



Appeal Decision

Site visit made on 18 July 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Appeal Ref: APP/J3720/W/23/3316018

Land north of Mill Lane, Broom, Warwickshire B50 4HR

- 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 Karl Lockley of Lockley Homes against the decision of Stratford-on-Avon District Council.
 - The application Ref 22/01880/PIP, dated 15 June 2022, was refused by notice dated 5 August 2022.
 - The development proposed is "8no custom-build carbon-neutral dwellings with associated ancillary development".
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Decision

1. The appeal is dismissed and permission in principle for the erection of 8 self-build and/or custom houses is refused.

Applications for costs

2. An application for costs was made by Lockley Homes against Stratford-on-Avon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal is for permission in principle. The Planning Practice Guidance (the PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. It is a two-stage process: the first stage (permission in principle stage) establishes whether the site is suitable in-principle, and the second stage (technical details consent) is when the detailed development proposals are assessed. Full planning permission does not exist unless both the permission in principle and the technical details consent are approved. This appeal relates to the first of these two stages.
4. The scope of the considerations in an application for permission in principle is limited to matters of location, land use and the amount of residential development. I have therefore assessed the appeal on this basis.
5. In respect of residential development an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of net dwellings, or for a fixed number. In this case, the application form expresses the proposal as a fixed number of 8 dwellings. The appellant refers to the Council having unilaterally amended the description such that the decision notice incorrectly states the erection of "up to" 8, which was not what was applied for. Furthermore, the appellant applied for custom-build housing, not self-build dwellings that appears on the decision notice. However, this distinction matters not in this instance as both terms fall within the statutory

definition of 'self-build and custom housing' (SBCH). Nonetheless, I have taken the description of development from the application form.

6. Since the Council determined the application, it has published its latest 5-year housing land supply (5YHLS). As of 30 September 2022, the Council is now able to demonstrate it has 10.6 years' supply of deliverable housing land compared to the previously reported figure of 8.42 years. Whilst the appellant questions how the figure has been calculated and that the figure is likely to be lower than published, he does not dispute the Council can demonstrate a 5YHLS.

Main Issues

7. The main issues in this appeal are:

- Whether the appeal site would be a suitable location for housing with regard to local and national policies, and
- The effect of the proposed development on the character and appearance of the countryside.

Reasons

Whether a suitable location for housing

8. Policy CS.15 of the Stratford-upon-Avon Core Strategy¹ (the Core Strategy) sets out the Council's development strategy for the distribution of housing development across the district. It seeks to ensure a balanced dispersal in accordance with the character and appearance and function of a wide range of sustainable locations in order to produce sustainable patterns of development. Most development is to be focused on Stratford-upon-Avon followed by Main Rural Centres, then New Settlements, and then Local Service Villages. The Council confirms that Broom is an "other settlement" where development is restricted to small-scale community-led schemes which meet an identified need by the local community. In addition, 'Local Needs Schemes' may be permitted in or adjacent to settlements brought forward to meet a need identified by that community. Core Strategy Policy CS.16 sets out the numerical distribution of dwellings in the various types of settlements and Core Strategy Policy CS.1 is a broad-brush policy promoting the wider principles of sustainable development.
9. These policies are broadly in accordance with the Framework's aim of promoting sustainable patterns of development and identifying opportunities for villages and other settlements to grow, supported by infrastructure and facilities, and in rural areas where it will enhance or maintain the vitality of communities.
10. The village of Broom is in the neighbourhood area of Bidford-on-Avon (itself a Main Rural Centre) as defined in the Bidford-on-Avon Parish Neighbourhood Plan² (the BPNP). However, Broom and the appeal site lie outside the defined Built-Up Area Boundary (the BUAB) of Bidford-on-Avon. BPNP Policy H1 states that all areas outside the boundary of Bidford-on-Avon are classed as 'countryside' where new housing will be strictly controlled and limited to dwellings for rural workers, replacement dwellings and new housing in

¹ Adopted 11 July 2016

² Made 17 July 2017

accordance with BPNP Policy H2. Policy H2 will permit affordable housing on small sites in Broom where there is a proven need and an as yet unmet local need; that there are no other suitable and available sites within the development boundary of the settlement, and secure arrangements exist to ensure the housing will remain affordable and viable to meeting the continuing needs of local people.

