



Appeal Decision

Site visit made on 12 July 2016

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 5th August 2016

Appeal Ref: APP/W1850/W/15/3141403

Kingcup Cottage, A49 From Dinmore Manor Lane to Auberrow Lane Via Wellington, Wellington, Hereford, HR4 8DT

- 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 Mrs Myra Thomson against the decision of Herefordshire Council.
 - The application Ref 143792, dated 18 December 2014, was refused by notice dated 8 October 2015.
 - The development proposed is residential development and alteration of existing access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is made in outline form with approval sought for access only. The application form states that the development would provide 26 dwellings of which 9 would be social rented properties. Plan ref 1366 03 E, dated December 2013 and entitled Site Layout Plan, is an illustrative layout which shows the retention of Kingcup Cottage and 26 units within the site.
3. Following the refusal of the application a further illustrative plan ref 1366 03 F, dated January 2016, was submitted as part of this appeal. This shows the retention of Kingcup Cottage and a scheme for 6 dwellings. As the matter of layout remains a reserved matter, this plan is also indicative. It does not therefore alter the nature of the original application, which seeks permission for up to 26 dwellings.
4. I am normally required to deal with an appeal on the basis of the same plans that informed the Council's decision. Nonetheless, and irrespective of the merits or otherwise of a reduced scheme, I have considered whether it would be appropriate to take the revised drawings into account in this case and whether a lesser number of dwellings could be appropriately secured by condition. I have concluded that it would not. Firstly because to do so would result in a substantially different scheme to the one originally applied for, which *Planning Practice Guidance*¹ advises should be avoided. Furthermore, to do so would potentially run contrary to the *Wheatcroft* principles². The key test in this regard, is whether dealing with the proposal in that way would so change the development that to grant permission on that basis would deprive those

¹ Planning Practice Guidance ID 21a-012-20140306 - 'Can conditions be used to modify plans and other details submitted with an application?'

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, p37]

who should have been consulted on the changed development, the opportunity to make representations. As I cannot be assured that all those consulted would not be prejudiced by a revised scheme I cannot proceed on that basis.

5. The scheme includes an element of social housing. Following the submission of the appeal the Court of Appeal reached a decision in relation to the "West Berkshire" case³. As the proposal includes an element of affordable housing and was potentially being advanced on the basis of a scheme for less than 10 dwellings, I gave the parties the opportunity to provide further comments on the matter. Both parties responded that they considered the scheme should be determined on the basis of provision set out in the original application and as such, the West Berkshire case would bear no relevance to this appeal.
6. The appeal is accompanied by a signed Unilateral Undertaking which relates to the provision of affordable housing, the provision of financial contribution of £50,000 towards the construction of a footpath between the site and Wellington industrial Estate, and the provision of commuted sums towards education, recycling, playing field provision, the provision of open space and the provision of reserved land for connecting drainage and a future highway link to Marsh Lane.

Main Issues

7. The main issues for the appeal are:
 - Whether the proposal would conflict with policies for residential development which seek to achieve a sustainable pattern of development, and
 - The effect of the proposal on the character and appearance of the area.

Reasons

Policy Background

8. The parties agree that at this point in time a robust five-year housing land supply cannot be demonstrated. As such paragraph 49 of the *National Planning Policy Framework* (the Framework) is engaged and relevant policies for the supply of housing must be considered out-of-date. Paragraph 14 of the Framework advises that where the development plan is out-of-date permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
9. The Council refused the application on the basis of Policies DR3, T6, LA2 and LA3 of the *Herefordshire Unitary Development Plan 2007*. These policies were extant at the time of the decision but have subsequently been replaced by policies within the *Herefordshire Local Plan Core Strategy 2011-2031 (CS)*, adopted in October 2015. I have therefore decided this appeal on the basis of national policy and policies within the current development plan. Although these are out-of-date as a result of housing land supply issues, I have no

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441 which finds that the policies in the Written Ministerial Statement of the 28 November 2014 as to the specific circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought from small scale and self build development, must once again be treated as a material consideration.

reason to suppose, given the recent adoption of these plans, that there is any conflict with the Framework and therefore the policies within them still carry weight in the planning balance.

