



Appeal Decision

Hearing Held on 5 June 2018

Site visit made on 5 June 2018

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 26th June 2018

Appeal Ref: APP/A0665/W/17/3182960

Lodge Farm, Worthenbury Road, Crewe by Farndon CH3 6PA

- 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 Lister Carter against Cheshire West & Chester Council.
 - The application Ref 17/01344/OUT is dated 15 March 2017.
 - The development proposed is mixed - use development comprising of up to 14 residential units and up to 14 commercial units (B1) with associated access.
-

Decision

1. The appeal is dismissed, and outline planning permission for mixed - use development comprising of up to 14 residential units and up to 14 commercial units (B1) with associated access, is refused.

Procedural Matters

2. The description of development stated on the planning application form is 14 live/work units. However, at the Hearing it was agreed that the description stated on the appeal form is more appropriate and aligns with those in the Decoy Farm and the Lyndale Farm developments¹. Accordingly I have used that as set out in the banner heading above.
3. The application was submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on this basis, treating the plans as illustrative only. Time was allowed after the Hearing event for the submission of a Unilateral Undertaking². This provides for 30% of the units to be affordable housing; and contributions towards education and leisure infrastructure. The Council has confirmed that these provisions would meet the relevant statutory and policy tests.
4. The appeal site comprises both a former farmyard and a house with garden. There are inconsistencies in the submitted information but it was confirmed at the Hearing that the appeal site comprises both of these and that the total site area is some 0.884 hectares.
5. Land does not have to be owned for planning permission to be sought. Notice of ownership had not been served on one of the land owners and Certificate B is incomplete. However, it is clear the owner is aware of the proposal and a

¹ APP/A0665/W/15/3140690 and 17/00049/FUL

² S106 Town and County Planning Act 1990

signed letter to this effect was produced at the Hearing. The appellant is Lister Carter but the Unilateral Undertaking cites Lister Carter Homes Limited. It was confirmed at the Hearing that these are the same entity.

Background and Main Issues

6. The Council failed to reach a decision on the proposed development within the prescribed time limit. Taking into account the above; the Council's Statement of Case; and third party representations; I consider the main issues to be:
- whether or not the site is appropriate for the proposed development in the light of national and local planning policies and guidance having regard to location and settlement hierarchy; and
 - the effect of the proposed development on protected species.

Reasons

7. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise³. The development plan includes Cheshire West and Chester Local Plan (Part One) Strategic Policies 2015 (the Part One LP); Chester District Local Plan 2006 (CDLP); and the recently made Farndon Neighbourhood Plan 2018 (the NP). The Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies 2018 (the emerging LP) has been submitted for examination. There are outstanding objections and for the purposes of this appeal I consider the emerging LP to carry limited to moderate weight.

Location and Settlement Hierarchy

8. A core planning principle of the National Planning Policy Framework (the Framework) is to focus development in locations which are, or can be made, sustainable. With the aim of promoting sustainable development in rural areas, Paragraph 55 directs housing to areas where it will enhance, or maintain, the vitality of rural communities. In general, new residential development is most appropriate in locations where there is access to services, opportunities for employment, and alternative modes of transport to the private car.
9. Reflecting this Policies STRAT 1 and STRAT 2 of the Part One LP set out a Settlement Hierarchy which seeks to direct development to main settlements. STRAT 8 provides for development in rural areas to meet local needs in the most accessible and sustainable locations to sustain vibrant rural communities with development focused in identified key service centres. The nearest key service centre to the appeal site is Farndon. STRAT 9 restricts development in the countryside to that which requires a countryside location and which cannot be accommodated within identified settlements. Policy HO7 of the CDLP is more restrictive in terms of the extent to which new dwellings would be acceptable in countryside locations and accords less with the Framework.
10. The appeal site is some 1.6km away from Farndon and is in the countryside. The proposed development would not fall within any of the five categories of development permitted in the countryside under Policy STRAT 9. It would therefore fail to accord with the settlement strategy in these respects.

