
Appeal Decision

Hearing held on 28 February 2017

Site visit made on 28 February 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 20 April 2017

Appeal Ref: APP/J3720/W/16/3158740

Land off Station Road, Fenny Compton, Warwickshire CV47 2YW

- 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 Mr John Lagan of Lagan Homes Ltd against the decision of Stratford on Avon District Council.
 - The application Ref 16/00990/OUT, dated 21 March 2016, was refused by notice dated 12 July 2016.
 - The development proposed is described as "*outline application for the construction of up to 25 dwellings (35% affordable) with all matters reserved except for access*".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with only access to be determined at this stage. As details of layout, scale, appearance and landscaping are reserved for future consideration, I have treated the indicative layout on the proposed site plan¹ as being for illustration purposes only.
3. Before the Hearing opened the appellants submitted a draft planning obligation (Unilateral Undertaking (UU)) under the provisions of section 106 of the above Act. The UU covers the provision of affordable housing, a highways contribution, rights of way contribution and off-site open space contribution. The completed and signed UU is dated 3rd March 2017 on the front (Document 4) but the section on the second page that says "THIS UNDERTAKING is provided..." has been left blank.
4. I have therefore considered whether this affects its legal status. The UU has been signed and witnessed pursuant to a statement that says "IN WITNESS whereof the parties have executed this Deed as their Deed the day and year first before written". On balance, despite the omission of the date in the relevant section, I consider that the date on the front page allows the document to be properly interpreted as being dated the 3rd March 2017 and I shall proceed to deal with this appeal accordingly.
5. The Council submitted late evidence before the Hearing opened in relation to an appeal decision². The appellant has had the opportunity to comment on this

¹ Drawing number 1537-020

² APP/J3720/W/16/3156555- February 2017

document. The appellant requested that 2 appeal decisions be submitted as late evidence at the Hearing. However, the Council objected to the submission of the documents as they could have been provided at an earlier date. After discussion between the parties it was agreed that the appellant would not submit them.

Application for costs

6. Before and at the Hearing an application for costs was made by Stratford-on-Avon District Council against Mr John Lagan of Lagan Homes Ltd. This application is the subject of a separate decision.

Main Issues

7. The main issue in this case is whether the site is a suitable location for housing taking into account development plan and national policies and other material considerations.

Reasons

8. The appeal site comprises a grassed paddock adjacent to the settlement of Fenny Compton. On the southern and eastern boundaries of the site there are established hedgerows. There is a children's play area and recreation ground/playing fields to the north west of the site and dwellings on Thompsons Field adjoin its western boundary. I noted at my site visit that there is a dilapidated building, which has the appearance of a stable block, on the appeal site. There is a concrete access drive adjacent to the eastern boundary of the site. The proposal would comprise up to 25 dwellings with 35% of these being affordable. Vehicular access to the site would be from Thompsons Field.

Development plan

9. The development plan includes the Stratford-on-Avon District Core Strategy 2011-2031 (CS) adopted on the 11 July 2016. CS Policy CS.15 relates to the distribution of development in Stratford-on-Avon District based on a pattern of balanced dispersal, in accordance with the distinctive character and function of the wide range of sustainable locations across the District. In this respect, Fenny Compton is identified in the supporting text of CS Policy CS.15 as a Category 2 – Local Service Village (LSV).
10. CS Policy CS.15 advises that the scale of housing development appropriate to each village is specified in CS Policy CS.16 and that development will take place on sites identified in a Neighbourhood Plan; and through small-scale schemes on unidentified but suitable sites within their Built-Up Area Boundaries (BUAB) (where defined) or otherwise within their physical confines. The latter criterion is also stated in CS Policy AS.10. There is no Neighbourhood Plan in progress for Fenny Compton. The Parish Plan does not identify sites for housing.
11. CS Policy CS.16 states that in Category 2 LSVs approximately 700 homes in total are to be provided, of which no more than around 12% should be provided in any individual settlement. This translates to around 84 dwellings. The Council have provided evidence in relation to the amount of houses that have been built or have planning permission that are attributable to Fenny Compton within the CS plan period so far. These figures indicate that 6 dwellings have been built and 102 have planning permission.

