



Appeal Decision

Site visit made on 5 October 2015

by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 March 2016

Appeal Ref: APP/A0665/W/15/3129628

Land adjacent to Shepherds Fold Drive, Winsford, CW7 2UJ

- 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 Goldfinch (Promotions) Limited against the decision of Cheshire West & Chester Council.
 - The application Ref 12/04858/OUT, dated 29 October 2012, was refused by notice dated 15 May 2015.
 - The development proposed is described as "outline planning consent for residential development of up to 73 units with all matters other than means of access reserved for subsequent approval".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above is taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has changed from that stated on the application form. It indicates the revised description as "residential development for up to 50 units with all matters other than means of access reserved for subsequent approval". The Council considered the proposal on this basis. Therefore so shall I.
 3. The planning application was submitted in outline with all matters other than access reserved. I have therefore dealt with the appeal on that basis. A plan was submitted with the application indicating that vehicular access would be provided by a continuation of Shepherds Fold Drive. It also indicated a possible layout of how the site could be developed. However, I have treated that aspect, as well as the elevation plans which were submitted with the planning application, as being for indicative purposes only.
 4. At the time of my site visit I was not in receipt of the red line site plan which accompanied the planning application. However, this was subsequently provided. I am satisfied that I had sufficient information at the time of my site visit to inform my decision.
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Main Issues

5. The main issues in this case are:

- whether or not the proposal for housing in this location would be acceptable having regard to the relevant provisions of the development plan and the National Planning Policy Framework (the Framework); and
- the effect of the proposed development on a European Protected Species (EPS).

Reasons

Whether or not the proposal for housing in this location would be acceptable having regard to the relevant provisions of the development plan and the Framework

6. Planning law requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework sets out the Government's planning policies and is a material consideration in planning decisions.
7. The Framework does not change the statutory status of the development plan as the starting point for decision making. It indicates, at paragraph 12, that proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
8. The development plan for the area comprises the Cheshire West and Chester Local Plan (Part One) Strategic Policies (CWCLP1), the retained policies of the Vale Royal Borough Local Plan (VRBLP) and the Winsford Neighbourhood Plan (WNP).
9. Policy STRAT 1 of the CWCLP1 reflects the presumption in favour of sustainable development set out in the Framework. It indicates that proposals that are in accordance with relevant policies in the Plan and support identified sustainable development principles will be approved without delay unless material considerations indicate otherwise. It also indicates that proposals that fundamentally conflict with the identified sustainable development principles or policies within the Local Plan will be refused.
10. Policy STRAT 2 of the CWCLP1 indicates that over the period of 2010 to 2030 the Plan will deliver at least 22,000 dwellings. It goes on to indicate that the majority of new development will be located within or on the edge of the city of Chester and three towns, one of which is Winsford.
11. Policy STRAT 6 of the CWCLP1 indicates that Winsford will be a key focus of development in the east of the Borough and development proposals will help to support the continued regeneration in the town. It also indicates that provision will be made for at least 3,500 new dwellings.
12. The WNP sets out a vision for the future of the town to 2030, along with policies for where new development should go. It also allocates sufficient land to deliver around 3,362 new homes by 2030. The appeal site was identified as potential residential land in the preferred option of the WNP at the consultation stage. However, it was not included in the final plan for examination and is not allocated within the made WNP.

