



Appeal Decision

Site visit made on 1 November 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/H4315/W/23/3318871

Land Plot Adjacent to Electrical Substation, Gorsey Lane, Clockface, Bold, St Helens, Merseyside WA9 4FZ

- 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 Dr Trevor Smith against the decision of St Helens Metropolitan Borough Council.
- The application Ref P/2022/0801/FUL, dated 14 October 2022, was refused by notice dated 31 January 2023.
- The development proposed is the erection of one detached country house dwelling.

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by St Helens Metropolitan Borough Council against Dr Trevor Smith. This application is the subject of a separate Decision.

Preliminary Matters

3. The Government published a revised version of the National Planning Policy Framework (Framework) on 19 December 2023. Whilst I have had regard to the revised framework, the issues most relevant to this appeal remain unaffected by the revisions. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action. For correctness, I have used the updated Framework paragraph references where relevant.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the strategic allocation of Site 4HA;
 - biodiversity, ecology and protected species; and
 - highway safety.

Reasons

Strategic allocation

5. The appeal site is shown as being part of the Bold Forest Garden Suburb Strategic Housing site, Site 4HA, as identified in Policies LPA04 and LPA04.1 and on the Policies Map of the St Helens Borough Local Plan Up To 2037 (July 2022) (LP). The notional capacity of Site 4HA is 2,988 homes. Policy

LPA04.1 of the LP states that a planning application for development within a Strategic Housing Site must be supported by a comprehensive master plan covering the whole site. Further to this Policy LPA11 of the LP sets out additional coordinating and design aspects that need to be considered in the master planning process. The appellant only has control over a very small part of this allocation and has not supplied a comprehensive master plan. This is contrary to Policies LPA04.1 and LPA11 of the LP.

6. The appellant insists that the appeal site was allocated without the landowner's knowledge or acceptance and disputes the legality of its inclusion in the LP. I acknowledge both the appellant and Council's detailed evidence submitted regarding the preparation and examination of the local plan including the adequacy of communications with the landowner, the differences in some of the evidence-based documentation/boundaries and the disagreements in the use of the development interest raised. While I note both parties' positions regarding these, it is not appropriate for the appeal process to re-open the examination of evidence on which a local plan has been found sound. The examination of the local plan was a detailed and rigorous process and if the appellant considered that a significant legal error had occurred in how the examination was conducted, then the appropriate course of action would be to challenge the local plan in the High Court.
7. Notwithstanding the dispute regarding the appeal site's allocation, the appellant further argues that the proposal would have a limited impact on the master planning and future development of the wider allocated site.
8. In this respect, the appeal site is a very small part of the wider allocated site. It is tucked against the outer edge of the allocated site's boundary, adjacent to Gorsey Lane, an electrical substation and the housing on Frenchfields Crescent. The proposal's drawings provide a detailed layout including its access and landscaping and this demonstrates the development's small scale and extent.
9. The Council advise that the appeal site may be needed for critical power infrastructure and as an essential open space buffer. It also notes that the effects of the proposal on the location of roads, public open space or the local centre of the wider allocated site cannot be assessed without a comprehensive master plan. However, little evidence is provided to show these were the reasons the appeal site was included during the preparation and examination of the LP. Moreover, the Council acknowledged, in its 2018 St Helens Council Cabinet Report, that the minor boundary changes to allocated and safeguarded sites were not significant, and the changes were not noted in the report's summary statement.
10. With the proposal's edge position and its access location close to the existing country park and substation accesses, it would have little impact on the wider allocated site's local centre and road designs. Little justification is provided as to why the small open space buffer the appeal site would provide could not be catered for in the remaining allocation or why the appellant's identified separation strip to the substation could not be used as the service route. Even without a comprehensive master plan, the appeal site is sufficiently small and discretely located to prevent it from unacceptably impacting the wider allocated site's master planning and future development.
11. Consequently, the proposal would be at odds with the strategic allocation of Site 4HA and the requirements set out in Policies LPA04.1 and LPA11 of the LP.

However, the Council has not sufficiently demonstrated that the proposal would be likely to prevent the positive master planning and future development of the remaining allocation. A conflict with a policy in the development plan cannot be disregarded. However, given the evidence before me, I afford this conflict limited weight.

Highway safety

12. The Council agrees as acceptable the design of the proposal's access including the provision of visibility splays and a footway extension to Gorsey Lane. However, it notes that some of the land necessary for this is not shown as forming part of the appeal site.
13. The appellant advises that the landowner of the appeal site also owns the land between it and Gorsey Lane and confirms that the owner has agreed it may be used for the access proposals. While an email from the landowner confirming this is provided, no legal documentation such as a Land Registry plan and/or a formal landowner agreement is provided. There is, therefore, some uncertainty that this land would be available, and its use would be permitted for the proposal. The Highway Authority also considered the information submitted and advised a plan clearly showing land ownership was required and it maintained its objection. As highway safety could be compromised if the land was not available, I consider a cautionary approach justified.
14. Consequently, insufficient information has been provided to demonstrate that the access proposal would not unacceptably compromise highway safety. The proposal would conflict with the relevant provisions in Policy LPA06 of the LP which seeks, amongst other matters, to ensure new development would not cause severe harm to the highway network.
15. The proposal would also not comply with paragraph 115 of the Framework which states that development should be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

