
Appeal Decision

Site visit made on 19 April 2016

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 04 August 2016

Appeal Ref: APP/L3245/W/16/3142153

Bay Cottage, Little Ness Road, Ruyton XI Towns, Shrewsbury SY4 1LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Robert Edwards and Mrs M Dutton against Shropshire Council.
 - The application Ref 14/03483/OUT is dated 31 July 2014.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed and planning permission is refused for residential development at Bay Cottage, Little Ness Road, Ruyton XI Towns, Shrewsbury SY4 1LQ.

Procedural Matters

2. The appeal was made because of the Council's failure to determine the planning application within the prescribed period. The Council has confirmed in their statement that if they had determined the application it was likely that it would have been refused on the grounds that the adverse visual and contextual impacts of the proposal outweighed the benefits of providing additional housing. It would therefore not constitute sustainable development as a whole. I have used this potential reason for refusal to frame the main issue.
3. The appeal was submitted in outline with access only to be determined at this stage. I have considered the appeal on this basis, with the submitted layout plan being for indicative purposes only, except for the access details.
4. Since the refusal of the planning application, the Council adopted the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan on 17 December 2015. The parties have dealt with this change in the development plan in their statements.
5. I have received late evidence from the appellant bringing to my attention a recent appeal decision ¹ dated 16 May 2016 for residential development at Teal Drive, Ellesmere. The parties were invited to make observations on

¹ Appeal Ref APP/L3245/W/15/3067596

whether the matters in this decision had a bearing on the cases they had made. I have taken these observations into account in my decision.

6. I have subsequently been made aware by the Council that they have lodged a statutory challenge under s288 of the Planning Act against this decision in the High Court. A High Court Order has been granted for the case to proceed to an oral hearing.
7. In addition the Council has since published a revised assessment of Full Objectively Assessment Need (FOAN) and the appellant has again been given the opportunity to provide comments. I have had regard to these in my decision.

Main Issue

8. The main issue in this case is whether the proposal would represent sustainable development with particular reference to the Council's settlement strategy, the location of the site and its effect on the character and appearance of the area.

Reasons

9. The appeal site forms a 0.47 hectare field located on the edge of Ruyton XI Towns, a settlement identified as a community hub in Policy MD1 of the SAMDev, where development is to be focused. The site lies outside the development boundary of the town in open countryside.
10. Policy CS4 of the Shropshire Core Strategy 2011(CS) allows development outside a community hub or cluster providing that the proposal meets the requirements of CS Policy CS5. Policy CS5 states that new development in the countryside will be strictly controlled in accordance with national policies protecting the countryside. The policy allows for exceptions where a development would improve the sustainability of rural communities, bringing local economic and community benefits. The policy lists a number of development types that would be considered acceptable. The appeal proposal would not relate to any of the types of development listed.
11. The appellant has argued that Policy CS5 is a permissive policy, that the developments listed as acceptable in the countryside do not form an exclusive list. My attention is brought to an appeal in West Felton² where this interpretation was made. I consider that this policy does not exclude other development types, provided that a proposal would bring local economic and community benefits and would meet the requirements of CS Policies CS6 and CS17. These policies aim to achieve high quality sustainable development which would not erode the character of the countryside.
12. The appellant makes the case that there is a shortfall in housing delivery in North West Shropshire against the target for this Spatial Zone set down in CS Policy CS1 and that therefore there is a need to boost housing delivery in this area. The Council appears to me to have misunderstood the appellant's evidence, as it does not attempt to use the spatial zones to assess housing supply but rather housing delivery. I consider this forms an appropriate approach bearing in mind that one of the stated indicators for the delivery of

² APP/L3245/W/15/3003171

Policy CS1 is the net additional dwellings in Shrewsbury, Market Towns and the Rural Area disaggregated by Spatial Zone.

