



Appeal Decision

Inquiry held on 20 - 23 November 2017

Site visit made on 23 November 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 15 January 2018

Appeal Ref: APP/J3720/W/17/3173452

Home Farm, Land off A423, Southam, Warwickshire CV47 1NZ

- 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 Kler Group against the decision of Stratford-on-Avon District Council.
 - The application Ref 15/04305/OUT, dated 3 December 2015, was refused by notice dated 20 October 2016.
 - The development proposed is outline application for the erection of up to 240 dwellings with all matters reserved except for access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline with only access to be considered at this stage. However, the application documents include an indicative masterplan that shows how the development might be laid out and the general ratio of built development to areas of open space. I have had regard to this in my decision.
3. A set of up-to-date plans was submitted at the Inquiry and it is these that I have taken into account in my determination of the appeal.
4. At the Inquiry, the appellant submitted an executed Section 106 Agreement that includes a number of obligations to come into effect in the event that planning permission is granted. These obligations would secure on-site affordable housing and public open space along with financial contributions towards healthcare, policing, biodiversity off-setting, public transport, education, libraries, Rights of Way, sustainable travel and highways.

Main Issues

5. In light of all the submissions before me, the main issues in this appeal are:
 1. The effect of the proposal on the development plan strategy for the area having regard to the Council's housing land supply; and
 2. The planning balance including the weight to be attached to the relevant policies of the development plan and other considerations.

Reasons

Background

6. The site covers an area of approximately 10 hectares and is located to the south-east of the A423 which is the bypass to Southam. It is a greenfield site comprising agricultural land bounded by gappy hedgerows along its south-eastern and south-western boundaries. A number of mature trees line up along the north-eastern boundary next to existing residential development. Its north-western boundary, which runs along the A423, is formed by a narrow belt of dense trees and shrubs. The A423 separates the site and the development to the north from the other part of Southam including its main shopping streets.
7. The indicative masterplan shows housing development spreading east across the site from the A423 surrounded by areas of public open space, the largest of which would be located to the south west. A new access would be formed towards the northern part of the site directly off the bypass and would include the provision of a new roundabout. There would also be a new pedestrian Toucan crossing near to this point. A Public Right of Way (PRoW) crosses the southern part of the site and then crosses the A423 where it leads into Stowe Drive, which is located to the east of the main part of the town.

Development plan strategy

8. The development plan comprises the Stratford-on-Avon District Core Strategy (2016) (CS). There is no dispute between the parties that the Council can demonstrate more than a five-year supply of housing land and thus that the development plan is up-to-date.
9. Policy CS.1 is worded to reflect the sustainable development principles in the National Planning Policy Framework (the Framework) and it seeks to apply them to development within the District. The policy says that planning applications that accord with the policies in the CS will be approved without delay unless material considerations indicate otherwise.
10. Policy CS.15 sets out how development in the District will be distributed and applies the principle of 'balanced dispersal'. It sets out that the town of Stratford-upon-Avon will be the main focus for housing and business development but identifies that such development will also be suitable in the Main Rural Centres (MRCs), which include Southam. CS.15B says that within the MRCs, development will take place on allocated sites identified in the Area Strategies¹ and shown on the Policies Map; on sites identified in a Neighbourhood Plan; and through the redevelopment and re-use of suitable land and property within the Built-Up Area Boundaries as defined in the Policies Map. It also requires proposals to be in accordance with the overall scale of development identified for the settlement in policy CS.16.
11. Whilst not included in the reasons for refusal of the application, it is relevant to note that Policy CS.16 sets out the overall housing requirement (based on an Objectively Assessed Need (OAN)) of 14,600 homes over the plan period 2011-2031 and identifies strategic allocations for housing and housing-led mixed-use development. Approximately 3,800 homes are to be distributed across the MRCs. There are three allocations at Southam, which are: 200 homes West of Banbury Road (SOU.1); 165 homes West of Coventry Road (SOU.2); and 530

¹ The CS includes individual Area Strategies for each MRC to which specific policies relate.

