. Vehicular access is proposed from the A51 to the south. Although there are footways along the A51 to the front of the site, these are limited in their extent.
7. The public rights of way are rural in nature, with mixed surfaces and a number of gates, bridges and stiles. These gates, bridges and stiles vary in their condition and ease of use. Similarly, the quality of signage and ease of route-finding varies along the route. I also have concerns over the attractiveness of some parts of the route, particularly close to Baldwins Gate, where in places, the public rights of way are narrow, overgrown and have limited natural surveillance.
8. Turning to the conditions under-foot, I accept that the weather is not always wet, and as such, there will be times of year when the surface of these rights of way is firm. However, there is no guarantee of their condition and indeed one of the suggested routes passes through an active livestock farm, with the associated under-foot conditions.
9. These public rights of way are also footpaths, rather than bridleways or byways, further limiting their ability to provide a genuine, viable alternative to the use of the private motor vehicle for accessing nearby settlements and their services.
10. The appellant has drawn my attention to and provided a copy of the decision for a similar appeal nearby¹ (the Croft Farm decision). In their 2019 decision, the Inspector in that case also considered non private motor vehicle links between that appeal site, Baldwins Gate and the facilities there. In that case, the Inspector found that the walking route was acceptable. Crucially, in that case, the Inspector noted that the local highway authority raised no objection to the proposal, unlike in the case before me.
11. Despite the importance of consistency in decision-making, it is also important that each case be considered on its own merits. This site is significantly further from Baldwins Gate than the Croft Farm site, and to access it would require longer journeys along unlit, largely unsurfaced and occasionally overgrown public rights of way with a number of gates, stiles and bridges. It was plain from my site visit that many of these public rights of way would not be suitable for all-weather, day-to-day trips to Baldwins Gate to access facilities and services. Their surface, width, accessibility, usability and general rural nature all count against them for such day-to-day use. It is these journeys which national and local policies seek to provide for, in order to reduce the reliance on the private motor vehicle.

¹ Appeal Reference APP/P3420/W/19/3225154

12. I accept that not every journey is appropriate to be made on foot, and I also accept that there are urban areas where housing may be further from facilities and services than this site. Nevertheless, for day-to-day access to facilities and services, a longer walk along hard-surfaced urban footways would, in my view, be a significantly more attractive and realistic proposition than a walk along unlit, un-surfaced, public rights of way in a rural area, or indeed, along a series of minor and major roads with limited footways. As such, although the site can be accessed from rural public rights of way, which are undoubtedly attractive and pleasant to walk along in their own right, these routes would not discourage the use of the private motor vehicle for accessing day-to-day services.
13. In their consultation response on the original application, the County Council Rights of Way Officer pointed out that "*the granting of planning permission does not constitute authority for interference with the right of way or its closure or diversion.*" Given this, and the lack of information in the submissions around whether the appellant has that authority, right or the ability to carry out suggested improvement works to the relevant public rights of way and structures along them, and indeed, the detail of works required, I can give little weight to the offer of such improvements.
14. Similarly, despite the suggestion that the Council or another body is in the process of footway improvement works, I note the offer of footway improvements to the A51. However, like my comments around the works to public rights of way, I am concerned over this offer. I have limited evidence of need, of exactly what would be provided, of whether it can be provided, of whether it would achieve what is required, and of whether it would meet the requirements of the highway authority in all other respects. It is also unclear how improved access to Hill Chorlton would improve access to facilities and services, given their location relative to the site and Hill Chorlton.
15. A substantial amount of travel not undertaken in a private motor vehicle would therefore be likely to happen on the roads, and given the lack of footways, this would increase the likelihood of pedestrian/vehicle conflict.
16. The promotion of public transport in the Travel Statement Measures and Initiatives is admirable and is on its face consistent with policy aims around sustainable transport. There are a number of route options from the site to bus stops in particular. However, they are either unsurfaced public rights of way, subject to the conditions and limitations set out above, or along well-used roads with limited footways and street lighting.
17. Given the limitations of the service, the location of bus stops relative to the site and my concerns around access to them, this promotion of public transport could in itself give rise to pedestrian/vehicle conflict.
18. The Action Plan includes references to new bus stops, new footpaths over and above the other footway and public rights of way improvements mentioned elsewhere. However, like those, these Action Plan items suffer from the same lack of detail and certainty which would give me any confidence that they could be delivered in order to mitigate the unacceptable identified harm and potential for harm. I therefore give the offer of these improvements limited weight.

