



Appeal Decision

Site visit made on 8 October 2014

by **Paul Dignan MSc PhD**

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

Decision date: 27 October 2014

Appeal Ref: APP/H1840/A/14/2214045

The Firs, Main Street, Bishampton, Pershore, Worcestershire, WR10 2NH.

- 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 Will Adams against the decision of Wychavon District Council.
 - The application Ref. W/13/01094/OU, dated 22 May 2013, was refused by notice dated 20 August 2013.
 - The development proposed is 19 No. dwellings with associated amenity space, access and parking arrangements.
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Decision

1. The appeal is dismissed.

Background and preliminary matters

2. The application was made in outline. Although the Design and Access statement states that all matters save access are reserved, the application form indicates that scale is also for consideration, and the approximate size and type of the units proposed is set out therein. The Council has dealt with it on that basis and so shall I. Plans showing the vehicular access to the site, which would be from Main Street, also shows a layout for a development of 19 houses, 11 detached and 8 semi-detached. Insofar as this relates to the layout, I have treated it as indicative.
3. Amongst the Council's reasons for refusal to grant planning permission was the absence of a mechanism to provide affordable housing and secure financial contributions towards education facilities, open space and play facilities, transport, recycling, sports facilities and public art. The appellant has submitted a signed and sealed Agreement dated 14 May 2014, made under section 106 of the Town and Country Planning Act 1990 to address these matters. I comment on this below.
4. Part of the site lies in the countryside where new residential development is restricted. Policy GD1 of the Wychavon District Local Plan directs most new development to land within defined settlement boundaries, and conflict with this policy was amongst the Council's reasons for refusal. However, in the light of a recent appeal decision¹ where the Inspector was not convinced that the Council could demonstrate a five-year supply of housing land, and having regard to the provisions of the National Planning Policy Framework (NPPF),

¹ Appeal Ref. APP/H1840/A/13/2203924

specifically paragraphs 49 and 14, the Council has withdrawn that reason for refusal.

5. Since the refusal of planning permission for the appeal proposal, the Council has granted outline planning permission² for a 4 house scheme, with the retention of the existing dwelling, on the part of the site that lies within the settlement boundary.

Main Issue

6. Where a local planning authority cannot demonstrate a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered as up date. Subject to a proviso which does not apply here, where relevant policies are not up to date, paragraph 14 of the NPPF provides that planning permission for sustainable development should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The main issue in this case, therefore, is whether the proposal would amount to sustainable development, and if so, whether there are any adverse impacts which would significantly and demonstrably outweigh the benefits.

Reasons

7. The appeal site is about 1.06ha, made up of an existing residential property on the western side of Main Street and an agricultural field behind. A Grade II listed building, Walnut Cottage, and its gardens, adjoins the front part of the site on its northern side, with the rear of the site adjoining the rear gardens of houses on Babylon Lane. On the southern side, the agricultural field adjoins the farmyard at Nightingale Farm, in particular the principal livestock building which abuts the site boundary. Open countryside lies to the west. The Council's outstanding reasons for refusal relate to the proximity to Nightingale Farm and the effect on the setting of Walnut Cottage.

Nightingale Farm

8. The main enterprise at Nightingale Farm is a well established and highly regarded Aberdeen Angus pedigree herd. The livestock building is used to house most of the herd over winter, some 60-65 cows plus followers, plus bulls, to total of about 150 head for the period October to April. Calving takes place in the shed from November to May, and calves are weaned in the shed in about three batches between August and November. The shed is lit overnight during calving, and extractor fans run continuously while the shed is fully stocked. Feeding typically takes place twice a day, using a shredding machine and tractor. Bedding is straw litter.
9. Proximity to livestock buildings can adversely affect residential living conditions, through noise and odours in particular, but also through factors such as the prevalence of flies at certain times of the year. This conflict can give rise to complaints, which in turn can limit the farming enterprise. The indicative layout seeks to address this by retaining an undeveloped buffer beside the livestock building, with the nearest gardens being about 30m away and the nearest dwellings about 37-38m. The appellant commissioned noise and odour assessments to demonstrate that these separation distances would provide satisfactory living conditions for future occupiers of the proposed dwellings.

