
Appeal Decision

Site visit made on 2 June 2015

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 7 July 2015

Appeal Ref: APP/W1850/W/15/3003671

Land adjacent to Lea Hall Cottage, Lea, Herefordshire HR9 7LQ

- 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 North Oak Homes Limited against the decision of Herefordshire Council.
 - The application Ref P142108/O, dated 11 July 2014, was refused by notice dated 16 December 2014.
 - The proposal is development of up to 44 new dwellings of which 35% will be affordable (16 units).
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Application for Costs

1. An application for costs was made by North Oak Homes Limited against Herefordshire Council. That application is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Preliminary Matters

3. The application sought outline planning permission with all matters other than access reserved for subsequent approval. The layout shown on the submitted plans was confirmed at the site meeting to be for illustrative purposes only, other than with regard to the proposed access, and I have dealt with the appeal accordingly.
4. A completed unilateral undertaking was submitted during the course of the appeal in order to address the Council's fourth reason for refusing planning permission. However, for me to take the planning obligations contained in the undertaking into account they need to meet the legal requirements set out in the Community Infrastructure Levy (CIL) Regulations (2010, as amended). I return to this matter later in my decision.

Main Issues

5. The main issues are the effect that the proposal would have on the character and appearance of the area, and whether safe and suitable access would be provided.
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Reasons

6. Lea is a small, dispersed village in the hilly countryside between Ross on Wye and Gloucester. The appeal site, which comprises 2.3 hectares of agricultural land, lies to the west of the A40 around 300 metres to the south of the village centre which is at the crossroads of the main road and the B4222. A few hundred metres along the A40 to the west of the crossroads is the village school and community hall. Most of the dwellings in the village are to the east of the A40, with two further separate groups, one close to the village hall and the other across some fields to the south. There are also a few dwellings alongside the A40 opposite, and immediately to the north and south of, the site. Slightly further to the south, beyond a dismantled railway line, is an industrial premises.
7. The site falls from the A40, most steeply towards its western boundary which is formed by a mature hedgerow and stream. There are two large trees on the site, a turkey oak and horse chestnut, both of which are protected by a tree preservation order; two hawthorn trees; and a hedgerow along the A40 frontage. A public footpath runs in a north-south direction across the centre of the site and continues across open fields to join the A40 close to the village centre.

Character and Appearance

8. Unlike parts of Herefordshire, the countryside in the vicinity of the appeal site is not subject to any specific environmental designations. However, it is an attractive rural area comprising a scattering of small settlements and rural buildings along winding country roads between medium sized fields bounded by mature hedgerows and trees on undulating terrain. The various parts of Lea village nestle in this landscape with views of buildings, other than at close range, being largely restricted due to the topography, trees and hedgerows.
9. Whilst there are three detached modern houses with domestic-style landscaped front gardens immediately to the south of the site, and a small collection of older dwellings including Lea Hall and Lea Hall Cottage to the north, most of the land to the west of the A40 between the village centre and the dismantled railway remains undeveloped. The appeal site makes up a significant part of this open area, and forms an integral part of the attractive landscape setting of the village by virtue of its undeveloped nature and landscape features.
10. The formation of an access road from the A40 into the site along with requisite visibility splays, and the erection of up to 44 dwellings, however well-designed and landscaped, would significantly alter the nature of the largely open land to the south of the main part of the village. The scale of the proposal means that it would be large in comparison to the small number of dwellings on this side of the A40, and that it would represent a significant addition to the small village in a location that is physically separate from its existing core. An important part of the attractive rural setting to the village would be replaced by an isolated housing estate protruding down the hillside well to the rear of the limited frontage development along the main road.
11. The hilly topography, and presence of mature trees and hedgerows, means that the proposal would be unlikely to be seen from many parts of the village or surrounding area. However, it would be clearly visible from nearby dwellings;