- homes South of Daventry Road (SOU.3). The Council's five-year housing land supply (the 5 year HLS) currently stands at 6.67 years which represents a supply of 16,199 homes, which is significantly above the OAN for the District.
12. The site lies outside of the Southam development boundary as defined on the policies map. It is therefore within the countryside for the purposes of policy AS.10. The policy applies to all parts of the District outside the defined Built-Up Areas' Boundaries including the MRCs. It lists, amongst other things, the types of residential development that are acceptable in principle within the Countryside. It is common ground between the parties that the proposal does not conform to any of the types of development listed in policy AS.10 but the appellant's view is that the proposal's conflict with this policy does not render it contrary to the development plan as a whole.
13. Under the heading "Development Management Considerations" which follows the supporting text to policy CS.1, the CS says that policy CS.1 is the overarching basis on which to consider and determine planning applications. The appellant placed considerable reliance on this at the Inquiry, asserting that policy CS.1 provides key support for the proposal on the basis that it would accord with the overall policy objective of securing sustainable development. Nevertheless, policy CS.1 requires proposals to be in accordance with other CS policies.
14. The appellant argues that policy CS.15 is a strategic policy giving effect to the core CS principle of balanced dispersal and that the development would accord with the policy objective of placing development in the most sustainable of the MRCs and would not undermine the aim of dispersal. I note the appellant's view that that in using the words "development will take place" – as set out in CS.15B, the policy is doing no more than explaining where *development that has been identified in the development plan* will take place.
15. I have been referred to the High Court's judgement in the Lichfield case² which says that there is no inevitable conclusion that [in setting out where development will take place] development in some other area is contrary to the relevant policy. Given the wording of policy CS.15B, I agree that the same principle must apply in this appeal.
16. However, in addition to its other requirements, policy CS.15 states that the number of homes proposed will be assessed against the consistency with the overall scale of development identified for the settlement in policy CS.16. Accordingly, when read as a whole, policy CS.15 cannot be looked at in isolation of policy CS.16. Nor can it be divorced from the Southam Area Strategy, which sets out a number of principles (expressed in policy AS.7) as part of the overall vision for Southam with an expectation that development will contribute to achieving them where appropriate.
17. The Southam Area Strategy lists the site allocations for Southam and sets out that the provision of about 1100 new homes is a minimum. It is clear that to provide the envisaged number of homes over the plan period, reserve sites may need to come forward. Policy CS.16 allows for this to happen in certain circumstances where there is a need to rectify any shortfall in housing delivery, meet additional housing need because of the jobs growth at Jaguar Land Rover

² See paragraph 41 of *Lichfield District Council v Secretary of State for Communities and Local Government* [2017] EWHC 2242 (Admin).

or meet additional need identified within or outside the Coventry and Warwickshire Housing Market Area. However, reserve sites will be brought forward as part of a Site Allocations Plan. Therefore, although the MRC figure of 3800 homes is not a ceiling to further development, it is clear to me that policies CS.1, CS.15, CS.16 and AS.10 are operating together to provide a robust strategy for positively guiding development in the district over the plan period. The Council is currently meeting the housing needs of Southam by way of the three substantial allocations as a result of the permissive nature of those policies. Therefore, although even more housing could come forward, the terms on which this will take place are not met by the appeal proposal.