² Council Ref. W/13/01975/OU

10. The assessments were based on monitoring carried out in mid-May 2013, over a 24 hour period in the case of noise, and just over an hour in the case of odour. At the time it was thought that the livestock building was fully stocked. The noise monitoring indicated that reasonable to good daytime and night-time noise environments could be achieved, albeit with the use of mitigation, in the form of closed double glazed windows and acoustic barriers. The odour monitoring summarised the manure odours detected as typically faint, localised and transient. A distinct odour, moderately unpleasant, was detectable at one location, a proposed garden, directly downwind of a manure heap next to the livestock building. Very faint, but mildly unpleasant, manure odours were detected at other proposed garden locations. Fly numbers were not recorded but the assessor later recalled that there was not a fly nuisance. Similarly, the noise of fans was not noted in the original report or methodology. When this was raised subsequently it was stated that the fans were observed to be on
11. It transpired that only 37 animals were housed at the time, 17 cows and 20 bulls. No further data was collected, but a simple multiplication factor was used to extrapolate the noise with 170 (and 120) animals housed. Again, the residential noise environment, with mitigation, was considered to be adequate. Whatever the basis for the extrapolation, and it is not explained in any detail, I cannot see how the noise environment recorded, unattended, in a single 24hr period at what seems to have been a period of low activity, can reasonably be considered as sufficiently representative to enable a robust characterisation of what must be a highly variable environment over the course of the year.
12. Events such as calving, which often occurs during the night, and weaning, which is known to be particularly noisy and often enduring, do not appear to have been captured. No consideration seems to have been given to whether or not the dynamics of a fully stocked livestock building differs from the situation on the day of monitoring. Fan noise may also not have been fully captured. It would be unlikely that mechanical ventilation would have been operating at the fully stocked level. In respect of odour, even allowing for the possible uncharacteristic presence of a dungheap near the appeal site boundary, the stocking level of the building at the time of assessment cannot be expected to provide a representative characterisation of the environment over the farming year. For example, mucking-out requirements would have been well below those pertaining in winter. I consider that the reports, and subsequent explanatory and supporting documents, show little understanding of the environment they seek to characterise, and it is no surprise therefore that they fall well short of providing a satisfactory analysis.
13. An absence of recorded complaints has been pointed out, but nearby residents on Main Street, Babylon Lane and further afield maintain that noise from the farm can be extremely intrusive at times. Weaning was identified by local residents as a particularly disturbing time, both day and night. A batch of calves was being weaned in the shed at the time of my site visit and the noise was very noticeable, and certainly at a level that I would say could reasonably be expected to prove disturbing to at least some occupiers of the proposed dwellings. Nearby residents also comment that flies are a serious problem in summer and that odours and late working can be disturbing. Locals say that they put up with the disturbance, but that cannot necessarily be said of prospective occupiers of the proposed dwellings.

14. One of the dwellings on the approved 4 house scheme would be a similar distance from the corner of the livestock building as some in the appeal scheme indicative layout, and it is submitted that the Council must have accepted that it would not be unreasonably affected. Be that as it may, the greater number of houses proposed in the appeal scheme, with some directly opposite the long axis of the livestock building, would far more likely, in my view, to lead to conflict and complaint than the smaller approved scheme.
15. The matter of the bio-security of Nightingale Farm has also been raised. The farm's Elite Health Status is considered vital to its business model, and the farm owners argue that the presence of additional housing beside it may represent an increased disease risk. It is generally accepted that farms with development close to them tend to suffer more from trespass and other forms of disturbance, but on the evidence available I cannot conclude that there is an increased risk to the Elite Health Status of the herd, not least because of the nature of the relevant diseases' transmission.
16. Overall, however, I consider that the evidence does not demonstrate that the proposal would provide satisfactory living conditions for prospective occupiers. In view of the inevitable close proximity of the proposed dwellings to the farmyard and livestock building, I consider that there is a significant likelihood of conflict between the agricultural and residential uses which could adversely affect the farming operations. I find that the proposal would not accord with saved Policy GD2 of the Wychavon District Local Plan (LP) which seeks to avoid development which adversely affects both private amenity and the efficient operation of surrounding land uses.

Walnut Cottage

17. Walnut Cottage is an L-shaped timber framed detached cottage dating from about the 17th century, when it may have been 2-3 dwellings. The formerly exposed timber framing is now covered by a rough cast render, and it has modern casements, door and rear facing dormers, A former wheelwrights' workshop in the rear garden has been effectively rebuilt to form a new small studio/ancillary dwelling. The cottage is listed for its group value with a number of other nearby properties, but its individual heritage significance is not particularly obvious in the street scene or in views from the public footpaths running alongside or to the rear of the appeal site, due mainly to the rendering and more modern elements.
18. The appeal proposal would, from the indicative layout, see a new dwelling in relatively close proximity to its southern flank, and the views from the rear would be towards new housing rather than the open views across the site that it currently enjoys. However, it is not clear to me that the space to the south of the cottage, or the extent of views beyond what is already a very spacious rear garden, have a material effect on the significance of the designated heritage asset. Furthermore, the indicated siting of the proposed dwelling to the south is not dissimilar to that indicated for one of the dwellings in the approved 4 house scheme, which I consider has a realistic prospect of being implemented and accordingly to be a valid fallback position.
19. Overall I consider that the proposal would not harm the setting of Walnut Cottage, and that it would not therefore conflict with LP Policy ENV14.

Whether the proposal would amount to sustainable development

20. Sustainable development involves seeking positive improvement in the quality of the built, natural and historic environment, as well as people's quality of life. In this case I have concluded that the proposal would not provide a satisfactory residential environment, and would conflict with the adjoining land use. For these reasons I consider that the proposal does not constitute sustainable development as described by the NPPF. The presumption in favour of sustainable development does not therefore apply. I have found that the proposal conflicts with the development plan, and there are not material considerations sufficient to outweigh this. It follows that the appeal must be dismissed.

The section 106 Agreement

21. The section 106 Agreement contains provision for 7 of the proposed dwellings to be secured as affordable housing, and for the payment of a number of contributions toward local services and infrastructure, in the event that planning permission were granted. Since I have found the proposed development to be unacceptable for other reasons, it is unnecessary to consider these further: at best, they would simply enable compliance with certain development plan policies, or provide mitigation for an otherwise unacceptable impact of the proposed development.

Overall Conclusion

22. Having considered all other matters raised, I conclude that the appeal should be dismissed.

Paul Dignan

INSPECTOR