- the A40 along the site frontage; the public footpath that crosses the site; and certain vantage points on higher ground to the north west.
12. It may be the case that travellers approaching from the south on the A40 gain a perception of reaching a settlement having passed the entrance to the industrial premises and the three detached houses, but the frontage hedgerow and large trees on the site, along with undeveloped land on the other side of the A40, mean that the setting remains essentially open and rural at this point. I am advised that planning permission has been granted for a small number of dwellings on two sites on the opposite side of the A40, but these are within the village further to the north meaning that those developments would not affect the open and rural quality of the area around the appeal site.
 13. It was apparent from my site visit that parts of the development would be visible at a distance from the village hall car park, and this would also be likely to be so from certain vantage points along the A40 to the north west of the site. From these distant perspectives the proposal would appear as a significant intrusion of residential development on the largely undeveloped hillside quite out of scale with the limited amount of existing frontage development along that section of the A40, and quite separate from any other parts of the village. The fact that 39 dwellings are likely to be built on land to the side and rear of the petrol station on the A40 would do little to alter the context in which the current proposal would be seen as it would be some distance away and on the other side of the valley from the approved scheme.
 14. The indicative layout plan shows the retention of the protected oak tree and the removal of the horse chestnut, the latter being in poor condition according to the appellant's tree survey. However, as scale and layout are reserved matters, it should be possible to retain both trees if this were deemed to be appropriate in accordance with policy LA5 of the Herefordshire Unitary Development Plan 2007 ("UDP"). I have not, therefore attached weight to the harm that would be caused if either or both of these trees were to be lost. That said, part of the current value of those trees arises from their rural setting, and this would be diminished if they were to be surrounded by residential development.
 15. In support of its arguments relating to this issue, the Council has referred me to a number of other appeal decisions. However, as these relate to different sites and different types of proposal, the findings of my colleague Inspectors are of little relevance in terms of the effects on the character and appearance of the area around the current site. I have, however, noted their views about the degree of consistency between various landscape protection policies in the UDP and the National Planning Policy Framework 2012 ("NPPF").
 16. Whilst it is the case that the Council's landscape officer did not object to the proposal, the formal view of the Council was that planning permission should be refused due to the effect on the landscape setting of the village. In assessing this issue, I have taken account of all of the information and opinions expressed on this matter, including from Council officers, the appellant's various consultants, and interested parties.
 17. I conclude on this issue that the development, by reason of the location, nature and size of the site, and the number of dwellings proposed, would cause

significant harm to the character and appearance of the area. Accordingly, the proposal would be contrary to the objectives of national policy¹ and UDP policy LA3 which collectively recognise the intrinsic character and beauty of the countryside, aim to conserve and enhance the natural environment, and seek to prevent development that would have an adverse impact on the landscape setting of settlements.

Safe and Suitable Access?

18. The Council's highways officer expressed concerns at the planning application stage relating to both the visibility at the proposed access and pedestrian crossing facilities on the A40. The reason for refusal refers to the site not being well connected to the rest of the village and its local services, and the proposal severely compromising highway safety.
19. At the appeal stage, following the submission of additional information by the appellant², the Council advised that it is now satisfied that appropriate visibility splays could be provided, and that these, along with other details relating to the proposed access, could be secured by planning conditions if the appeal were to be allowed. I have no reason to come to a different view. However, the Council remains concerned about the accessibility of facilities in the village for pedestrians and is of the opinion that future residents would be likely to use private motor vehicles.
20. There would be two possible means by which future residents could reach the centre of the village on foot: the public right of way that crosses the site and fields to the north, and the footway on the eastern side of the A40. The former would entail walking around 300 metres across fields on an unmade and unlit path, whereas the latter would be slightly longer and entail crossing the A40.
21. Whilst the A40 is a busy road, it is subject to a 30 miles per hour speed limit through the village which commences some 150 metres to the south of the site. A planning condition could ensure that the traffic calming measures and footway and crossing facility to link to the existing footway on the east side of the A40 were provided as proposed in the appellant's transport statement. On this basis, notwithstanding the nature and length of the pedestrian routes involved, future residents of the site would have a reasonable opportunity to access local facilities in the village on foot without undue risk of an accident. A wider range of services and facilities in Ross on Wye and elsewhere could be reached by public transport. Future residents would not, therefore, be dependent on the use of private motor vehicles to meet their daily needs.
22. The NPPF recognises that opportunities to maximise sustainable transport solutions vary from urban to rural areas, and advises that proposals should only be refused on transport grounds where the residual cumulative impacts of development would be severe³.
23. In this context, and in the absence of any substantive evidence to the contrary, I conclude that safe and suitable access would be provided to serve the proposed development. The proposal would, therefore, be consistent with the

¹ NPPF paragraph 17, fifth bullet point.