11. The proposal for 8 dwellings is not promoted as any of the types of development set out in BPNP Policies H1 and H2 and is not secured as affordable housing. Furthermore, apart from 1 letter of support, the proposal is not a community-led or supported proposal, with objections submitted by the local Councillor, the Parish Council and a substantial number of third parties.
12. At a district-wide level, those areas that lie outside a BUAB are considered 'countryside' under Core Strategy Policy AS.10. This sets out the types of development considered suitable for countryside locations in principle. The proposed dwellings are not intended for occupation by essential rural workers; the proposal does not involve the conversion or re-use of existing buildings and is not presented as small-scale housing to meet a need identified by the local community and hence would be contrary to AS.10. Nor does it fulfil the requirements of being a small-scale housing scheme in accordance with Core Strategy Policies CS.15 and CS.16.
13. The appellant refers to the site being in a sustainable location because it shares services and facilities in Bidford-on-Avon and draws my attention to the grant of planning permission for housing at the end of Mill Lane³. Whilst it might be possible to walk to Bidford-on-Avon, the status of Broom in the Council's settlement hierarchy has been assessed on its level of service provision and hence its designation as an "other settlement". That housing development was a community-led exception site that included affordable housing following a local housing needs survey, in accordance with the development plan, although at the time the BPNP was not yet made and Policy H2 had limited weight. To otherwise allow new dwellings to be built outside settlement boundaries based on their proximity to services and facilities could be too easily repeated in other settlements across the district, giving rise to ad-hoc and unsustainable patterns of development that would undermine the Council's development strategy for the location of housing in settlements and the countryside.
14. The proposal is described as SBCH. Under the Self-Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and associated secondary legislation, the Act provides a definition of SBCH. The National Planning Policy Framework (the Framework) identifies 'people wishing to commission or build their own homes' as a distinct section of the community and part of the mix of housing needed for different groups in the community, for which the size, type and tenure of housing needed should be assessed and reflected in planning policies.
15. Under the SBCH Act Councils are required to keep a local self-build register (the Register) of persons seeking to acquire land to build a home and publish it. The demand for SBCH is to be measured by the number of new applicants entered on the Register in each base period; and that number must be

³ Local Planning Authority ref 16/01302/FUL

matched by new suitable permissions granted within 3 years of the end of each relevant base period. Under the Act, authorities must have regard to the Register when carrying out their planning functions, including making decisions on planning applications.

16. According to the Council, as of 1 April 2022, based on the total number of entries on the Register, there is a supply shortfall of 81 plots across the district - counting only those with a local connection this reduces to 75 plots. Whilst there is some disagreement between the parties as to the exact shortfall and what is included in calculating the figure, including various housing assessments and position papers, the parties do not dispute that the shortfall between demand and supply is significant and the shortfall is a material consideration. The Council further acknowledges that the demand for SBCH is rising. The appellant considers the SBCH demand/supply figures to be under representative and refers to a YouGov survey in 2020 that found the awareness of the Right to Build legalisation was low, with many people unaware of the self-build Register.
17. The Council's Core Strategy was at an advanced stage of preparation by the time the SBCH Act and the Regulations came into force. Consequently, there are no SBCH policies in either the Core Strategy or the BPNP. This is a significant issue when the legal starting point for determining planning applications is the development plan.
18. The Council is aware of the lack of SBCH policies, as indeed are the various joint local planning authorities and various housing and economic assessments, such as HEDNA⁴. The emerging joint South Warwickshire Local Plan recognises the need to meet the diverse needs of residents including the provision of SBCH and the contribution of net zero carbon development. However, this plan is unlikely be adopted before late 2025 and therefore has little weight.
19. Nonetheless, the Council is progressing its own Site Allocations Plan (the SAP), which includes draft policies SAP6 and SAP7 for the provision and delivery of SBCH. Amongst other things, draft Policy SAP6 will support in principle SBCH on allocated sites. For unallocated sites, SBCH will be supported in principle within or adjacent to BUABs of Main Rural Centres (such as Bidford-on-Avon), and Local Service Villages. As already stated, Broom is not one of these settlement types. Moreover, the appeal site lies some distance from the BUAB of Bidford-on-Avon so as not be 'adjacent'. The approach to the location of SBCH is broadly similar to the sustainability principles behind the Council's housing strategy and the Framework, of building dwellings in locations with reasonable access to services and facilities.
20. In the summer of 2022, the Regulation 18 Preferred Options version of the SAP was subject to public consultation. However, due the stage of preparation of the SAP I cannot be sure that the SBCH policies would be retained unchanged in the adopted version. I therefore give the emerging SAP and its SBCH policies only limited weight.
21. Nonetheless, to be appropriately delivered as SBCH, the Council must be satisfied that the initial owners of the SBCH will have primary input into the final design and layout, otherwise it will not meet the legal definition of SBCH. Whilst SBCH is included in the description of the proposed development, the

⁴ The Coventry and Warwickshire Housing & Economic Development Needs Assessment (November 2022)

appellant has not provided any mechanism to secure the SBCH tenure, such as a legal agreement or planning obligation.

