



Appeal Decision

Site visit made on 14 April 2014

by Chris Couper BA (Hons) DiP TP MRTPI

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

Decision date: 13 May 2014

Appeal Ref: APP/A0665/A/14/2213068

New Farm Court, Tilston Road, Malpas, Cheshire SY14 7DF

- 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 Jolyon Grace against the decision of Cheshire West and Chester Council.
 - The application Ref 13/02900/OUT, dated 1 July 2013, was refused by notice dated 4 December 2013.
 - The development proposed is demolition of 5 existing buildings and the erection of 13 use class C3 dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Although the application form states that the proposal was submitted in outline with all matters of access, appearance, landscaping, layout and scale reserved for subsequent approval, the Council and appellant agree in their statements that details of access are to be determined at this stage. I have dealt with the appeal on this basis, and, other than the access details, I have treated as indicative only the details depicted on the submitted masterplan and draft planning layout drawings.
3. On 6 March 2014 the planning guidance was published and came into force. I have considered the contents of that guidance, but in light of the facts in this case, it does not alter my conclusions.

Main Issues

4. The main issues are:
 - i) whether the proposal is sustainably located, with particular regard to whether occupiers of the proposed dwellings would be provided with safe and convenient access to local services and facilities; and
 - ii) whether the proposal generates a requirement for a contribution towards essential infrastructure.
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Reasons

Sustainable development and highway safety

5. The site comprises a group of buildings to the rear of Overton House, which have had a variety of uses, latterly as a children's nursery and play barn, although I understand that that use ceased in 2012. Whilst there are a few other buildings along this stretch of Tilston Road, the site is located in open countryside where planning policies are generally restrictive and new housing development would not normally be permitted. However, the National Planning Policy Framework ('the Framework') sets out that where Councils cannot demonstrate a 5 year housing land supply, relevant policies for the supply of housing should not be considered up-to-date. In these circumstances paragraph 14 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
6. The Council acknowledges that it cannot demonstrate a five year housing supply, but maintains that there is a lack of safe and sustainable pedestrian and cycle links from the site to local facilities and services, and that consequently the proposal is not the sustainable development for which the Framework places a presumption in favour.
7. The parties agree that the site is located within approximately 800m to 1km of the village centre of Malpas. I observed on my visit that Malpas has a wide range of services and facilities, and I understand that it is identified in the Council's Sustainable Development Supplementary Planning Document ('SPD') as a Key Service Centre. The settlement is therefore a relatively sustainable location for development. In understand that in the interests of promoting sustainable patterns of development, the SPD requires that new housing be located within 1.6km of facilities.
8. The appellant acknowledges that most future occupiers of the proposed dwellings would be largely reliant on the car to access those services and facilities. Whilst that may be the case, one of the Core Principles of the Framework is that planning should seek to make the fullest possible use of public transport, walking and cycling. I consider it therefore essential that, in the interests of promoting sustainable patterns of development, future occupiers should be provided with safe and convenient alternatives to the car.
9. The appellant contends that following the approval of a development, which is under construction, at St Joseph's College, new road signs marking the 30mph limit have been erected at the edge of the village, and that these are just 200m from the appeal site. He has provided evidence that there are various alternative walking and cycling routes from the site to the village, although as many of these are fairly circuitous or are rights of way across fields, in my view they may be of greater value for leisure, rather than practical, purposes. However, a new pedestrian link would be provided from the appeal site through the adjoining field to Tilston Road, as shown on the indicative masterplan. From that point there are various alternative pedestrian routes into the village.
10. Route 1c passes through the field to the east of Tilston Road running roughly parallel to the road to a point close to Brockbank Cottages, where it meets an

existing footpath into the village. However, as that path was not clearly marked on the ground at the time of my visit, and as it passes through a field, I am not persuaded that it provides a practical alternative for many trips. An alternative route into the village, which could also be used by cyclists, follows Tilston Road (route 1a). Pedestrians taking that option would need to walk along a 150m stretch of Tilston Road which has neither footpath nor lighting, before they could take a route through the new development under construction at St Joseph's College (route 1b). Whilst it was not clear from my visit that route 1b is accessible at this time, the appellant states that it will open in 2014, and I have no evidence that it will not be provided. Whilst more circuitous than continuing along Tilston Road, it would avoid part of the narrow and banked section of that road, known as Beeches Bank.