18. I note the appellant's argument that the proposal would not undermine the CS principle of balanced dispersal. However, the purpose of the CS is to guide development through providing a strategy for its location and distribution. In this case the CS has been consulted upon and rigorously tested through examination.
19. I accept that the proposal would account for about 1.6% of the total number of homes to be delivered across the district over the plan period. The supporting text to policy CS.15 says that provision is made over the plan period for development in the MRCs, but with a varying amount reflecting the specific constraints and opportunities of each and the importance of retaining their individual character and distinctiveness. Taking this into account with the cross reference in policy CS.15 to the scale of development in policy CS.16, the Council is clearly seeking to manage the level of growth in each of the District's settlements. Southam is projected to receive about 25% of the planned growth at the MRCs, which is a substantial amount of new development in relation to the size of the settlement.
20. At the Inquiry, the appellant argued that in the circumstance of a site large enough to accommodate 240 dwellings being identified within the settlement boundary, it would be offered support by the CS. Had such land been available in Southam, it seems likely to me that it would have been identified for development within the development plan. The settlement edge location of the three allocations at Southam clearly indicates that there is no such land and a hypothetical situation of this nature cannot therefore be given weight of any significance.
21. Further development at Southam on the scale proposed would upset the balance sought in the dispersal of development throughout the District and compromise the carefully planned for and managed growth at Southam. It would pose a considerable risk to the ability of the settlement to cope with the influx of such a large number of people over and above that already planned for by placing additional pressure on the available shops and services in the town. It would unbalance the settlement and undermine social cohesion.
22. Moreover, in seeking to manage growth in the way the CS sets out, the amount of new development at the MRCs cannot be open ended. If the reverse was true, policies CS.15 and CS.16 would be rendered ineffectual and thus somewhat pointless.
23. To conclude on this first main issue, the proposal would conflict with policies CS.15, CS.16 and AS.10 thus harming the development plan strategy for the location and distribution of housing. Because of this, it would also be contrary to policy CS.1. I accept that the development plan should be taken as a whole

and that one policy may pull in a different direction to another. I have identified that in this case the proposal does not accord with the key strategic policies concerned with the distribution of development across the District.

24. Accordingly, even if I were to conclude that the proposal would accord with every other policy in the plan, the breach of the above mentioned policies is of sufficient magnitude to place the proposal at odds with the development plan as a whole.

Planning balance

25. Paragraph 12 of the Framework states that proposed development that conflicts with an up-to-date Local Plan should be refused unless other material considerations indicate otherwise. It is agreed that the presumption in favour of sustainable development in paragraph 14 of the Framework does not apply.
26. Before I go on to address the matter of other material considerations, it is worth recalling that Paragraph 1 of the Framework states that it provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities. That is what the Council has done in preparing and adopting its CS. Moreover, the purpose of the development plan is to guide development within the area to which it relates following extensive consultation and examination. This underpins the whole principle of the plan-led system. Furthermore, the plan is more than achieving what the Government expects of it.
27. In my view, to allow further development over and above that which is currently more than meeting the District's OAN would undermine that principle and the development plan strategy for housing in the District. I therefore apportion very substantial weight to the proposal's conflict with policies CS.15 and CS.16.
28. At the Inquiry, the appellant sought to make the case that even if I were to find the proposal to be at odds with the development plan as a whole, this should not necessarily be a barrier to the development going ahead. Indeed it is argued that should the proposal be found to perform well against the three dimensions of sustainable development, this is capable of outweighing the conflict with the development plan.
29. I have a number of other appeal decisions³ before me. There are clear differences between them and the case in this appeal because of the Council's ability to demonstrate a 6.67 year HLS. In some of the other cases, there was either no 5 year HLS or relevant policies were out-of-date for other reasons and thus the presumption in favour of sustainable development within paragraph 14 of the Framework was engaged. In the others, the HLS was marginal or the decisions pre-dated the judgments of the High Court⁴ and then the Court of Appeal⁵ in 'Barwood'.
30. Having said that, I accept the general principle within those other decisions that the existence of a 5 year HLS is not an end point to decision making where

³ See in particular Tabs 8, 18, 19, 21 and 22 of Mr Robson's Proof of Evidence

⁴ East Staffordshire BC v SSCLG & Barwood Strategic Land [2016] EWHC 2973 (Admin)

⁵ Barwood Strategic Land v East Staffordshire BC and SSCLG [2017] EWCA Civ 893

other material considerations exist. There was considerable evidence put to the Inquiry in relation to this matter.