22. Even if they had, the PPG makes it clear that at the permission in principle stage it is not possible to secure a planning obligation or to impose conditions. If the proposed SBCH was in a location where housing would ordinarily be acceptable, then a planning obligation at technical details stage may be acceptable. However, the appeal site is not in a location ordinarily acceptable for new housing. Hence the provision of 8 specific SBCH dwellings on the appeal site could not be guaranteed or secured at the permission in principle stage, even if the appellant is willing to enter into a planning obligation at the technical details stage. This means I must treat the proposal as open-market housing, and for the reasons already set out, this would be contrary to policy. This therefore diminishes the weight that can be attached to the provision of SBCH.
23. Accordingly, for the reason given above, the proposed development would be contrary to Core Strategy Policies CS.1, CS.15 and AS.10 and BPNP Policies H1 and H2 whose aims are described above.

Character and appearance of the area

24. The appeal site is an agricultural field currently managed as pasture and grazing. It fronts Mill Lane behind a mature hedge on the northern edge of the village. There are a number of dwellings on the other side of Mill Lane including a former church. There are the buildings of Yew Tree House to the east and a cottage and mobile home to the west. Due to the location of the appeal site, these properties are significantly distanced from each other and give the northern edge of the village a sparse built form.
25. The site is bound by mature hedgerows on its other 3 boundaries, limiting views of the ground and into the site from farther away, and limiting the outwards views to the countryside beyond. Views would be more filtered in the winter months as leaves fall. The northern site boundary, which demarks the outer edge of the site, positively contributes to the rural setting of the village, as acknowledged by the appellant's submitted Landscape and Visual Appraisal⁵ (the LVA). Nonetheless the appeal site is an agricultural field, free of built development that encloses the village and positively contributes to the undeveloped rural character and appearance of the area.
26. The proposal would involve the erection of 8 detached two-storey dwellings set in good-sized plots. The indicative layout shows there would be a single access point and estate road off Mill Lane, that would bend round into a cul-du-sac. Garages would be formed of separate buildings, with some of the shared garages having sizeable footprints, some almost as long as the dwellings themselves, resulting in a substantial number of buildings on the site beyond the number of dwellings.
27. The site lies within Natural England's National Character Area 106 "Severn and Avon Vales" with its low-lying agricultural landscapes, and forms part of the Avon Valley Landscape Character Area of the Warwickshire County Council Warwickshire Landscape Project (1993). The appeal site also lies within the Bidford-on-Avon Parish Landscape Character Area A (PLCA-A). The area

⁵ Prepared by The Richards Partnership dated January 2023

includes the terrace farmlands at Marriage Hill, the River Arrow to the west and the historic village of Broom. Landscape designations are a relevant factor when considering the location of development as part of a permission in principle application.

28. The boundary of the PLCA-A character area, as shown in Appendix 2 of the BPNP, includes the appeal site and land either side as well as fields further northwards. Some of the key features that gives the village of Broom its rural character are described in the PLCA-A and include the appeal site as part of the "small pastoral fields north of Mill Lane" and the "limited development north of Mill Lane...broken up by small fields, open grasslands and hedgerows". The PLCA-A states that the newer housing at Mill Close and Millers Bank, to the west of the appeal site, is an exception to this.
29. Due to the vegetated boundaries and topography, long range views of the site would be limited. Some closer views would also be curtailed to some extent. Pedestrians would see more of the site along Mill Lane, especially at the proposed vehicular access point, although motorists would have more oblique views as they drive past.
30. People using the nearby public right of way (the PRoW) that crosses fields to the west, and which forms part of the Heart of England Way, would see the site's northern hedgerow boundary when approaching Broom from the north. This hedgerow, as already described, makes a positive contribution to the rural and underdeveloped setting of Broom. Whilst a few dwellings are visible on this PRoW approach, they do not present a strong built-up delineation of the village.
31. The LVA concludes that the degree of harm to landscape character would likely be small, and mitigation native planting could provide some beneficial effects. Even though hedgerows would be retained, and planting could be enhanced, the proposal would introduce substantial built development and an extensive roofscape to an undeveloped part of the village deemed a key part and view of the PLCA-A. This would reduce the presence of "small pastoral fields north of Mill Lane" and diminish the site's contribution to the setting of Broom and hence to the surrounding area. Careful choice of locally typical roof and other building materials would not adequately mitigate against this.
32. Accordingly, the proposal would be contrary to Core Strategy Policies CS.5 and CS.9 and BPNP Policy ENV7. Collectively these seek to ensure that new development has regard to, and avoids having a detrimental effect on, locally distinctive landscapes and maintains the distinctive landscape character, skyline and views identified in the PLCA-A.