11. I note the appellant's case that people already walk along Tilston Road, and that there is no record of accidents along this stretch of it. Additionally he states that the proposal would result in a reduction in the total number of daily pedestrian and vehicular movements compared to the former use as a children's nursery/play barn. Although I have no reason to disagree, I note that that use has ceased as it was not economically viable. Furthermore, although I do not have full details of the former use, it seems to me that future occupiers of the proposed dwellings may seek to access village services in the evening and at night time when the former use was unlikely to have generated many trips.
12. In conclusion, for most practical purposes, pedestrians would need to walk along at least part of Tilston Road to access the village, a stretch of which would be unlit and without footpath. Cyclists could make use of various alternative routes detailed by the appellant, although most, except possibly those cycling for leisure, would be likely to use the most direct route along Tilston Road.
13. I observed on my visit that Tilston Road is fairly busy, has a carriageway of variable width, and that, as sections of it are relatively straight, traffic speeds were generally high. For those reasons future occupiers of the proposed dwellings may be deterred from walking to the village's services and amenities, particularly if there was no signage to alert drivers to the likely presence of pedestrians on the road. However, in the context of an undersupply of housing, and given the relatively short distance between the site and the village, I am satisfied that, subject to an appropriate mechanism to secure warning signage, adequate pedestrian access from the site to local facilities could be provided.
14. The appellant has indicated that he would be willing to provide a financial sum of £2,000 towards the provision of warning signs, and that this matter could be addressed by a suitably worded planning condition in the event that the appeal is allowed. He refers at paragraph 7.9 of his statement to a unilateral undertaking condition. The Council has not proposed a condition in its statement, but has indicated that a s106 legal agreement/unilateral undertaking is required to secure £2000 for this purpose. In his Final Comments the appellant does not respond to the Council's requirement, or provide details of an alternative mechanism by which this matter could be addressed.
15. The Framework sets out various tests for conditions and the planning guidance is clear that positively worded conditions requiring the payment of money are not appropriate, although a negatively worded condition to prohibit

development until a specified action has been taken may be possible. However, in this case I do not have details of an appropriate mechanism to secure the provision of the necessary pedestrian warning signs. Consequently, as I consider such provision to be necessary to make the development acceptable, I conclude on this matter that the proposal would not provide safe and convenient access to local services and facilities.

16. Policy HO7 of the Chester District Local Plan ('Local Plan') states that, unless addressing a recognised exception, new dwellings in the open countryside will not be permitted. The Council states that the policy relates to the protection of the countryside rather than the supply of housing, and that in that respect it remains up-to-date as a policy. At paragraph 6.7 of his statement the appellant agrees. However, as the policy's effect is to limit housing supply, and the Council acknowledges that it cannot demonstrate a 5 year housing land supply, in my view, in accordance with the Framework, that policy is out-of-date, and I accord it very little weight in my decision.

17. Policy ENV1 of the Local Plan states that development will be permitted where it accords with the principles of sustainable development. It is therefore broadly consistent with the Framework's presumption in favour of sustainable development and I accord it significant weight in my decision. As I am not persuaded from the evidence before me that safe and secure pedestrian access between the site and the village's services would be provided, the proposal is not the sustainable development for which the Framework places a presumption in favour. There would also be a significant conflict with one of the Framework's Core Principles, and with paragraph 32 which requires that decisions should take account of whether safe and suitable access can be achieved for all people.