31. There is agreement between the parties that housing schemes with policy compliant affordable housing elements deliver generic economic and social benefits. I consider the economic benefits associated with the construction of 240 dwellings and their occupants' subsequent use of local shops and services to be a matter that carries substantial weight in support of the proposal.
32. In terms of the social role, a key part of this is the provision of housing to meet the needs of present and future generations. The Council has allocated sites to ensure the housing needs of Southam are met and more widely in the north-eastern sub-area of the District, by the Lighthorne Heath new settlement. In addition, there is no reliance, within the housing figures on windfall development to support the Council's 5 year HLS. This makes the HLS figure particularly robust. In any case, the CS only envisages that windfalls will total 100 across all of the MRCs.
33. The appellant has sought to make the case that the benefits of affordable housing provision should not carry diminished weight simply because of the existence of a 5 year HLS. As a matter of principle, I agree but in this appeal, there is no clear identified need for affordable housing that has not already been planned for. This was recognised by the CS Inspector⁶.
34. Indeed, the Council's latest analysis, which has not been challenged by the appellant, is that there are 3,226 registered households of which 200 were registered with a Southam address. The evidence shows an over-provision of affordable housing in Southam, when the 340 affordable homes within the three allocations are taken into account. Furthermore, the Lighthorne Heath new settlement will provide a substantial number of affordable homes (about 1,050) with delivery expected in 2019/20.
35. Accordingly, the needs for affordable housing in Southam and the north-eastern sub-area of the District more widely are being met. On the basis of the Council's track record of delivering affordable housing, I have no reason to doubt that the same will not be replicated district-wide and therefore give little weight to the appellant's argument that the proposal would meet a need wider than Southam. Consequently, there is no need for an uplift in affordable housing numbers so to provide even more at the current time would in itself be harmful to the overall strategy for housing in the District.
36. Taking the provision of market and affordable housing together, given the Council's healthy HLS position and that the OAN for the District will be exceeded by development planned for within the CS, the social benefits of more market and affordable housing are not of such importance to carry anything more than limited weight in this appeal.
37. The public open space element of the proposal would increase the overall amount of open space provision in Southam and would be available to those living elsewhere in addition to residents of the proposed development. This would be a benefit of the scheme. However, it would be unlikely to be used by people living on the other side of the bypass because of the nature of the road and I also consider it unlikely that people living in the residential development

⁶ Inspector's Report paragraph 55

to the north of the site would use it because they would first have to navigate a narrow, muddy and steeply undulating route to access it. Such benefits therefore carry very limited weight.

38. The proposals also include provision (within the planning obligations) for an improved bus service. However, occupiers of the proposed development would still need to catch buses from Market Street in the Centre of Southam as although there is potential for buses to stop along the bypass, at this stage there are no plans for them to do so. Nevertheless, the overall service improvement would represent a social benefit albeit one of limited weight.
39. It was further argued by the appellant that the conflict with policy AS.10 should be given limited weight and dispute remains between the parties on the issue of whether it is a strategic or development management policy. Whichever side of the line the policy may be considered to sit on, it plays an important role in protecting the countryside from inappropriate development and in managing the location of development around the District's settlements in combination with policies CS.15 and CS.16.
40. It also sets out a number of requirements that development will be assessed against including the need to minimise the impact on the character of the local landscape, communities and environmental features.
41. The character of the land would change permanently from an open field to one of built form with its associated infrastructure. Whilst new planting around the site and on the proposed area of open space would provide a degree of mitigation for this harm, it would not be of a sufficient scale to neutralise it.
42. I have taken into account that the site sits within a landscape considered by the Council to be of medium sensitivity, the absence of any strong objection on landscape grounds and the clear urban influences from neighbouring residential areas. The proposal would also provide biodiversity gains. However, none of this would be sufficient in my view to provide a re-balancing factor in the overall consideration of environmental harm. Thus, overall there would be limited harm on the environmental side.
43. The highway authority initially expressed concerns regarding the proposed main access across the bypass but eventually changed their position to one of acceptance. On behalf of Southam Town Council, Mr Acres put it to the Inquiry that this change in stance was due to a "wearing down" of the highway authority by the appellant.
44. Nevertheless, the fact of the matter is that there are no objections from the highway authority in terms of the safe and efficient operation of the local highway network in respect of the proposed site access and the provision of the Toucan crossing. Having read and heard all of the evidence in combination with seeing the traffic and access situation for myself, I am satisfied that the proposal would be acceptable in relation to this matter.
45. At my site visit, I observed the restricted visibility in both directions along the A423 when seeking to cross from its western side via the PRoW. I therefore note Southam Town Council's serious concerns regarding the suitability of this route as a 'safe route to school', which is how it is promoted within the proposals. However, given the location of the PRoW and the difficulty in crossing the road, I do not consider it would be used regularly by school

children particularly given the provision of a more straightforward route to school via the proposed Toucan crossing.

