



Appeal Decision

Hearing held on 29 November 2022

Site visit made on 29 November 2022

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/A0665/W/22/3302423

BRIAR LEA COTTAGE, NANTWICH ROAD, TILSTONE FEARNALL, CHESHIRE, CW6 9HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Whiley against the decision of Cheshire West and Chester Council.
 - The application Ref 21/04530/FUL, dated 6 November 2021, was refused by notice dated 7 March 2022.
 - The development proposed is described as "Unique Very Special Circumstances for the proposed development of five detached family homes and three affordable homes for local need at Briar Lea Cottage small holding."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development is in an appropriate and accessible location, in accordance with planning policy, whilst also taking into account the particular circumstances of the appellant.
 - The effect of the development on the character and appearance of the area
 - The effect of the development to the living conditions of future occupiers.

Reasons

Location of the proposed development

3. The site is within the small village of Tilstone Fearnall, which is mainly of a dispersed linear form along the A51 (Nantwich Road). There is a Church in the village, but no other service or facility that I am aware of. There is a bus service which runs along the A51 which links with larger settlements.
4. The site is essentially the grounds and garden areas of the semi-detached dwelling of Briar Lea, which adjoins Holly Cottage. There is proposed a new access off Tilstone Bank Lane to the southeast, with use also of the existing access off the A51 for the affordable housing. It is clear there were some structures on the site which have been removed, though from the evidence both submitted and recorded at the hearing much of the site had an agricultural past. It is my view that the site is mainly former agricultural land

and some garden land, which does not meet with the definition of previously developed land in the Local Plan annex or the National Planning Policy Framework (the Framework). I would therefore not regard the development proposed as being mainly on previously developed land based on the evidence before me.

5. The site has a rural appearance, other than some areas close to Briar Lea which has a more domestic garden character. The wider area too is of a distinct rural character, partly due to the small amount and dispersed pattern of dwellings in the village set between the fields. The site has the appearance of being primarily part of, and also set within, the countryside.
6. The rural nature of the site and lack of services in the village is reflected in the Development Plan policies. Policy STRAT 2 of the Cheshire West and Chester Council Local Plan (Part 1) sets out the strategy for development including new housing, but only indicates housing should be in smaller rural settlements which have adequate services and facilities and access to public transport, thereby being a local service centre. The site is outside any key or local service centres identified by policy and therefore in policy terms it is considered to be in the countryside.
7. Policy STRAT 8 also relates to development in rural areas, but does not set any housing development allocations for villages which are not regarded as key service centres. Policy R1 of the Local Plan Part 2 has more detail on the matter of development in rural areas, including having a list of settlements which are key and local service centres. Tilstone Fearnal is not on this list.
8. For development in the countryside, such as this development proposed, policy STRAT 9 of the Local Plan states that the *"intrinsic character and beauty of the Cheshire countryside will be protected by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements."* The policy does set a list of development types and circumstances that would be permitted in the countryside, but the proposal of market housing with some affordable houses does not fit with any of these types of development. Furthermore, the proposal does not meet with any of the exceptions for housing development in the countryside as set out in policy DM19.
9. Indeed, as set out above, the village does not have much in the way of services and facilities. Tarporley is not far from the site but would be a substantial distance to walk, especially frequently. There is also limited street lighting which would also limit walking and cycling, especially in the short winter days for example. There is an hourly bus service with stops near the site, but this is not sufficient to make the site an accessible location for future occupants of the proposed housing.
10. There have been examples brought to my attention of housing developments in the countryside, but from the evidence provided the situations for these other developments differ from that which is now proposed. These other examples are not fully comparable.
11. For these reasons, the proposal would be a housing development within the countryside, in a village with very limited services and facilities, which does not comply with the Local Plan policies STRAT 1 (Sustainable Development), STRAT 2, STRAT 8 and STRAT 9 (Green Belt and Countryside) Policy DM19 (Proposals

for Residential Development). The proposal is also contrary to policy BE3 of the Beeston, Tiverton and Tilstone Fearnall Neighbourhood Plan, which requires that new development complies with STRAT 9 of the Local Plan.

Visual Impact

12. As set out in policy STRAT 9, development should protect the intrinsic beauty of the countryside. The proposal would result in a residential development on what is a mostly open and rural site, significantly changing its character with an urbanising effect.
13. The site would be well screened from some vantage points, but the affordable housing would be clearly visible from the A51 and the larger market housing would be visible from the proposed new access off Tilstone Bank Lane. The urbanising impact of the development would be apparent.
14. It is noted that the proposals could incorporate further landscaping and there is no objection to the design of the individual dwellings from the Council, which the appellant states will reflect nearby other dwellings. However, these are mostly large dwellings proposed and the urbanising effect of the development would erode the rural and open character of the site, which contributes positively to the open countryside.
15. As such, the development would be harmful to the intrinsic beauty of the countryside in this area of the site, though this harm is limited by the enclosed nature of the site and the close proximity of some other houses. Nonetheless the proposal, due to its visual impacts, would be in conflict with policies BE1, NE4 of the Neighbourhood Plan, and policy STRAT 9 of the Local Plan, which requires that development respects the character of the surrounding natural landscape, amongst other things.