13. I note that the housing allocations in the WNP provide for less housing than that indicated for Winsford in policy STRAT 6 of the CWCLP1. However, I also note that, as indicated in the explanatory text to policy STRAT 9 of the CWCLP1, settlement boundaries for the four urban areas, which includes Winsford, will be identified through the Local Plan (Part Two) Land Allocations and Detailed Policies Plan (CWCLP2) and that where there is a need to accommodate development on the edge of a settlement the boundary will be drawn to reflect this. Therefore this provides the potential for additional sites, if required, to be allocated through the CWCLP2.
14. Policy STRAT 9 of the CWCLP1 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. Its explanatory text indicates that land beyond identified settlement boundaries will be classed as countryside. It also indicates that until the CWCLP2 has been adopted, the retained policies in the VRBLP relating to settlement boundaries and development beyond the existing built form of settlements will continue to operate. The appeal proposal does not fall within any of the types of development listed in policy STRAT 9 which will be permitted in the countryside.
15. Policy GS5 of the VRBLP indicates that the character and appearance of the open countryside will be protected. It also indicates that open countryside is defined as all parts of the Borough which lie outside of settlement policy boundaries. The policy goes on to state that new buildings will not be allowed unless provided for through other policies of the plan. There is nothing in the evidence before me to indicate that the appeal proposal would be provided for through other policies of the VRBLP.
16. There is no dispute between the parties that the appeal site lies outside the settlement boundary of Winsford and therefore within the countryside for planning policy purposes.
17. Policies STRAT 9 of the CWCLP1 and GS5 of the VRBLP seek to protect the countryside and are broadly consistent with the core planning principle of the Framework of recognising the intrinsic character and beauty of the countryside.
18. The appeal site comprises an open area of rough grassland which is currently unused. To the west of the site is an area of existing residential development, to the north is Wades Lane, a public footpath, beyond which is a golf course, to the east is a field and a sewage treatment works beyond and to the south is mature woodland and an open field. Views of the site are largely contained and the visual impact of the urban form of the proposed development within the wider landscape could be partially mitigated by existing and additional landscaping. However, the Landscape and Visual Impact Assessment (LVIA) undertaken by the appellant indicates moderate adverse and moderate/minor adverse residual effects after 15 years on two receptor groups considered to be of a high sensitivity. These are respectively the residents of the properties on Willow Close with rear elevations facing the site and the users of the public footpath to the north. Therefore, notwithstanding that the LVIA indicates that the overall anticipated visual impact of the proposed development after 15 years is expected to be minor adverse/negligible it seems to me that the development would have a clear visual impact affecting views into, over and out of the site for the most sensitive of the receptor groups.

19. The appeal site is located on the northern edge of the settlement of Winsford within the countryside. Therefore, the proposed development would serve to extend the settlement edge into the countryside.
20. Notwithstanding that the Inspector in the report of the Inquiry to consider the VRBLP stated that the appeal site does not have the feel of open countryside, it nevertheless forms part of a large area of countryside which wraps around the northern edge of Winsford and meets the Weaver Valley at its eastern end. The proposed development of up to 50 dwellings on this undeveloped greenfield site in this locality would therefore result in an increased sense of urbanisation. It would diminish the extent of open undeveloped countryside in the locality and detract from its character and appearance.
21. Taking account of all of the above therefore, the appeal proposal would be contrary not only to the locational requirements of policies STRAT 9 of the CWCLP1 and GS5 of the VRBLP but also to their stated purposes which are respectively to protect the intrinsic character and beauty of the Cheshire countryside and to protect the character and appearance of the open countryside. The appellant does not dispute the Council's ability to demonstrate a five year supply of deliverable housing land and from the evidence I see no reason to take an alternative view. Therefore, having regard to the Framework, policies STRAT 9 of the CWCLP1 and GS5 of the VRBLP can be regarded at the present time as being up to date.
22. The appeal proposal would also be contrary to the core planning principle of the Framework that planning should take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside.

Effect on an EPS

23. A survey undertaken in 2012 indicated the presence of Great Crested Newts (GCNs) in ponds on and in the vicinity of the site. It also indicated that the site provides suitable terrestrial habitat for the species for foraging and hibernating and forms part of connecting habitat between breeding ponds.
24. An assessment of the risk of committing an offence if the proposed activities were undertaken without a licence produced a likely impact of 'Red: Offence Highly likely'. Accordingly, an EPS development licence would be required to allow the development to progress lawfully. When determining whether or not to grant a licence for activities affecting an EPS, the licensing authority must be satisfied that three tests have been met. These are, that the proposed development meets a purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; that there is no satisfactory alternative; and that the action authorised will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.
25. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2010 places a duty on me, as the competent authority, to have regard to the requirements of the Habitats Directive in the exercise of my function.
26. The appeal proposal would not meet a purpose of preserving public health or public safety. The appellant suggests that it would result in various public

benefits so as to constitute overriding public benefit. However, the Council is able to demonstrate a five year supply of deliverable housing land as required by the Framework. Therefore, although the appeal proposal would contribute towards meeting the housing provision identified for Winsford in the CWCLP1 and provide 30% affordable housing, I am not satisfied that any economic and social benefits in these respects, along with the other aspects of the development referred to by the appellant, would warrant being classed as imperative reasons of overriding public interest so as to meet the first test.