19. As such, I consider that the proposal would be likely to lead to reliance on use of the private motor vehicle, that the proposal would not provide safe, all-weather, all-season pedestrian routes to facilities and services, and that this arrangement could lead to pedestrian/vehicle conflict; an unacceptable impact on highway safety. I also therefore find that the site, its location and accessibility would not promote sustainable transport or represent sustainable development, contrary to the aims of the National Planning Policy Framework (the Framework).

Agricultural land quality

20. Policy HG1 of the Chapel and Hill Chorlton, Maer and Aston, and Whitmore Neighbourhood Development Plan 2019 (the NDP) seeks to allow housing in sustainable locations. One of the criteria in that policy is that development must not involve the loss of best and most versatile (BMV) agricultural land, which is valued in that policy and in the Framework. The NDP, like the Framework defines BMV agricultural land as being grades 1 to 3a.
21. The Soils and Agricultural Quality of Land North of Stableford Report, January 2020 states that the site is 92% grade 2 land and 8% grade 3b. The illustrative plans submitted with the application show that the majority of the developable area would lie in the grade 2 land.
22. I note the commentary from the appellant around the practicality of farming this land, which they suggest reduces its real-world quality, versatility and value. However, this evidence does not establish that the land cannot be farmed. Other submissions suggest that it is still being actively farmed, and I do not consider that the evidence before me is sufficient to outweigh the significant conflict of the proposal with the relevant policy, seeking to protect such land from development.
23. The proposal would therefore result in the loss of BMV agricultural land and would be contrary to both Policy HG1 of the NDP and the aims of the Framework.

Character and appearance

24. The appeal site is an open field, crossed with a line of mature trees and spanned by an overhead power line, sloping gently from north to south, towards the A51 and the proposed access. There are a number of houses, farms, and other typically rural buildings to the west and north of the site, all visually well-contained and appropriate for their rural location. A caravan park and a number of other buildings lie to the south of the site, on the opposite side of the A51.
25. The character of the site is fundamentally and strongly rural, blending in to the wider rural, agricultural landscape when viewed from within and without its boundaries and in longer views. The railway line running alongside the eastern boundary of the site, whilst an obviously built intervention in the landscape, does not alter this character. Rather, to my mind, it reinforces the rural nature of the site and its surroundings as an area through which transport links pass, rather than stop. An impression added to by the nature of the A51 close to the site and the lack of bus stops in the immediate area.

26. As noted in my Preliminary Matters above, this appeal is made in outline with all matters reserved. Nevertheless, illustrative plans have been provided demonstrating how the site could be developed, highlighting the developable area in light of the on-site constraints, including the overhead power lines, trees and level changes. Taking these factors into account, I find that the illustrative layout shows a form of development which would not relate well to the overall scale or form of the site, the existing, established site boundaries, or indeed, the strongly rural, agricultural character of the area.
27. This contrasts with other nearby built-form, all of which has a close and obvious relationship to the boundaries which surround it, reducing its effect on the overall established rural character and appearance of the area.
28. All development has an effect on its site and surroundings, and I must acknowledge that detailed matters of design, and therefore appearance and final effect are not before me. However, given the established rural, agricultural and open character and appearance of the site and surrounding area, I find that development of this site at this scale for residential purposes would fundamentally harm that established character and appearance, by urbanising the site and reducing the overall rural, agricultural character of the area.
29. In this regard, the proposal would therefore be contrary to Policies CSP1 and CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (the Spatial Strategy), which seek to ensure that development respects the character, identity and context of surrounding landscapes, and that natural assets, the rural landscape in this case, are protected, maintained and enhanced. The proposal would also be contrary to saved Policies N17 and N19 of the Newcastle-under-Lyme Local Plan 2011 (the Local Plan) which seek to protect landscape character and quality.
30. These policies, and the conflict of the proposal with them are also consistent with the general thrust of the Framework to conserve the natural environment, to recognise the intrinsic character and beauty of the countryside, whilst delivering a sufficient supply of homes in the right, sustainable, accessible, locations.