12. The appellant confirmed at the hearing that the only part of these figures that he disputes is the 80 attributed to the Compton Works site. I acknowledge that the planning permission for that site was in outline and there is a slight discrepancy between the parties as to the overall number that can be attributed to it. However, for the purposes of the case before me this discrepancy is not fundamental.
13. The appellant considers that the Compton Works site should not be treated as part of the housing commitments for Fenny Compton for a number of reasons. These include that the site is an appreciable distance from the centre of the village, the development would not comply with CS Policies AS.10 or CS.15, it should be treated as a large rural brownfield site (CS Policy AS.11) and that the scheme is not deliverable.
14. The Compton Works site is an appreciable distance from the edge and centre of the village and as such it is not within the physical confines of the village. The Council accepted that the approved scheme for that site would not be treated as small scale and that as such it would not comply with CS Policies AS.10 or CS.15. However, the outline permission was granted prior to the adoption of the CS.
15. CS Policy AS.11 relates to large rural brownfield sites and 4 specific sites are considered within the policy. The appellant is of the view that if the planning permission expires on the Compton Works site then any subsequent planning application would be determined against this policy. As such he considers the dwellings should be attributable to large rural brownfield sites and not LSVs.
16. The Council stated at the hearing that the development of Compton Works may not be considered as an extensive previously developed site due to its size as the 4 sites referred to in CS Policy AS.11 are much larger in site area than the Compton Works site. The Council also stated that the extant permission for Compton Works was in place whilst the CS Examination took place. As such, it considers that if the Compton Works permission was attributable to large rural brownfield sites and not LSV's the figures would have been modified at that stage.
17. The outline planning permission for the Compton Works site expires in November 2017. I acknowledge that a subsequent planning application from a housebuilder has been withdrawn and that there were no planning applications on that site at the time of the hearing. Footnote 11 to paragraph 47 of the National Planning Policy Framework (the Framework) sets out that *"sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans"*.
18. I note that the site has been marketed since November 2014 and remains unsold. (Document 3) I also saw at my site visit that there are a number of buildings and structures on the site. I acknowledge that the timescale to submit and obtain planning permission on the reserved matters of the Compton Works outline planning consent is constrained. However, I consider that it is highly likely that the owner of the site or a potential purchaser would seek to do this as it would minimise the possibility of the planning permission expiring or not being granted in the future.

19. The appellant considers that the withdrawal of the recent planning application and the housebuilder from the purchase of the Compton Works site indicates that the development of the site through the outline planning consent is not viable. I acknowledge that the site may be contaminated and that a number of structures would need to be removed from the site. However, this is not unusual with previously developed sites and is normally reflected in the site value. Furthermore, no detailed evidence in relation to the viability of the Compton Works site is before me and there is not clear evidence that the scheme will not be implemented within 5 years.
20. Taking into account all of the above I consider that it is reasonable that the Compton Works site is included in the commitments for Fenny Compton. Even though the site is an appreciable distance from the village it is within walking and cycling distance and there is a pavement on Station Road. As such it is likely that future occupiers of any dwellings on that site would support and utilise the services and facilities within the village. Furthermore, it was not included within the commitments for large rural brownfield sites through the CS Examination. The outline planning consent is still extant and should be considered deliverable.
21. Consequently, the housing commitments to date within the plan period are 108 based on the figures provided by the Council. The proposal would increase this up to a maximum of 133. I am conscious that the housing figures in the CS are not intended to be a ceiling, but the unfettered release of sites such as the appeal site cannot, logically, be the intended corollary of that. This is appreciably more than 84 dwellings and additional development well above the intended number for any one LSV would have the potential to distort the pattern of balanced dispersal of the development strategy.
22. The Council has also provided figures in relation to the housing commitments for all the Category 2 LSVs. These indicate that a total number of 566 dwellings are considered to be committed within the plan period so far. I acknowledge that this does not exceed the overall figure of approximately 700 dwellings of Category 2 LSV's but there is a substantial period of time left within the plan period for the remainder to come forward.
23. The appeal site is an unidentified site and Fenny Compton does not have a defined BUAB. I therefore need to consider whether the appeal site is within the physical confines of the settlement. The appeal site clearly lies on the edge of the village. I acknowledge that there is a building on the recreation ground. However, it is single storey and due to its location close to the concrete access drive and the mature landscaping adjacent to it I would not consider that this building is within the physical confines of the village. This finding is supported by the Council's Informal Planning Guidance- '*Defining BUAB*' - (August 2016) which states that playing fields should be excluded from the confines of a settlement when on the edge of the built-up area.
24. Moreover, although the site is bordered by the concrete access drive and the recreation ground when standing on Station Road adjacent to the site there is a clear sense of being at the edge of the settlement. Due to its openness and the hedgerows the appeal site relates visually to the open countryside. Consequently, the appeal site cannot be treated as being within the physical confines of the village.