Biodiversity, ecology and protected species

16. The appeal site consists of a mix of scrubland and grassland with some larger trees and sections of hedgerow. Gorsey Lane sits to the front and there is scrubland and an electrical substation to its sides. Typically to the rear is farmland. Clock Face Country Park is also located nearby.
17. Policy LPC06 of the LP seeks to protect and enhance biodiversity. It also states that sufficient evidence is required to enable a Habitats Regulations Assessment (HRA) to be completed where development is likely to have a significant effect on internationally important sites, including those which are functionally linked to the development site. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of any internationally important site. I am the competent authority for the appeal.
18. The Council consulted Merseyside Environmental Advisory Service (MEAS) regarding the proposal. MEAS recommended a Preliminary Ecological Appraisal (PEA) and, due to the appeal site being near several international and national sites (Special Protection Areas and Ramsars), an HRA for likely significant effects be completed prior to determination.

19. The appellant submitted the report 'Great Crested Newt and Bat Surveys, Gorsey Lane, Warrington' completed by Corvus Ecology Consulting and dated October 2014 to support the application. Reference is also made to a bird and bat survey but this has not been provided for the appeal. While the report was undertaken to address an appeal for the site adjacent to the appeal site, the appellant argues that it is sufficient to demonstrate that there are no major ecological issues.
20. However, the report is over 9 years old and, while it assesses great crested newts and bats in reasonable detail, it provides little information regarding other habitats or species that may exist on the site. The appellant advises that the original ecologist of the report confirms that regardless of any great crested newt population changes, the mitigation proposed would be the same. The appellant advises that there is no reluctance in undertaking an updated report but, due to cost, offers to undertake this after planning approval. I note that MEAS indicates that it is unlikely that there are any major ecological issues with the proposal but stresses the need and legal duty to undertake. The details provided are insufficient to allow me to confirm the proposal would not have a likely effect on the international and national sites or result in a net loss of biodiversity. Due to my legal duty regarding an HRA, the use of a condition would not be appropriate.
21. The appellant refers to the Planning Inspectorate letter regarding the Environmental Impact Assessment (EIA) screening issued for the appeal of the adjacent Frenchfields Crescent development. While this indicates the site did not require an EIA, it does not replace the need for a PEA or HRA.
22. Given my findings, I cannot conclude that the proposal would not adversely affect protected habitats and species or deliver biodiversity net gain improvements. It would therefore conflict with Policy LPC06 of the LP.
23. It would also conflict with paragraphs 180 and 186 of the Framework which state, amongst other matters, that planning decisions should contribute to and enhance the natural and local environment by minimising impacts and permission should be refused if significant harm to biodiversity cannot be avoided or adequately mitigated.

Planning Balance

24. The appellant contends that the Council has failed to meet the demand for Self-Build and Custom serviced plots over the last three years and takes this into account in considering the application.
25. However, the Council confirms that it maintains, as required by the Self-build and Custom Housebuilding Act 2015 (as amended), a register of individuals and associations of individuals who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding schemes.
26. Further to this, Policy LPC01 of the LP seeks to achieve a mix of housing that reflects the housing needs including housing that people wish to commission or build themselves. Criterion 5 of this policy confirms the Council will support suitably designed and located self-build and custom-build housing where they would conform with relevant local and national policies.
27. The appellant contends that the policy is non-specific and could apply to any planning application and that the LP's estimated number of houses to be

delivered makes no provision for granting self and custom-build permissions within its total. While this may be the case, neither the policy nor the LP's housing number limits the planning applications for the provision of serviced plots for self and custom builders. This therefore does not indicate that the Council is not meeting its self-build and custom-build housing duties.

28. Furthermore, the Council advises that while no serviceable plots have been permitted since the register was created, this is due to no plots labelled as 'self-build' being submitted rather than it not granting permissions. The Council notes that the appeal site is included on the register. Other than the reference to the self-build homes on Frenchfield Crescent, which were ultimately granted permission, the appellant provides little evidence to show the Council's assessment is incorrect. As such there is no compelling evidence that the Council is failing in its duty under the Housing and Planning Act 2016 to grant planning permission for enough serviced plots of land to meet each base period's demand for self-build and custom housebuilding.
29. The appellant cites Appeal Decision APP/G2435/W/18/3214451 as an example where the demand for self-build and custom serviced plots was considered. However, in this case, a much larger development was being considered and the Council was found to be granting insufficient planning permissions to meet the demand for self-build and custom serviced plots. This is not directly comparable to the appeal before me and does not set a precedent. It does not therefore change my view regarding the appeal.
30. It is evident that the proposal would add to the supply of self-build and custom-build homes and would in all probability be delivered more rapidly than the allocated housing. However, the proposal would only provide a single dwelling in an area which already has housing allocated and it would therefore have a neutral effect in terms of increasing housing supply and economic benefits. It would not support the Framework's objective of significantly boosting the supply of homes as set out in paragraph 60.
31. Accordingly, the self-build and increased speed of delivery benefits are small and would not outweigh the conflict found with the strategic allocation of Site 4HA, the unacceptable compromise in highway safety and the adverse effects on the protected habitats and species.

Conclusion

32. The proposed development would be contrary to the development plan and there are no other considerations, including the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

J Symmons

INSPECTOR