Conclusions on suitability of the location

31. The appellant suggests that the delivery of affordable housing, for which there is an established need in the Borough, means that this proposal should be considered as a rural exception site, in line with those allowed under paragraph 80 of the Framework. However, whilst I neither dispute the established need for affordable housing, nor the support for it in rural areas in the Framework, such support is qualified. Notably, the Framework seeks to avoid the development of isolated homes in the countryside and promotes sustainable development in rural areas.
32. For the reasons set out above, I do not consider that this proposal represents sustainable development in a rural area. The appellant is correct that the site is not isolated insofar as there are other houses near to the site. However, in light of the relevant caselaw, given that the site would be physically separate from a settlement, its facilities and services, I find that the site would be isolated in terms of paragraph 80 of the Framework. In any event, isolation is not the only reason for avoiding development in the countryside.

33. As such, I do not find that the proposal could be considered as a rural exception site. I also do not consider that the proposal would enhance or maintain the vitality of rural communities through supporting services in a village nearby owing to the accessibility concerns I have set out above. The proposal does not therefore benefit from the support for rural housing in the Framework.
34. The harm that the development of this rural, agricultural site would cause is in effect reinforced by the presumption in planning policy against development in rural areas, except for specific purposes and exceptions. It has already been established above that the proposal does not qualify as any of these exceptions.
35. As I have found that the proposal is significantly contrary to the development plan, and to the content of the Framework, I find that the site is not a suitable location for the development proposed, having regard to its accessibility, the agricultural quality of the land and the character and appearance of the area.

Developer contributions

36. Further to the submission of this appeal, I have now been provided with a copy of an agreement under section 106, albeit unsigned at this stage by the Council. This seeks to secure appropriate contributions towards the provision of affordable housing, required to provide a balanced and well-functioning housing market, and towards primary and secondary school provision in the County and Borough.
37. I have had regard to the evidence, the relevant guidance in the Framework and considered whether the requirement for these contributions meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. I am satisfied that such contributions would be necessary to make the development acceptable in planning terms, directly relate to the development and are fairly related in scale and kind to the development.
38. I note the version of the agreement which seeks to procure the new footway construction for the County, in accordance with the plan attached. In light of the limited evidence as to the ability of the appellant to deliver this footway (as discussed above), and indeed, what benefit would arise from an improved link to Hill Chorlton when facilities and services are located in Baldwins Gate, I do not consider that this part of the agreement meets the tests in the regulations.

Other Matters

39. The appellant has suggested that modern ways of life, including changing approaches to work, shopping and leisure, accelerated in some cases by the pandemic should alter the approach taken to access to facilities and services. It is undeniably true that ways of life are changing. National and local policy recognises and supports such shifts but still seeks to ensure that sustainability in general terms, and a reduction in the reliance on the private motor vehicle more specifically, are central to planning policy at all levels. As such, I do not find that I am able to set aside the requirements for sites for proposals such as this to be accessible and sustainable in this case.

40. The appellant relies on the Croft Farm decision as evidence of the housing land position of the Council and that its policies are out of date for the purposes of decision-making in light of the Framework. Whilst that was the ultimate conclusion of that appeal, it is important to note that the Inspector in that decision found that the general thrust of local policies “*to locate new development towards settlements with a range of facilities and access to public transport, generally accords with the Framework*”. Notwithstanding the ultimate conclusion on that appeal as a whole (following consideration of the housing land position) the Inspector in the case found that they were to be attributed “*significant weight*”.
41. I agree with those conclusions and find that the development plan policies relevant to this appeal are consistent with the content and aims of the Framework. As such, the ultimate conclusions of the Inspector in that appeal do not bind my reasoning or decision, particularly as both the case and the evidence before me is different to the case and evidence before that Inspector.
42. The appellant suggests that in their response to this appeal the Council has ignored a significant portion of the evidence provided. However, I am satisfied that in their evidence the Council has, as have I in this decision, concentrated on the principal important controversial issues which allow parties to understand why the matter was decided as it was. Given the volume of material presented, and the relatively narrow reasons for refusal (i.e., the principal important controversial issues, as set out in the Main Issues above) I am satisfied that this approach was reasonable and appropriate.