² *Response to Reason for Refusal No.2*, David Tucker Associates (January 2015).

³ NPPF paragraphs 29 and 32.

objectives of national policy and UDP policies DR3 and T8 which collectively seek to ensure the efficient movement of goods and people, maximise road safety, and provide access by means other than the private car including through good links to public transport and the creation of safe, convenient and attractive patterns of movement for pedestrians, people with disabilities and cyclists.

Planning Obligations

24. A completed unilateral undertaking was submitted during the course of the appeal. Despite being given the opportunity, the Council has not commented on that undertaking. However, it is clear to me that the provisions relating to affordable housing would ensure that element of the proposal would be delivered and that this would be in accordance with local and national planning policies and the requirements of the CIL regulations. I will, therefore, take that obligation and the social and economic benefits that would arise from the delivery of up to 16 affordable homes into account.
25. One of the planning obligations relates to on-site open space. However, as all matters other than access are reserved, the provision of on-site open space does not need to be dealt with at outline stage and I am not persuaded that obligation is necessary.
26. In the absence of relevant information from the Council I cannot be sure that the various financial contributions included in the obligations would be necessary to make the development acceptable in planning terms, directly related to the development, or fairly and reasonably related in scale and kind to the development⁴. Furthermore, neither can I be sure that the "five obligation limit" set by CIL regulation 123(3)(b) would be complied with. I cannot, therefore, take those obligations into account in making my decision. That said, given the tests that any obligations need to meet, even if I had been able to take them into account they would not have created any significant net additional benefits as they would be required to address infrastructure issues caused by the proposal rather than rectify any existing problems.

Other Matters

27. The NPPF aims to boost significantly the supply of housing and requires local planning authorities to demonstrate a five year supply of deliverable housing sites⁵, something that the Council accepts it cannot currently do. The proposal would deliver up to 44 new dwellings, 35% of which would be affordable, in a location that would help to support local services and a rural community, and create or safeguard jobs in the construction industry. In the context of current national planning policy and the housing land supply situation in Herefordshire, I attach considerable weight to the significant social and economic benefits that the proposal would deliver.
28. If the proposal were to be allowed it would lessen the need to find additional housing sites elsewhere. However, the extent to which this may potentially help to protect landscapes subject to particular environmental designations is unclear from the information before me meaning that I can attach very little

⁴ NPPF paragraph 204.

⁵ NPPF paragraph 47.

weight to any environmental benefits that the proposal may help to deliver in this way.

29. The appellant is concerned at the way in which the Council handled the planning application, including in terms of the time taken and lack of opportunity given to respond to concerns raised by the highways officer. However, this has no bearing on my assessment of the proposal which is based on the main issues which I have identified and other relevant planning considerations.

Overall Assessment

30. As the Council is unable to demonstrate a five year supply of deliverable housing sites, UDP policies for the supply of housing should not be considered up to date⁶. However, UDP policy LA3, which is clearly relevant to my first main issue, is not directly concerned with the supply of housing; indeed it does not rule out housing development in any particular location but rather seeks to protect the landscape setting of settlements, an objective that is broadly consistent with various policies in the NPPF. I do not, therefore, consider policy LA3 to be out of date. This is significant, as the NPPF requires a different balancing exercise in circumstances where relevant development plan policies are out of date⁷.
31. By virtue of the significant conflict with UDP policy LA3 that I have identified, the proposal would not be in accordance with the development plan, irrespective of the fact that UDP policies for the supply of housing are out of date. Planning permission should not therefore be granted unless material considerations indicate otherwise⁸.
32. I have found that the proposal would deliver significant social and economic benefits to which I attach considerable weight.
33. On the other hand, I have found that the proposal would cause significant harm to the character and appearance of the area. In the context of the particular qualities of the site, the scale of the proposal, and relevant national and local planning policies, I attach considerable weight to that harm.
34. The harm that would be caused would not be outweighed by the benefits and therefore, on balance, material considerations do not indicate that the proposal, which is not in accordance with the UDP, should be allowed.

Conclusion

35. For the reasons given above, I conclude that the appeal should be dismissed.

William Fieldhouse

INSPECTOR

⁶ NPPF paragraph 49.

⁷ NPPF paragraph 14.

⁸ NPPF paragraph 11.