Other Matters

33. I have had regard to the proximity of the appeal site to the Broom Conservation Area (the CA) and am mindful that there may be an effect on the setting of a designated heritage asset. However, the Council has not raised any concerns that the proposal would cause harm to the setting of the CA. Whether it would or wouldn't, because of my findings on the main issues this is not a matter I need to consider any further.

34. I acknowledge the appellant's concerns with the Council's handling of the application and pre-application engagement. Nonetheless, in reaching my decision I have been concerned only with the planning merits of the case.

Planning Balance and Conclusion

35. Planning law requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.
36. I have found the location of housing outside the BUAB of Bidford-on-Avon and hence in the countryside would be contrary to the Council's housing strategy. To allow the proposed development would undermine the delivery of the housing strategy and distribution of sustainable patterns of development as well as the Framework's aim of promoting sustainable development. I have also identified there would be harm to the character and appearance of the locally valued countryside landscape in the Parish around the village. These are serious planning objections and I therefore afford this conflict with the development plan significant weight.
37. Whilst the Council has more than a 5-year supply of deliverable housing land, there is dispute between the parties as to whether the most relevant policies for determining the application are out of date because the development plan does not include policies to address the provision of SBCH, and hence whether Framework paragraph 11d) is engaged and the 'tilted balance' triggered. There is also a significant district-wide shortfall in the supply of SBCH plots.
38. The proposed 8 SBCH would therefore help address the district-wide shortfall of SBCH and this weighs in favour of the proposal. The lack of SBCH policies and shortfall of SBCH supply reduces the weight to be given to Policies CS.15 and AS.10 and BPNP Policies H1 and H2. However, their weight is not reduced to the extent that they play no part. Case law has found that even where policies can be considered out of date, this does not mean that they carry no weight. The balancing exercise remains a matter of planning judgement. Indeed, the development plan still has primacy and still seeks to ensure the spread of development across the district is done to ensure adherence to the Framework's principles of sustainable patterns of development whereby development is directed to those areas that have the benefit of accessible services.
39. The draft SBCH policies in the emerging SAP can only garner limited weight due to the stage of preparation of the plan. However, they indicate that the location of SBCVH will be guided by similar sustainability principles that guide the Council's housing strategy. Whilst the Register might indicate there is some demand for SBCH in the Parish, the proposal is not community-led and third-party representations would indicate there is little community support.
40. My attention has been drawn to a number of appeal decisions where Inspectors took different approaches to the 'tilted balance'. The decisions are for different Councils and there were different issues at play. The appeal decision at Welford-on-Avon is mine. The appeal site was already proposed as an allocated site for SBCH in the emerging SAP, albeit of limited weight, on a site immediately adjacent to the BUAB of a higher order Category 2 Local Service

Village suitable to receive new housing in the Core Strategy. This is a very different scenario to the appeal proposal before me. The appellant recognised that without securing the SBCH tenure the proposal would be open-market housing and contrary to policy. However, the SBCH tenure was able to be appropriately secured by a planning obligation because the proposal was made as an outline planning application, not a permission in principle.

41. I appreciate that the Framework sets out a presumption in favour of sustainable development. However, even where the tilted balance is engaged the benefits of additional SBCH housing does not necessarily outweigh all other concerns. As the tenure of the proposed SBCH cannot be secured at the permission in principle stage, the proposal is effectively for open-market housing. This therefore reduces the weight I attribute to the proposal's effect on reducing the district wide SBCH shortfall against a backdrop of the Council's overall healthy housing land supply.
42. The proposal would see a modest associated socio-economic benefits during and after construction of 8 dwellings. I have no reason to doubt the dwellings would be of a high build-quality and their carbon-neutral credentials would support the environmental aims of the Framework. There is also the benefit that the site is available and readily deliverable given its single ownership and control by the appellant.
43. Even if I were to find the lack of SBCH policies triggered the 'tilted balance', the adverse impacts of allowing housing on the site would undermine the Council's housing strategy when the Council has well over a 5YHLS. Coupled with the harm to a locally important landscape and surrounding countryside, the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
44. In conclusion, the proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations. Therefore, for the reasons given above the appeal should be dismissed.

K Stephens
INSPECTOR