25. I note that 'small-scale' is not defined with the CS and that the Council consider that it is a matter of fact and degree in relation to the characteristics of the individual settlement. I am not aware of the exact number of dwellings in Fenny Compton but the Council have stated that it is a medium sized settlement which contains between 250 and 600 dwellings approximately. I have also noted that the Parish Plan states that the overall Parish contained 322 households in 2008 with the majority being within the village.
26. The consideration of what is small-scale also has to be considered in conjunction with the fact that housing schemes are expected to be within the BUAB or the physical confines of the LSV. I acknowledge that this would restrict development to existing gaps within villages and redevelopment opportunities. I have also taken into account the size of developments that have obtained planning permission in the plan period to date within Fenny Compton (excluding Compton Works). The proposal would represent an appreciable increase in the size of the village and taking into account all of the above I do not consider that the development would be small-scale.
27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan in the determination of this appeal, that determination must be made in accordance with the development plan unless material considerations indicate otherwise. The development of the appeal site would be contrary to CS Policies AS.10, CS.15 and CS.16.
28. The Framework sets out that development that conflicts with an up-to-date development plan should be refused unless other material considerations indicate otherwise. I will therefore go on to consider whether there are other material considerations which would lead me to determine the appeal other than in accordance with the development plan.

Material considerations

29. There is no dispute between the parties that the Council can demonstrate a 5 year supply of housing land and I have no reason to come to a contrary view. As such, the development plan policies relating to the supply of housing to be considered 'up-to-date' by virtue of paragraph 49 of the Framework.
30. Fenny Compton is a Category 2 LSV and it is not as sustainable a location as sites in areas such as the main town or main rural centres. However, the village does have a range of services and facilities and some public transport. The Framework notes that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. The proposed development would not be located in an unsustainable location, far from services and facilities. Nevertheless, the same circumstances would arise in relation to many sites which are outside of the BUAB or the physical confines of this and other Category 2 LSVs. This factor simply indicates that the proposal would not cause significant harm in this respect. It is not a positive benefit in its favour in the light of an unchallenged 5 year housing land supply.
31. The Framework states that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities, recognising that new development in such areas can support the retention of local services and community facilities. However, there is no evidence to suggest that existing local services or facilities would be under threat in the absence of the proposed development.

32. The proposal would be seen in views, when approaching the village from the direction of the Compton Works site, against the backdrop of dwellings in the village. However, the site is currently open and undeveloped and the development would extend the urbanising nature and line of domestic buildings on this side of Station Road. I acknowledge that, taking into account the above, the proposal would only result in limited harm to the character and appearance of the area. I am satisfied that subject to the control that exists at reserved matters stage, the dwellings could be designed to be sensitive to local character and architectural styling.
33. The Framework states that, in determining planning applications, local authorities should aim to conserve and enhance biodiversity by encouraging opportunities to incorporate biodiversity in and around developments. I note that the existing site is of limited ecological value and that planning conditions could ensure that there is an enhancement through landscaping and bat/bird boxes. This would be a benefit of the development but provides limited weight in favour of the proposals.
34. I note that there were no technical objections to the development in relation to drainage, highways or tree matters. However, a lack of harm in these respects is a neutral consideration and does not weigh for or against the scheme.
35. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
36. The signed and completed UU requires the appellant to provide and ensure that 35% of the total number of dwellings erected on the site comprises affordable housing and make financial contributions of £1,875 towards highways and transportation, £41,037.04 towards off-site open space and £5,608.66 towards rights of way improvements.
37. The Council submitted a Community Infrastructure Levy (CIL) Compliance Statement in relation to the UU (Document 2). All of the provisions are necessary to make the development acceptable and are fairly and reasonably related to the proposal. The requirements in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 are met, so that account should be taken of the UU. I have therefore attached weight to them in reaching my decision but the financial contributions simply fulfil policy expectations. Consequently, they attract no positive weight as benefits in support of the scheme.
38. However, the affordable housing provision can be treated as a benefit of the scheme. The supporting text to CS Policy CS.18 states that demand for affordable housing is high within the District and as such it attracts significant weight.
39. The appellant has drawn my attention to 2 appeal decisions³ in relation to the weight that can be attributed to the harm from exceeding the housing provision for each LSV. However, these decisions were made before the CS was adopted