Essential infrastructure

18. Although not referred to in the decision notice, the Council sets out in its Statement that a financial contribution of £13,598 towards off-site play provision is required, and that it should be secured by means of a legal agreement. The appellant however states in his Grounds of Appeal that Officers advised Members at Committee that he had agreed to provide a formal play space within the site, and that there was therefore no longer a need for a legal agreement. I note that an 'amenity green space' is shown on the indicative masterplan, and that at paragraph 6.27 of his statement, the appellant states that he has agreed to provide on-site play equipment to the value requested by the Council. In his Final Comments the appellant does not respond to the Council's requirement in its Statement, or provide an alternative mechanism by which on-site recreational provision, or off-site contributions, could be secured.

19. It is an accepted principle that the impacts of development on infrastructure rendering a development unacceptable, may be rendered acceptable through financial contributions to mitigate its impact. The Framework sets out, at paragraph 204, that obligations should only be sought where they are necessary, directly related to the proposed development, and fairly and reasonably related in scale and kind to the development. Policy SR5 of the Local Plan requires that, where there is a proven deficiency, for housing schemes of 5 to 14 dwellings, the developer will be expected to pay a commuted sum to improve provision for play areas in the immediate locality.

20. I have limited information to assess what the current level of provision in the village is, although I note that the Officer's Committee report states that it is likely that the requested contribution would be spent on running track and adult gym equipment at Malpas Recreation Ground in the village centre. Be that as it may, given the scale of the development, the absence of any play area in the immediate locality, and my concerns regarding pedestrian access to the village, I accept that on-site play area provision may be more suitable in this instance. However, regardless of whether play space and facilities would be provided on-site, or whether contributions towards off-site facilities would be made, an appropriate mechanism would need to be put in place to secure its provision and future maintenance.

21. As I have not been provided with any such mechanism, I cannot be sure that such provision would be made. Whilst the nature of any such requirement is not entirely clear, and I have insufficient evidence to determine whether the contribution requested by the Council would satisfy the tests in the Framework, it has not been demonstrated, as required by policy SR5 that there is, or will be, sufficient infrastructure capacity to support and meet all the play area requirements arising from the proposed development.

Other matters

22. Third parties have raised objections that local roads, properties and other areas are subject to flooding, and that this causes pollution and has an adverse effect on wildlife. However, I have limited information to assess the extent or causes of the flooding, and I have no reason to believe that a suitably designed development would make any existing problems worse. Details of surface water drainage could also be addressed by a planning condition should the scheme be allowed. In the event that the scheme was allowed, detailed matters relating to the appearance and layout of the development would be submitted as part of the reserved matters, and these may go some way to addressing concerns raised regarding its design and landscape impact.

23. Malpas Parish Council comment on the increase in housing stock as a result of other development in the area, and on the cumulative impact on traffic and infrastructure. I have addressed the requirement for play facilities above. However, I have limited information to assess the need for any additional infrastructure requirements, and given the housing supply shortfall, I do not consider that these concerns, and the limited evidence I have to support them, constitute reasons to dismiss the appeal. The Parish Council also refers to the need to ensure consistency in planning decisions and refers in particular to a scheme for 35 dwellings at Well Meadow which was refused permission. However, I understand that that scheme was on a greenfield site, accessed via a single lane road, and was considerably larger than the proposal before me. It does not therefore alter my conclusions.

24. Finally, I note that the proposal is for development on a brownfield site and that it would provide a percentage of affordable housing. These are significant benefits in the scheme's favour.

Conclusion

25. Whilst I have noted the various benefits of the scheme, including the provision of housing (a percentage of which would be affordable), which would assist in

addressing the Council's acknowledged shortfall, the harm arising as a result of the absence of a suitable mechanism to secure a safe and convenient pedestrian access to and from the site to local services and amenities significantly and demonstrably outweighs those benefits. Additionally, from the evidence before me, I consider that a mechanism to secure play area provision or improvements to existing facilities would be required.

26. Consequently, and having regard to all other matters raised, the appeal is dismissed.

Chris Couper

INSPECTOR

Richborough Estates