Living Conditions

16. There was initial concern from the Council that the dwelling described as Housetype E on the submitted layout plan would have an overbearing and poor relationship with the proposed affordable housing to the north. However, with this appeal plan PL02 Revision F was submitted to move the Housetype E dwelling so it would be closer to the side of the affordable house rather than its rear garden.
17. The Council confirmed at the Hearing that they were satisfied that this sufficiently addressed this issue, subject to recommended conditions. It is my view that the proposed development would not have any significant or unacceptable living condition impacts to either existing neighbours to the site or for potential future occupiers of the proposed houses.
18. As such, the proposal for this main issue is in accordance with Policy SOC5 of the Cheshire West and Chester Local Plan (Part 1) and Policy DM2 of the Cheshire West and Chester Local Plan (Part 2).

Planning Balance

19. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, I am required to determine appeals in accordance with the policies of the Development Plan, unless material considerations indicate otherwise.

20. In this case, it is clear that the appellant has substantial mental and physical health issues to the extent that he needs care support. Furthermore, Briar Lea is in a very poor condition, potentially beyond repair, but is still where the appellant lives alone on a low income. This is the basis for the need and justification for the proposed development.
21. The justification given for this development, that is contrary to policy, is that the appellant needs financial resources for a new dwelling, suitable to his needs, and also for his lifelong care requirements. This would be provided through the sale of the land with an approved development for housing which would increase its value.
22. I am in no doubt that the appellant needs to move out of Briar Lea and is in need of constant care. It is my view that if it is accepted that the personal circumstances are justification for a residential development in the countryside, such a development should be limited to the minimum necessary to provide the financial requirements of the appellant. However, there is no substantive detail as to the amount needed by the appellant other than approximately £250,000 needed for a small adapted house in the area. There is no detail of the costs needed for his care, such as on a per annum basis for example.
23. If the development proposed was consented this would likely increase the value of the land substantially to a significant amount. As such, it is possible that the value of the land if this development was approved would be much more than necessary to meet the needs of the appellant as set out in the Statement of Case and at the Hearing. For instance, the agent for the appellant at the Hearing discussed trying to maximise the value of the land with the proposed quantum of development, but in my view the extent of any development should only be enough to provide for the appellant's needs given the conflict with policy.
24. For these reasons it has not been sufficiently demonstrated that the appellant's personal circumstances result in a necessity to develop eight new dwellings, some of which are particularly large houses, in this unsustainable countryside location.
25. Furthermore, from the evidence submitted and also through discussions at the Hearing, it has not been fully demonstrated that alternative routes to provide new accommodation and care for the appellant have been fully investigated. It seems that there has only been limited interaction with the Council about housing or care. There also seemed to be no substantive discussions with the NHS about possible care support, even though the appellant has significant health issues. Even if there are no alternatives available the proposed scale of development has to be justified in relation to the appellant's needs.
26. I fully sympathise with the appellant and agree that his situation has to improve. However, it has not been demonstrated sufficiently that the extent of development as proposed is all necessary to provide for the needs of the appellant.
27. For these reasons the personal circumstances given to justify the need for the proposed development contrary to policy is significantly undermined by the lack of supporting evidence, including financial details. There would be clear benefits to the appellant, but there is significant doubt whether the extent of

the development as proposed is all necessary to meet the financial needs of the appellant.

28. The appellant has submitted a Unilateral Undertaking to the Council to state that all the financial benefits from the proposed development would go towards the appellants accommodation and care, though it is not clear how this would be enforced or monitored practically. I therefore do not consider this sufficient to address the issues set out above.
29. There are other benefits, such as the provision of new dwellings for the village and wider area, with potential biodiversity enhancements. The provision of affordable dwellings is another particular benefit. I also note the police comment with regards to the proposed development helping to counter crime in this area, especially with more security for those living at Briar Lea, which has been burgled in the recent past.
30. Overall, for all the reasons given above, I would give the benefits of the proposed development, based on the evidence before me, modest weight. However, there would be clear conflict with the policies of the Development Plan with the houses in an unsustainable and inaccessible location, along with some visual harm to the rural character of the site and area. With the Council able to demonstrate a high level of housing land supply, I would give the harm of proposing the new dwellings in this location significant weight.
31. The determination of this appeal must be in accordance with the development plan unless material considerations indicate otherwise. The material considerations put forward by the appellant's case are not sufficient for the reasons set out above to solely or cumulatively suggest there should be a decision other than in accordance with the Development Plan policies with this appeal.
32. In coming to this decision, I have had regard to the Human Rights of the appellant and also the public sector equalities duty (PSED). The PSED seeks to eliminate discrimination and advance opportunity, for example. With this decision I have considered the benefits to the appellant, who has physical and mental impairments, and the complete personal circumstances that have been put forward. Though I sympathise with the appellant and his situation, for the reasons set out above the appeal should be dismissed with there being clear planning policy conflict.

Conclusion

33. For the reasons given above I conclude that the appeal should be dismissed.

Mr S Rennie

INSPECTOR

APPEARANCES

For the Council:

Ms Katie Richardson – Senior Planning Officer

Ms Jill Stephens - Senior Planning Officer

For the Appellant

Mr Robert Whiley - Appellant

Mr David Taylor – Agent

Mr Fred Langdon – Guardian of the Appellant

Mr Paul Reckin – Friend of the Appellant

Mr Dennis Price – Executor and Friend of the Appellant