Planning Balance

43. The sufficiency of the housing land supply in the Borough is at issue between the parties, as well as the subsequent effect of this on the decision-making process, in line with paragraph 11 of the Framework.
44. The appellant is concerned with the approach of the Council to including student accommodation in the supply figures, and I note that this issue was considered by the Inspector in the Croft Farm decision, albeit some time ago and on evidence older than that before me in this appeal. Whilst I recognise that consistency in decision-making is important, I must make my decision on the basis of the evidence before me at the time I make it. In that previous appeal, the Inspector found that student housing made up a substantial portion of the supply, and their conclusions flowed from that finding. On the face of the evidence before me, I do not find the same.
45. The Council provides two figures for its housing-land supply; including and excluding student accommodation, both of which are in excess of five-years. If I were to exclude the sites in the Council’s Housing Land Supply Site Schedule with which the appellant takes issue, then the level of supply including student accommodation would still be in excess of five-years, but the level of supply excluding it would not be.
46. The Planning Practice Guidance (the PPG) is clear that student accommodation can count towards the housing land supply, based on the amount of accommodation that new student housing releases in the wider housing market (by allowing existing properties to return to general residential use); and/or the extent to which it allows general market housing to remain in such use, rather than being converted for use as student accommodation.

47. As such, I am satisfied that for the purposes of this decision it is appropriate for the Council to include student accommodation in its housing land supply figures. Setting aside for now the list of disputed sites from the appellant, the amount of student accommodation does not appear to be so substantial that it greatly distorts the overall level of supply, by making an otherwise insufficient supply sufficient.
48. The 2021 Housing Delivery Test (HDT) Results were published in advance of this decision, and the parties were given opportunity to comment. Although plainly a different measure to housing land supply, the HDT does nevertheless offer an opportunity in this case for me to verify the accuracy of the forward-looking supply position in evidence before me.
49. To my mind, these results support my conclusions on the adequacy of the Council's housing land supply, as it is clear that the Council has been delivering in excess of their planned requirements over the last three years, even taking into account variations in levels of housing delivery due to disruption in the construction industry caused by the pandemic.
50. As a result, I find that the Council does have a satisfactory supply of housing land, the provisions of paragraph 11d of the Framework do not apply, and the proposal does not benefit from the presumption in favour of sustainable development.
51. However, if I were to find that student accommodation should not be included, and were to then discount the sites in the Council's Housing Land Supply Schedule which the appellant invites me to, then the provisions of paragraph 11d)ii of the Framework would apply.
52. The appellant notes that in their view the balance in paragraph 11d)ii of the Framework relates only to policies in the Framework itself. However, the Court of Appeal judgment in *Gladman Developments Limited v SSHCLG and Corby Borough Council and Uttlesford District Council* [2021] EWCA Civ 104 confirms that paragraph 11d)ii does not require any development plan policies to be excluded from the tilted balance.
53. Notwithstanding that, the Framework is clear that development should take place in the right place at the right time, to support growth and meet needs, that development should achieve healthy, inclusive and safe places, be easily and sustainably accessible, and should promote sustainable transport choices and options. In addition, the Framework is clear that development should conserve and enhance the natural environment, an aim which encompasses landscapes for their wider qualities and land itself for its specific and measurable quality.
54. In light of that, and the effects I have found in my reasons above with regard to development plan conflict, I find that the adverse impacts of granting planning permission for the appeal proposal, being its overall sustainability and accessibility, its effect on the supply of the best and most versatile agricultural land, and on the character and appearance of the area would significantly and demonstrably outweigh the benefits of delivery of housing at the proposed scale, including both affordable and self-build housing for which there is an established need. The presumption in favour of sustainable development would not therefore apply.

55. The potential for a secured planning obligation to make appropriate contributions towards education provision is not a benefit to be weighed in the balance but is required in order to mitigate the effects of the proposed development.

Conclusion

56. Decisions must be taken in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration in decision making but does not override this statutory starting point.
57. I have found significant conflict between the proposal, specific policies in the development plan, and indeed, with the overall thrust and aim of national policy set out in the Framework, with which the development plan is consistent.
58. As such, I find that the proposal is significantly contrary to the development plan, and there are no material considerations, either arising from the application of tests in the Framework, or any others, which indicate a decision be taken other than in accordance with the development plan.
59. The appeal should therefore be dismissed.

S Dean

INSPECTOR