³ Section 38 of the Planning and Compulsory Purchase Act 2004

11. Policy 2.1 of the NP directs development to within the settlement boundary. It also provides for small-scale development of previously developed land in the open countryside consistent with Policy DM1 of the emerging LP.
12. In 2014 a lawful development certificate (LDC) on the farmyard part of the appeal site was granted, Ref 14/03331/LDC, for a storage use falling within use class B8 of the Use Classes Order 1987 (as amended) in association with a landscaping contracting business. Since then doubt has been raised about the circumstance in which the LDC was granted. At the time of the Hearing event the Council had not revoked it. Section 191(6) of the Town and Country Planning Act 1990 (as amended) states that "The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed. I am mindful of the decision of the Court⁴ that buildings last lawfully used for non-agricultural purposes are no longer agricultural buildings. I have been advised that, since the Hearing event, the Council has given notice of its proposal to revoke the lawful development certificate. I have not been advised the process has been completed.
13. The house and garden are not in a built up area and therefore also amount to previously developed land as defined in the Glossary to the Framework. For the reasons set out above I consider the appeal site to be previously developed land for the purposes of this appeal decision.
14. However, there are significant areas of the site that do not have buildings or hard standings⁵ and, as set out in the Framework, it should not be assumed that the whole curtilage should be developed. Moreover, in the context of the small scale of Crewe by Farndon I do not consider the proposal, which would nearly double the size of the hamlet, would be small scale and there would therefore be conflict with Policy 2.1 of the NP.

Accessibility

15. Policy DM1 of the emerging LP provides for replacement buildings for the same use, which would not be the case in this instance. It refers to emerging Policy DM 19 where residential development is proposed outside identified settlements and contains a number of criteria for assessing whether development in the countryside should be supported. The seventh criterion applies to this appeal. In turn this has nine criteria for replacement of buildings on previously developed land, although the one relating to ancillary buildings is not relevant.
16. Farndon has a range of services and facilities including a primary school, pharmacy, post office and other shops. Although the sports club and a church are within reasonable walking distance other facilities are much further away and towards the limits of acceptable walking distances. The journey from the appeal site to Farndon is along the narrow, windy, unlit, Worthenbury Road. There are no footways and, in places, no verge. I observed significant numbers of vehicles using the road and tyre marks indicate these stray off the surfaced carriageway at times. Crossing of the busy A534 is also required. Accordingly I consider that a reasonable and safe walking route for access to services and facilities for a development of the scale proposed is not available. Walking or

⁴ The Queen (on the application of Lee Valley Regional Park Authority) and Broxbourne Borough Council and Britannia Nurseries [2015] EWHC 185 (Admin)

⁵ The appeal site includes grassland and part of a field - Extended Phase 1 Habitat Survey

cycling would be unlikely to be a feasible alternative to the private vehicle for many future occupants of the proposed dwellings for day to day services and facilities regardless of whether Worthenbury Road is identified as part of the wider leisure cycle network.

17. There is no public transport available in Crewe by Farndon. The nearest bus stop is on the other side of the A534.
18. Taking the above into account I conclude the proposed development would conflict with emerging Policies DM 19.7(i); which requires good access to public transport; and DM 19.7 (ii) as a reasonable safe walking route to local services and facilities would not be available; and with those principles of the Framework that seek to manage growth to make the fullest possible use of public transport, walking and cycling. There is also conflict with STRAT 8 of the Part One LP in these respects. I find no discrepancy with the Decoy Farm decision, where a footpath and cycleway would be provided, the site is close to Chester Business Park and there is an accessible bus stop; or the Lyndale Farm case, where there is a lit footpath route to services and a bus stop about 150m away.
19. The proposal would enable future occupants of the proposed development to work without commuting by private vehicle. However, it is unlikely that all such residents would work at the site and there may well be visitors and deliveries to the separate commercial units. Neither the growth in home working nationally, which may not mean self-employed/small businesses as proposed, nor the value for residents of the live/work concept overcomes my concerns about the relatively poor accessibility to services and facilities by means other than the private vehicle. The appellant asserts that live/work units require a countryside location, but, whether or not this is the case, this would not justify a particular operational need for the appeal site location. Therefore I find the proposal conflicts with Policy STRAT 9 of the Part One LP.