13. SAMDev Policy MD3 is a relevant consideration in relation to housing delivery. In addition to the allocated housing sites identified in Policies S1-S18, Policy MD3 allows for windfall sites both within settlements and in the countryside, providing that the development would be sustainable. This high reliance on windfall development to meet CS housing requirements is recognised in paragraph 44 of the SAMDev Inspectors Report. Furthermore Part 3 of this policy allows additional sites outside the settlement development boundaries where a settlement housing guideline appears unlikely to be met subject to other considerations in paragraph 2 of the policy. These include the assessment of the benefits and impacts of a development and the presumption in favour of sustainable development. The appellant considers that the appeal site would form a sustainable windfall site located outside the settlement boundary of Ruyton XI Towns in line with this policy.
14. The SAMDev in Policy S.14.2(iv) indicates that the housing needs of Ruyton XI Towns would be met by unimplemented planning approvals for 100 dwellings and in addition through the development of 15 dwellings by infilling, small groups of houses and conversion on suitable sites within the development boundary. There is no evidence before me that additional housing beyond the settlement limits is needed to meet the settlement housing guideline at this stage in the plan period. There is therefore no need to look to other sites outside the settlement at present.
15. Paragraph 7 of the Framework states that there are three dimensions to sustainable development, economic, social and environmental. In terms of the economic strand, the construction of the dwellings would support jobs in the local construction industry and the need for building materials would benefit local suppliers. Future residents of the development would spend locally and make use of local services and facilities. The development would also be subject to the Community Infrastructure Levy, contributing to the infrastructure needs of the area.
16. In terms of the social dimension to sustainability, the development would contribute to boosting the supply of housing in the local area. The future residents would support local facilities and services in Ruyton XI Towns, such as the primary school, post office and shops. With regard to accessibility, the site is located within walking distance to the facilities in the town and there is a bus stop approximately 150 metres from the site providing services to Shrewsbury and Oswestry.
17. The environmental dimension of sustainability relates amongst other things to protecting and enhancing the natural and built environment. The appeal site forms an area of grassland currently used for grazing by the appellant. It is in an elevated position to the rear of Bay Cottage. The large conifer trees next to the site access screen the site from Little Ness Road. These trees are to be removed in order to provide appropriate sight lines to the regraded access which would open up views of the site from the road. I accept that to some extent this impact could be mitigated by an appropriate landscaping scheme.
18. As a result of the elevated nature of the site, the mature trees that bound the site can be seen from Little Ness Road and from the village when looking east

down Church Street. I have noted the indicative levels on the submitted plans though I accept that the finished floor levels of the proposed dwellings forms a detail to be determined at reserved matters stage. Built development on this site, as a result of the sites topography and height, would be visible above the roof level of the neighbouring properties. The development would in my view, be seen as an intrusion in the skyline and would adversely affect views of the mature trees on the site boundary on the edge of the settlement. This would not reflect local distinctiveness and would result in an encroachment of built form into the countryside. Furthermore, it would be necessary that in order to develop the site, excavation works and retaining structures would be required. Whilst the full details are not available at this outline stage, I consider that it would be most likely that these measures would have a visual impact out of keeping with the local character of the area.

19. The Framework states in paragraph 8 that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously. The appeal proposal would provide some economic and social benefits, though having regard to the potential number of dwellings on the site, these would be fairly limited. However in terms of the environmental gains, the development would result in a negative impact, with built development encroaching into the countryside and altering the character and appearance of the site and surrounding area.
20. The Council and the appellant have drawn my attention to a number of appeals for housing development outside settlement boundaries in the Borough, some of which have been dismissed, some allowed. I have also noted the most recent appeal decisions which have been made since the adoption of the SAMDev in December 2015. Whilst I do not have full details of these cases, I note the similarities of these cases to the appeal scheme and I also note the differences. Where housing development has been allowed in the open countryside, these developments have been considered to simultaneously meet the economic, social and environmental gains of sustainability as required by paragraph 8 of the Framework. Each development needs to be considered on its own merits and it is on this basis that I have determined this appeal.
21. In conclusion, the appeal site is located in the open countryside on the edge of Ruyton XI Towns, a settlement identified as a community hub where new development should be directed. In its favour, the development of the site would provide social and economic benefits and would contribute to boosting the supply of housing in the Borough. However I have found that the development would not reflect local distinctiveness and would result in harmful encroachment of the countryside.
22. Accordingly, the proposal would not form sustainable development and would conflict with CS Policies CS1, CS4, CS5 and CS9 and SAMDev Policies MD1 and MD3 which set out the development strategy for the area strictly controlling new development in the countryside. In addition the scheme would conflict with CS Policies CS6 and CS17 which aim to protect, conserve and enhance the natural environment and local character.