10. The Council refer specifically to policies RA2, MT1 and LD1 of the CS in its reasons for refusal. Policy RA2 sets out a strategy for sustainable housing growth by identifying settlements where proportionate housing growth would be acceptable in or adjacent to the settlement. This reflects guidance in the Framework which seeks to boost significantly the supply of housing, and to provide a wide range of housing types and tenures including affordable housing. It also reflects the aims of the Framework to protect the countryside from unnecessary development and to locate development in rural areas where it would enhance or maintain the vitality of rural communities.
11. Policy MT1 seeks to, where possible, incorporate integrated transport connections and to support infrastructure including access to services by means other than the private car. This reflects guidance in the Framework which also seeks to support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport and balances land uses so that people can be encouraged to minimise journey lengths.
12. Policy LD1 aims to protect the local distinctiveness of Herefordshire by ensuring that the character of local townscape has positively influenced site selection and that the scale, nature and setting of settlements is reflected in new development. The Framework also seeks to ensure new development respects the intrinsic beauty of the countryside and states that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
13. I understand that the Wellington Neighbourhood Plan (WNP) is close to adoption. The plan, which covers the Parish of Wellington, seeks to ensure that new development attracts new residents, particularly those with young families and in doing so, keep the community alive. It also seeks to manage the number, location and design of new homes to retain the character of the surroundings. To this end 3 housing sites are identified on the edge of the village of Wellington. The appeal site lies within the Wellington Neighbourhood Area. Given the advanced stage of the plan, I give the policies within it some weight, although I have no indication that its adoption would alter the status of housing land supply in the Borough.

Sustainable Pattern of Development

14. The site lies in the small linear settlement of Wellington Marsh. It is a hamlet of 37 dwellings around a mile south of the village of Wellington. Other than a limited bus service running between Leominster and Hereford, the hamlet has no notable services. Wellington has a primary school, a public house, 2 churches, a parish hall and a community shop which includes a post office. The shortest route from the site to services in the village is via a public footpath. This is not paved and so most trips to Wellington would be made either by car or on foot along the A49. Although the distance travelled to services in Wellington is not prohibitive for some, due to the absence of a footpath on parts of the western carriageway, pedestrians are required to cross and re-cross the A49. I noted during my visit that this was a busy main road and that cars were travelling along it at fairly high speeds. This would be likely to

deter many pedestrians, including those with young children going to and from school, from making the trip on foot. Moreton Business Park is around half a mile to the south although the A49 has no footpath for parts of the route from the appeal site and this would also deter trips on foot.

15. I note that the unilateral undertaking supplied by the appellant seeks to provide a contribution of £50,000 towards the construction of a footpath link from the site to Moreton Business Park. The enhancement of a footpath link would provide better access on foot to local employment. However, taking into account the comments of Highways England, I cannot be assured that such a contribution would ensure the construction of the footpath. Moreover, although such proposals may benefit residents in Wellington Marsh, including residents of the new development, I have no evidence before me that such a contribution would be fairly or reasonably related to the proposal before me in scale or kind. I therefore give the matter no weight in the planning balance. I also note that improvements could be undertaken to the public footpath, although I have no evidence that these would be sufficient to significantly alter travel patterns from the village.
16. Therefore although some services would be accessible locally, taking into account the route and distance to travel only a small proportion of such trips would be likely to be undertaken on foot and most trips would be undertaken by private car. There is a bus service along the A49 which runs almost hourly during the day from Leominster to Hereford and some users would be able to use it to access jobs and services in these settlements by sustainable means. I also take into account that car trips from the site to Wellington, Moreton and to access higher order services in Hereford, around 4 miles away, would be relatively short by rural standards. Nevertheless, having regard to the number of dwellings proposed and the resulting number of trips likely to arise, it would contribute to a pattern of development where residents would be largely reliant upon the private car and would fail to reduce the need to travel.
17. I take into account the various appeal decisions put to me where the accessibility of rural sites has been considered. Based on the information before me I cannot be assured that these are directly comparable with the appeal proposal and so I attribute limited weight to them.
18. Accordingly on the first matter I conclude that the proposal would fail to comply with Policy MT1 of the CS and with guidance within paragraphs 30 and 37 of the Framework which seek to achieve a sustainable pattern of development.