Employment land

20. The buildings within the farmyard have clearly been disused for some time with no economic activity taking place. Due to their construction, state of repair and location these buildings appear unsuitable for most modern business or commercial uses. There would be a loss of the amount of employment land and buildings. However, the proposed live/work units, if fully occupied by small businesses as envisaged, would continue economic activity on the site albeit in a different way. Accordingly, even though the premises have not been actively marketed, I find little significant conflict with Policy ECON 1 of the Part One LP; Policy 1.1 of the NP; Policy DM 19.7(iv) or (viii) in terms of loss of employment land or redundant buildings in respect of the farmyard part of the site.

Character and appearance

21. The farm house is an occupied, attractive, property close to the road which contributes positively to the rural character of the area. I was told at the Hearing that it was the core of the settlement at one time. Its loss would give rise to some conflict with emerging Policy DM 19.7(vi) which seeks to retain the rural character of the area. There would be no conflict in this respect with the loss of the modern agricultural buildings which, although they are typical of a modern rural landscape, do not contribute particularly positively to the

character of the local area and, as they are vacant, there is some evidence of disrepair and anti-social behaviour.

22. The application is in outline with all matters reserved. I see no reason to suppose that an appropriate scheme, that would respect the local character of the area in terms of design and layout of the proposed buildings, could not be developed at the reserved matters stage. The removal of some of the larger modern buildings would enhance the appearance of the farmyard area. In this respect I find no significant conflict with Policy DM 19.7(vii).
23. However, the development, as shown on the illustrative plan, would extend buildings significantly further into undeveloped parts of the site which would have a greater impact on the character of the countryside. I acknowledge that the submitted plan is illustrative of only one way in which the site could be developed. However, on the balance of probabilities, it seems likely that the appellant would wish to achieve close to 14 units. To accommodate that amount of development whilst retaining a courtyard style layout to avoid "urbanising the countryside", it seems likely that a layout similar to that shown would be required. Accordingly I consider the proposal would conflict with emerging Policy DM 19.7(v) by having a greater impact on the character of the countryside that would not be off-set by the removal of the modern agricultural buildings.
24. Taking all the above into account I conclude overall that this location would not be appropriate for the proposed development in the light of national and local planning policies and guidance. It would conflict with Policies STRAT 1, STRAT 2, STRAT 8 and STRAT 9 of the Part One LP; Policy 2.1 of the NP; and parts of emerging Policy DM 19, as well as those principles of the Framework that seek to direct new residential development to the most accessible locations. Permitting it would undermine the policy led settlement hierarchy.

Protected Species

25. The planning application was accompanied by a Daytime Bat Survey and an Extended Phase 1 Habitat Survey. Subsequently Bat Activity Surveys were undertaken. These conclude that the site supports bat roosts and that a licence would be required from Natural England before demolition or construction work could take place. The appellant considers the site might qualify for a Low Impact Class Licence.
26. I was told that in discussions the Council's Ecologist accepted that the harm to protected species would be low level and that compensation/mitigation measures would overcome any effects on bats. Given the low numbers of bats affected this seems reasonable and I conclude that, with appropriate mitigation, the effect on bats would not be likely to be detrimental to the maintenance of the population of the species at favourable conservation status in its natural range, whether or not other alternatives have been considered.
27. There are no ponds on the appeal site and the terrestrial Great Crested Newt habitat within the appeal site is poorly represented although the hedgerows, the scrub and tall ruderal herb habitats offer cover and foraging for newts. There are seven ponds within 250m of the site, three of which are connected to the site by hedgerows and there are more ponds within 500m⁶. Additional

⁶ Paragraph 3.21 Extended Phase 1 Habitat Survey 2017 (the 2017 report)

survey work was recommended in the 2017 report. In the absence of a plan showing the locations of all of the ponds and more details of the investigations relating to these, I cannot confidently conclude that the effect on Great Crested newts has been adequately investigated whether or not the Council's Ecologist accepted in discussions that the harm to protected species would be low level. Accordingly I conclude that it has not been demonstrated that the effect on all protected species would be acceptable. Accordingly there is conflict with Policy ENV 4 of the Part One LP and Policy 27 of the CDLP and those principles of the Framework that seek to protect species.