Other Matters

23. The appellant disputes that the Council can demonstrate a 5 year supply of deliverable housing land. In order to demonstrate the position, the appellant

places reliance on the outcome of a number of recent appeal decisions. I have had regard to these and other evidence before me, including the Council's five year housing land statement dated August 2015 and an update of November 2015. In the appeal at West Felton in November 2015 referred to in paragraph 10, the Inspector concluded that a housing supply of 5.26 years was demonstrated and at another appeal Longden Road, Shrewsbury³ in January 2016, the Inspector found a 5.38 year supply.

24. After the submission of appeal statements, the appellant brought my attention to a more recent appeal decision dated 16 May 2016 for a residential development on Teal Drive, Ellesmere. In this case the Inspector concluded that the Shropshire Core Strategy housing requirement was out of date, that the Council did not have a Full Objectively Assessed Need (FOAN) and therefore could not demonstrate a 5 year supply of deliverable housing land.
25. The Council has subsequently published a revised FOAN. The appellant considers that this fails to meet the requirements of the Framework and Planning Practice Guidance (PPG) and does not address the issues raised in the Teal Drive appeal. The appellant argues that the Council still does not have an acceptable FOAN and therefore cannot demonstrate a 5 year supply of housing. Accordingly the appellant considers that in line with paragraph 49 of the Framework the relevant policies for the supply of housing should not be considered to be up to date. Paragraph 14 of the Framework is therefore engaged which sets out that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
26. Even if I were to conclude on the evidence before me, that the Council could not demonstrate a 5 year supply of housing land as suggested by the appellant, and that the relevant policies for the supply of housing land should not be considered to be up to date, I consider that the adverse environmental impacts of the proposal would significantly and demonstrably outweigh the benefits.
27. The appellant has submitted a signed and dated Unilateral Undertaking which would make a financial contribution to the provision of affordable housing in accordance with CS Policy CS11. However, following an Order of the Court of Appeal on 13 May 2016, legal effect has been given to the policy set out in the Written Ministerial Statement of 28 November 2014 that off-site contributions should not be sought from schemes of less than 10 units. This Government advice is a material consideration which is likely to outweigh the requirements of the development plan policy but as I am dismissing the appeal on the substantive issues I have not considered this matter further.
28. The Council has brought my attention to a previous appeal for a dwelling on land to the rear of Bay Cottage⁴ which marginally overlaps the appeal site. This appeal was considered in relation to a different policy context than exists now and I am informed by the appellant that the submission was different in terms of the proposed access and proximity to the existing Cottage. As a result of these differences, I do not consider this case to be comparable to the appeal proposal now before me.

³ APP/L3245/W/15/3011886

⁴ APP/L3245/A/09/2113390

29. The Council has made reference to the Grade II Listed White House, which adjoins Bay Cottage. No evidence is provided that the development would have an adverse impact on the setting of this Listed Building. I have no reason to disagree.

Conclusion

30. I have found that the appeal proposal would not represent sustainable development particularly with regard to the Council's settlement strategy, the location of the site on the edge of the settlement of Ruyton XI Towns and its effect on the character and appearance of the area.
31. For the reasons given above and having regard to all other matters raised including those put forward by local residents, I dismiss this appeal.

Helen Hockenhull

INSPECTOR

Richborough Estates