Character and Appearance

19. The site comprises a largely level piece of land which is directly accessed from the A49. It includes the immediate garden of Kingcup Cottage, a modern detached dwelling, and a larger area of mowed grass which surrounds it. It is edged by hedging with some mature trees along the boundary and sits between the properties on Marsh Lane and Marsh House Farm. As such, the site is not isolated from other housing, and does not extend further than dwellings on Marsh Lane to the rear. In this regard, the site is well related to those existing dwellings which make up Wellington Marsh.
20. Nevertheless, Wellington Marsh is very limited in size. It comprises a loose cluster of dwellings which sporadically front the A49 or extend along Marsh

Lane. It is not identified as a settlement in the CS and it is distinct from the village of Wellington, as it lies some distance from it in open countryside. Properties within it vary in age and style, showing evidence of limited and piecemeal expansion by the addition of small numbers of dwellings over time.

21. In support of the appeal I have been provided with an extract from the Landscape Character Appraisal (LCA) for the area which is Principal Settled Farmlands. This identifies a settlement pattern of farmsteads and dispersed hamlets capable of accommodating limited new development which is modest in size. In this case the extent of development proposed would go well beyond what would reasonably be described as limited. Although I note that the layout submitted is merely indicative, the scheme nonetheless proposes 26 additional dwellings on the site. Taking into account the size of the plot, this would result in a densely spaced and suburban form of development which would result in a significant enlargement of the hamlet, fundamentally changing the character of the settlement by almost doubling its size.
22. I take into account that the design and layout of the scheme is not a matter before me. I also bear in mind that landscaping could be provided which could partially screen the development in views into the site. Nevertheless, the scale of development proposed would be disproportionate and would fail to reflect the size and function of the settlement and so erode the attractive rural character of the countryside in this location.
23. On the second matter I therefore conclude that the proposal would be harmful to the character of the countryside in this location and would thereby conflict with policies RA2 and LD1 of the CS which together seek to ensure that new development takes into account the character and setting of the settlement in its form and layout. It would also conflict with guidance in the Framework which requires that planning should recognise the intrinsic character and beauty of the countryside.

Other Matters

24. The submitted Unilateral Undertaking makes provision for various financial contributions. It also makes provision for future road and drainage links from the site. As these are intended to mitigate the effects of the proposal on local services they do not represent a benefit in the planning balance and are therefore a neutral factor. I note the appellant's comments regarding the benefits of self-build, but have no evidence that the proposal before me is being advanced on this basis.
25. The development would provide an element of affordable housing, which would provide significant social benefits and this carries some weight in favour of the proposal.
26. The proposal would also provide some temporary jobs as a result of construction, and would help to sustain local services in Wellington and Moreton. These factors also carry some limited weight in favour of the proposal.

Conclusion

27. The proposal would contribute to the supply of housing in the Borough, including affordable housing, which the Borough Council are satisfied would meet local needs. I have not been advised by either party of the extent of

undersupply, although taking into account the amount of housing proposed, and having regard to the impetus for growth implicit in the Framework, this is a matter to which I attribute substantial weight. The development would also provide temporary construction jobs and would help to sustain local services, to which I also attribute some limited weight.

28. However, the proposal would cause significant harm to the character of the countryside in this location. It would also fail to comply with local and national guidance which seeks to achieve a sustainable pattern of development. Together this would amount to substantial and greater harm, which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As such, the appeal proposal would not benefit from the presumption in favour of sustainable development as set out in Paragraph 14 of the Framework.
29. Therefore, for the reasons given above, and having taken all matters raised into account, I conclude that the appeal is dismissed.

Anne Jordan
INSPECTOR

Richborough Estates