Other Matters

28. The Council has stated that they can demonstrate in excess of a five year supply of housing land; this is not disputed between the parties and I see no reason to doubt it. For Farndon the housing requirement established in the Part One LP is 200 houses to the year 2030. This is a minimum requirement but has been substantially exceeded with 98 completions and extant planning permissions for a further 145 dwellings. Accordingly the development plan policies as a whole are delivering housing to meet the needs of the locality and accord with the Framework in this respect.
29. Consistency in decision making is important. I have found nothing in any of the examples cited to lead me to any different conclusions in respect of this appeal⁷. I acknowledge that the appellant has had extensive discussions with the Council and has amended the proposals accordingly. However, that does not go to the heart of the planning matters before me.
30. I have taken account of the submitted Unilateral Undertaking. However, given my findings on the main issues I do not need to consider it further here.

Planning Balance and Conclusion

31. The provision of new housing, including affordable housing, would be a positive feature as the Framework seeks to significantly boost the supply of housing. Future occupants of the proposed dwellings would help to maintain the vibrancy of local services provided in Farndon and the surrounding villages. However, support for local services could well be provided for by new development in more policy compliant locations.
32. The construction of up to 14 live/work units would enhance the economy of the local area by the creation of jobs associated with the construction phase, and the spending by the new residents would also be beneficial to the economy of the area. The site is currently vacant although was formerly used for economic activity, and the live/work nature of the proposal would continue this, albeit in a different way. Additional Council Tax would be generated. However, the modest scale of the development would limit these benefits.
33. For the reasons set out above the proposal would conflict with significant parts of the development plan and I have found that the proposed development would undermine the adopted settlement strategy. I give this conflict significant weight in the context of a plan-led system as set out in Paragraph

⁷ Hefferston Grange 13/02812/FUL relates to change of use of buildings; APP/A0665/W/16/3152549 the site was within easy walking distance of facilities and was found to be functionally part of the village; for APP/A0665/W/16/3155284 the likely vehicle journeys for a single dwelling offset the traffic generation likely to arise from the commercial use of the existing viable building. Other Cases predate the Part One LP.

17 of the Framework. Although Paragraph 111 of the Framework encourages the effective re-use of previously developed land that is not of high environmental value, it should not be assumed that the whole curtilage should be developed. In the event that the appeal site is not previously developed land the conflict with the development plan would be greater.

34. Even taking account of the benefits set out above, I do not consider there to be any material considerations that would warrant a decision other than in accordance with the development plan. I therefore conclude that the appeal should not succeed and that planning permission should be refused.

S Harley

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr Alan Evans	Barrister
Mr Neil Culkin	Pegasus Group
Dr Rachel Hacking	Rachel Hacking Ecology
Mr Christopher Taylor	RADM Architects
Ms Elemis Park	RADM Architect
Mr Ken Roscoe	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nick Smith	Principal Planning Officer
Mrs Lyndsay Shinner	Senior Planning Officer

INTERESTED PERSONS:

Mr Paul Connolly	Resident
Mr Justin Paul	Resident
Mr Jeremy Mobbs	Resident
Mr John Evans	Chartered Surveyor and Resident
Ms Hilary Williams	Farndon Parish Council
Ms Sue Rowlandson	Farndon Parish Council

DOCUMENTS

- 1 Draft Unilateral Undertaking
- 2 Bat Activity Surveys
- 3 Council Planning Rebuttal Statement May 2018
- 4 Up to date Policies of the Emerging Part Two Local Plan
- 5 Comments on Policy DM 19 of the Emerging Part Two Local Plan
- 6 Plan annotated with ponds
- 7 Letter from Mr Feeney confirming notification of planning application and appeal
- 8 Draft conditions regarding bat mitigation; Reasonable Avoidance Measures relating to Great Crested Newts; and affordable housing
- 9 Emails from the Council and the appellant, with attachments, relating to the Unilateral Undertaking; proposed conditions and Open Space Strategy