³ APP/J3720/W/15/3089709 and APP/J3720/W/15/3133319

and therefore a different approach to decision-taking was therefore required in those cases. In relation to the appeal decision⁴ drawn to my attention by the Council I acknowledge that it related to a Category 3 LSV and comprised a larger scheme. I cannot be certain that the circumstances in any of these cases are directly comparable to those in this case. In any case, I am required to determine the current appeal on its own merits based on the evidence before me.

Overall Balance and Conclusions

40. As set out in S38(6) of the Planning and Compulsory Purchase Act 2004, the starting point in this appeal is the development plan. As stated above, the proposal would not be within the physical confines of Fenny Compton and would not be small-scale as such it would conflict with CS Policies CS.15 and AS.10. The development would also conflict with the development strategy of the Council and it follows that it would not accord with CS Policy CS.16.
41. The appellant refers to the three dimensions of sustainable development set out in the Framework: economic, social and environmental. I acknowledge that the proposal would contribute to the economic role by generating employment opportunities during development and by encouraging economically active residents into the area. The new homes bonus and increased Council tax receipts would bring additional resources to the Council, although I consider these matters to be incentives for Councils to provide housing rather than attracting weight in the planning balance.
42. The creation of additional dwellings including affordable housing would provide a social role. Environmental benefit would be gained through the biodiversity enhancements on the site but this has to be weighed against its urbanising effect. As such, the development would be neutral in environmental terms.
43. One of the core principles in the Framework is to ensure that planning is genuinely plan-led. Plans should be kept up-to-date and should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. The development of this parcel of land on the edge of a village, contrary to the development strategy in the CS and in circumstances where there is an undisputed 5 year supply of housing would not accord with this core principle of the planning system.
44. The Council have referred to a recent court judgement⁵ stating that in light of this judgement there is no 'separate' presumption in favour of sustainable development. The appellants have stated that this judgement notes recognition of the existence of discretion outside of paragraph 14 of the Framework. I acknowledge that an appeal against this judgement is due to be heard in May 2017. However, I consider that the judgement supports the approach taken in this decision.
45. The failure to comply with the development plan leads me to conclude that the proposal would not be sustainable development and to accord substantial weight to that conflict. I recognise that there are benefits, both socially and economically, associated with the proposed development, notably the potential

⁴ APP/J3720/W/16/3156555

⁵ East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973

for affordable housing provision and its potential to boost the supply of housing generally. Such benefits are by no means insignificant.

46. Nevertheless, there are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan. Taking all of the above into account I consider that the site is not a suitable location for housing. Having regard to all other matters raised therefore, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Andrew Boughton	BB Architecture & Planning Ltd
Daniel Stiff	BB Architecture & Planning Ltd
John Lagan	Lagan Homes
Will Lombard	Lagan Homes

FOR THE LOCAL PLANNING AUTHORITY:

Jamie Whitehouse	Senior Planning Officer
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INTERESTED PERSONS:

Bob Jones	Landowner
Robert Jones	Landowner
Janet Neale	Warwickshire County Council
Sophie Jarrett	Stratford-on-Avon District Council

DOCUMENTS SUBMITTED BY THE COUNCIL

- 1) CS Policy AS.11 – Large Rural Brownfield Sites
- 2) Council's CIL Justification Statement

DOCUMENTS SUBMITTED BY THE APPELLANT

- 3) Email from Andrew Jackson dated 27 February 2017

DOCUMENTS SUBMITTED AFTER THE HEARING

- 4) Completed and signed copy of the Unilateral Undertaking.