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## Appeal Decision

Site visit made on 7 October 2014

**by Michael R Moffoot DipTP MRTPI DipMgt MCMI**

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

**Decision date: 10 November 2014**

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**Appeal Ref: APP/L3245/A/13/2208947**

**The Gables, Nesscliffe, Shrewsbury SY4 1DB**

- 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 & Mrs Neil Fardoe against the decision of Shropshire Council.
  - The application Ref: 12/04425/OUT, dated 23 October 2012, was refused by notice dated 3 June 2013.
  - The development proposed is outline application (all matters reserved) for residential development to include affordable housing (resubmission).
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### Decision

1. The appeal is dismissed.

### Applications for Costs

2. Applications for costs were made by Mr & Mrs Neil Fardoe against Shropshire Council and Great Ness and Little Ness Parish Council. These applications are the subject of separate Decisions.

### Procedural Matters

3. The application was made in outline with all matters reserved for further approval. A plan was submitted with the application showing 'indicative access', but the appellants have made it clear that the drawing is for illustrative purposes only. I have considered the appeal on this basis.
4. Although the appellants submit that the second reason for refusal does not reflect the resolution and formal decision of the Central Planning Committee, I am required to confine my considerations to the reasons as they appear on the decision notice.

### Main Issues

5. The main issues in this case are, firstly, whether adequate provision would be made for affordable housing; and secondly, the effect of the proposed development on the living conditions of neighbouring occupiers.

### Reasons

#### *Affordable housing*

6. Meeting housing needs, and particularly the need for affordable housing, is a strategic objective of the Sustainable Community Strategy in Shropshire and informs the *Shropshire Local Development Framework: Adopted Core Strategy*

(2011). Policy CS11 of the Core Strategy sets out criteria for the type and mix of housing and includes an overall target for the first five years of the plan period of 33% of total annual provision in the form of local needs affordable housing. The explanatory text acknowledges that this is an extremely demanding target but one that reflects the evidence of need and the high aspirations of the Shropshire Partnership to tackle the issue. This objective reflects the Government's commitment to housing provision and affordable housing in the *National Planning Policy Framework* ('the Framework').

7. The Council requires the appellants to enter into a Section 106 Agreement for the provision of an appropriate amount of affordable housing on the site and/or a financial contribution towards off-site provision in accordance with policy CS11. The appellants do not dispute the appropriateness or need for a contribution, in the absence of which the development would not accord with the adopted policy. In spite of this, no obligation has been submitted; the appellants advise that one would be drawn up in the event the appeal is allowed. However, the matter cannot be dealt with by the imposition of a condition. Indeed, the *Planning Practice Guidance* states that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under Section 106 or an agreement under other powers. Such a condition is unlikely to pass the test of enforceability.
8. In the absence of the necessary obligation to secure provision of affordable housing the proposed development would conflict with Policy CS11 of the Core Strategy, and for this reason the appeal should fail.

#### *Living conditions*

9. Drawing no AP12016-Sk 3 Rev B shows an indicative access running between The Gables and Pinecroft to serve the proposed development, and involves demolition of two outbuildings and part of the appellant's bungalow to provide a gap of about 15 metres between the two dwellings. Whilst the drawing is illustrative it represents an obvious location for the access given that the site is otherwise land-locked, and it therefore provides a reasonable basis for assessing the implications of the development for neighbours' living conditions.
10. The coming and going of vehicles along this route would inevitably have some impact on the adjoining dwellings and their associated gardens. In terms of noise, the garage to Pinecroft would adjoin the access with ground and first floor windows to habitable rooms in the property set further back, so that the impact of vehicular activity on the enjoyment of these rooms would be minimal. The impact on The Gables in its truncated form would be similarly negligible, with details of the alterations to the bungalow capable of control by planning condition to safeguard the occupiers' living conditions.
11. The rear gardens to both properties have well-established vegetation on the boundaries and this could be supplemented by additional landscaping which could extend to the road frontage to reduce headlight intrusion and provide greater privacy for adjoining residents. The same considerations apply to the boundaries with Kynaston House and Breidden House, and the proximity of new dwellings to these properties could be considered in detail at the reserved matters stage in terms of safeguarding the neighbouring residents' living

conditions. Vehicles using the access would be most unlikely to generate significant pollution.

12. For these reasons, I conclude that the proposed development would not materially harm the living conditions of surrounding residents, and as such there would be no conflict with relevant objectives in policy CS6 of the Core Strategy which seek to safeguard residential and local amenity.

*Other considerations*

13. The Council and other parties also argue that the appeal site is outside any settlement currently identified as suitable for housing, and is therefore in the countryside where new housing is strictly controlled. The appellants contend that, in the absence of a five year housing land supply as required by paragraph 47 of the Framework, the relevant housing policies in the Core Strategy are not up-to-date, and as the proposal would make a contribution to meeting the shortfall permission should be granted.
14. In its consideration of the planning application the Council acknowledged that it could not demonstrate a five year supply of deliverable housing land at the time. Paragraph 14 of the Framework advises that development proposals should be granted where, amongst other things, development plan policies are out-of-date 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.
15. However, since the lodging of the appeal the Council has released a revised *Shropshire Five Year Housing Land Supply Statement*<sup>1</sup> (HLSS) which shows there is 5.47 years' supply of deliverable housing land in the County. Amongst other things, the appellants submit that the figure relies on 2590 dwellings that are proposed allocations in the Council's SAMDev Plan<sup>2</sup>, and cannot be considered deliverable before the document has been subjected to formal examination and subsequent adoption. It is also argued that the 5.47 years' supply includes sites which have had planning permission refused, including the appeal site.
16. Paragraph 47 of the Framework requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area. The assessment therefore relies upon accuracy, robustness and validity.
17. Despite the appellants' submissions regarding the veracity of the housing land supply figures in the HLSS, I have seen no substantive evidence to dispute the assessment. In any case, even if there is not a five year housing land supply as the appellants assert, I have found that the proposal fails to make provision for affordable housing for which there is a clear national and local imperative in relevant planning policies. The presumption in favour of granting planning permission in paragraph 14 of the Framework would not therefore apply in that case as the proposal would not be sustainable development.

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<sup>1</sup> Amended Version 12 August 2014

<sup>2</sup> *Site Allocations and Management of Development Plan Pre-Submission Draft (Final Plan)*

### **Other Matters**

18. The width and alignment of the access would be resolved at the reserved matters stage, and no technical evidence has been provided to demonstrate that the development would be hazardous for road users or pedestrians. In this respect, I note that the Council's Highway Officer offered no objections in principle to the proposal subject to conditions. Similarly, the Drainage Engineer did not object to the proposal and I see no reason to take a contrary view.
19. Although the pattern of development in Nesscliffe is largely linear, I observed development in depth at The Crescent and to the rear of Glasands, and in this context the proposed development would not be out of keeping. The density of housing on the site and its integration with existing built development would be an issue to be addressed at the reserved matters stage.
20. Concern has been expressed regarding loss of wildlife habitat, but the site is not subject to any special protection and this does not constitute a valid reason for dismissing the appeal.

### **Conclusion**

21. Although I have found that the proposed development would not be detrimental to surrounding residents' living conditions and there are no technical objections to this outline proposal, no formal provision is made for affordable housing. I consider this to be a compelling objection, and for this reason the appeal should not succeed.

Michael R Moffoot

Inspector