46. Having said that, the fact that more people would be living close to the PRoW as a result of the development could result in greater use of the route, particularly by those living nearest to it. Whilst some may be put off by the crossing, others might not and the potential for harm to pedestrian safety would be a residual element of the scheme without upgrading of the crossing in this area. Accordingly, this weighs against the proposal although I am not persuaded that the likelihood of harm would be so significant that it attracts more than limited weight.
47. The other substantive issues raised by Southam Town Council relate to flooding and the effects of traffic generation associated with the construction of High Speed 2 (HS2). Firstly turning to flooding, photographic evidence was produced before and during the Inquiry. I have no doubt that the flooding shown is serious and inconvenient to people seeking to use the pedestrian underpass or walk into the town via Stowe Drive. However, neither the lead flood authority nor the Environment Agency has objected to the proposed development in relation this matter. Furthermore, it is unclear how long the flooding lasted for and I am not persuaded that it would be of such magnitude to weigh against the proposal.
48. In terms of HS2, no substantive evidence has been produced to suggest that the combined effects of traffic generated by its construction or during the construction of the proposed development and after its occupation would result in any harm to the safe and efficient operation of the local highway network.

Planning Obligations

49. I have considered the planning obligations in the submitted Section 106 Agreement in light of the Framework, Planning Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).
50. I have already found that the obligations in respect of affordable housing, improved public transport and public open space would constitute benefits of the scheme and I have weighed these in the overall planning balance. However, as I am dismissing the appeal for the substantive reasons already set out, I do not consider the planning obligations further.

Conclusions

51. I consider that the proposal would provide economic benefits from the provision of new housing which attract significant weight. However, I have found that only limited weight or very limited weight should be apportioned to each of the scheme's social benefits. I have also found that there would be harm to the character of the local landscape and from the likely increased use of the PRoW, although I have found the harm to be limited in both of these respects.
52. The development plan provides a robust mechanism for delivering the District's housing requirement over the plan period. It is doing what is required of it and although it does not restrict development over and above that requirement, the existence of a 6.67 year HLS demonstrates that it does not need to do more. It is therefore clear that development plan policies are operating very successfully to deliver the Government aim of boosting significantly the supply of housing.

Therefore, although even more housing could come forward, it is not something that needs to occur now or would justify overriding the aims of the relevant planning policies. I have found that the appeal proposal's conflict in this respect attracts very substantial weight.

53. I do not consider the benefits of the scheme are sufficient either singly or in combination to outweigh the totality of the clear identified harms. Accordingly, taking all relevant matters into account, the harms significantly and demonstrably outweigh the benefits of the appeal proposal and there is nothing that leads me to conclude that a decision should be taken other than in accordance with the development plan in this particular case. Therefore, the appeal does not succeed.

Hayden Baugh-Jones

Inspector

Richborough Estates

APPEARANCES

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FOR SOUTHAM TOWN COUNCIL:

Mr John Acres MA DipTP MRTPI

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DOCUMENTS SUBMITTED AT THE INQUIRY

Documents submitted by the appellant

- AP1 Appellant's opening statement
- AP2 Appellant's closing submissions

Documents submitted by the local planning authority

- LPA1 Local planning authority's opening statement
- LPA2 High Court Judgement – Regina v Rochdale Borough Council
No. CO/292/2000
- LPA3 Email correspondence dated 17 and 20 November 2017 relating to HS2
including a map showing the route to the south of Southam
- LPA4 Local planning authority's closing submissions

Documents submitted by Southam Town Council

- STC1 Mr Acres' opening statement
- STC2 Mr Acres' Evidence In Chief
- STC3 Series of photographs showing flooding
- STC4 Southam Official Street Plan

Other documents (submitted jointly)

- ID1 Set of up-to-date application plans
- ID2 Set of agreed planning conditions
- ID3 Unsigned Section 106 Agreement
- ID4 Signed Section 106 Agreement
- ID5 High Court Judgement – Lichfield District Council v Secretary of State for
Communities and Local Government [2017] EWHS 2242 (Admin)