27. The appellant suggests that there are constraints on two sites allocated in the WNP in this part of Winsford which would restrict their suitability, availability and deliverability such that there is no satisfactory alternative site which has less impact on protected species. I have not been provided any evidence by the Council to challenge the appellant's evidence in this respect. However, given that there is no dispute between the parties of the Council's ability to demonstrate a five year supply of deliverable housing land, there would appear to be satisfactory alternatives which would meet the development need. Therefore, I am not satisfied that the second test requiring there to be no satisfactory alternative would be met either.
28. The Council's Biodiversity Officer indicates that the proposed mitigation measures are considered acceptable and will not be detrimental to the maintenance of the GCNs at a favourable conservation status in their natural range. I see no reason to take an alternative view. Therefore, I am content that the third test would be met. However, I cannot be satisfied from the evidence before me that in relation to the other two tests there would be a reasonable prospect of a licence being granted to allow the development to progress lawfully so as not to cause significant harm to an EPS. Therefore, the proposal would not accord with policy ENV4 of the CWCLP1 in so far as it seeks to ensure that where there is unavoidable loss or damage to habitats because of exceptional overriding circumstances there is no net loss of environmental value.

Overall planning balance and conclusion

29. The appeal proposal is not allocated for housing development in the made WNP. It would be contrary to policies STRAT9 of the CWCLP1 and GS5 of the VRBLP. It would also not accord with policy ENV4 of the CWCLP1. Accordingly, the proposal would not be in accordance with the development plan as a whole and planning permission should not be granted unless material considerations indicate otherwise.
30. The Framework is a material consideration in determining applications. It states, at paragraph 14, that at its heart is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking.
31. Paragraph 7 of the Framework sets out the three dimensions of sustainable development: economic, social and environmental. These dimensions are mutually dependent and should be jointly sought.
32. The Framework seeks to boost significantly the supply of housing. Notwithstanding that the Council can demonstrate a five year supply of housing land and that therefore the site is not needed to meet the area's identified housing need the appeal proposal would deliver social and economic benefits

by the provision of up to 50 new homes, 30% of which would be affordable, in a reasonably accessible location. Accordingly, these benefits are of some weight.

33. Turning to the environmental dimension there would be some environmental benefits resulting from new woodland planting within the site/identified wildlife corridor and the remediation of contaminated land, there having been potentially historically contaminative land uses on at least part of the site. However, I have found above that I cannot be satisfied that there would be a reasonable prospect of a licence being granted to allow the development to progress lawfully so as not to cause significant harm to an EPS. Furthermore, the appeal proposal would result in the extension of residential development within the countryside which would cause harm to the intrinsic character and beauty of the countryside. Accordingly, it would not contribute to protecting the natural environment and helping to improve biodiversity.
34. Taking all of the above into account therefore, notwithstanding the economic and social benefits of the proposal, it would not fit with the environmental dimension and therefore does not fit within the wide definition of sustainable development set out in the Framework.
35. In support of their case the appellant has referred to other appeal decisions¹ within the area for housing development beyond the settlement boundaries which have been allowed. I am not aware of the full circumstances of these appeals. However, the decisions indicate the finely balanced nature of the cases and it is clear that each needs to be judged on its own merits, on the basis of the evidence before the Inspector. It is on this basis that I have determined the appeal.
36. To conclude therefore, the appeal proposal would be contrary to the development plan as a whole and would not comprise sustainable development. Accordingly, for the reasons set out above and having regard to all other matters raised, the appeal should be dismissed.

Beverley Doward

INSPECTOR

¹ APP/A0665/A/14/2226994 and APP/A0665/W/14/3000528