

Appeal Decision

Hearing held on 13 January 2016

Site visits made on 12 & 13 January 2016

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 2 February 2016

Appeal Ref: APP/R0660/W/15/3130803

Land north of Pool Lane, Winterley, Cheshire

- 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 Footprint Land and Development against the decision of Cheshire East Council.
 - The application Ref 14/3962N, dated 19 August 2014, was refused by notice dated 11 June 2015.
 - The development proposed is outline planning permission for the construction of up to 79 no. dwellings.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Footprint Land and Development against Cheshire East Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was made in outline with all matters other than access reserved for later determination. I have considered the appeal on this basis.
4. My site visits included accompanied visits to 26 and 29 Pool Lane and to 383 Crewe Road.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings, with regard to outlook, privacy and light;
 - whether, having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the development proposed; and
 - the effect of the proposed development on Best and Most Versatile agricultural land.

Reasons

Living conditions

6. The application for the appeal scheme was made in outline. It was the appellant's evidence that design, and *ergo* layout, is a detailed consideration that could be addressed at the reserved matters stage. Although I accept that the precise site layout could be addressed at a later stage, I do not agree that all consideration of it is limited to reserved matters. Indeed, given the representations made by the occupiers of neighbouring dwellings, about the potential impact of the proposed development upon them, it is reasonable and necessary to establish at outline stage that, if planning permission were granted, the number of dwellings proposed could be accommodated on the site without giving rise to adverse impacts upon neighbouring properties that could not subsequently be altered.
7. The appeal scheme fixes the location of the site access. The submitted Planning Obligation fixes the three areas of open space across the site. In addition, there are a number of trees on and around the site, including protected trees, the root protection zones of which would need to be considered. These constraints clearly limit the ways in which 79 dwellings, which the appellant confirmed would be the number to be constructed, could be laid out. Indeed, it is evident that the various iterations of the indicative layout, derived from that initially set out in the Design and Access Statement, do not vary to any great degree.
8. 29 Pool Lane (No 29) has a number of large windows, to a lounge, kitchen and sun room, facing west to the appeal site. There is also a paved seating area outside the sunroom on the western side of the dwelling. Given the elevated landform of the eastern end of the appeal site, the currently wide open outlook from No 29 over and through the low deciduous hedge that forms the boundary with the appeal site, and the close proximity of No 29 to the boundary with the appeal site, the impact of new development would be particularly severe. Dwellings, even if single storey, would rise well above the hedge in close proximity to No 29 and appear overbearing upon its outlook. It is also difficult to see how the privacy of No 29, both dwelling and garden, could be secured in such a way as to not, in turn, further compound the adverse impact upon outlook.
9. Given the orientation of No 29, and its proximity to the site boundary, I also share the concerns of the occupier that, given the constraints set out above, the proposed development could result in dwellings overshadowing the property and resulting in loss of sunlight both to the dwelling and to parts of the garden, in the latter part of the day.
10. Some properties on Pool Lane, facing the consented part of the site, have dense, mature planting to their boundaries. No 6 has, in addition, a tall outbuilding along its frontage. These would be largely unaffected with regard to overlooking from the appeal scheme. Nonetheless, there would be adverse impacts upon a number of other dwellings, from 8 Pool Lane eastwards. Although the dwellings are set back from the lane, their frontages are completely open, with views of the appeal site. The elevation of the appeal site above Pool Lane, and the potential for new dwellings to be tight to, and rising above, the site boundary, would, in my judgment result in a very significant adverse change in, and an oppressive impact upon, the outlook from these

dwelling. With regard to privacy, I am satisfied that the likely distances are such that if new dwellings were orientated appropriately there would not be any serious adverse impacts.

11. The impact of the appeal scheme on the occupiers of dwellings on the west side of Crewe Road would be considerably less. The appeal site is lower here and the extant and proposed dwellings would be separated by the width of Crewe Road and the largest area of open space, which would run along almost the entire site frontage. I am satisfied that this would overcome any overlooking or privacy issues for dwellings opposite the site on Crewe Road.
12. There was discussion at the Hearing about the potential for a tree buffer along the site boundary with Pool Lane. This may, if planted properly with appropriate species, serve to soften the impacts of the new development upon the outlook from some of the dwellings on Pool Lane. However, no technical work has been carried out to demonstrate that such a buffer could be physically accommodated nor is it clear how it would be managed in the longer term.
13. My attention was drawn to the Council's Supplementary Planning Document (SPD) on Backland and Garden Development. Notwithstanding that the appeal scheme is neither backland nor garden development, the SPD sets out some indicative spacings between dwelling elevations. It suggests a distance of 21m between principal elevations and 13.5 m between a principal elevation with windows to habitable rooms and blank elevations. However, it goes on to note that each application will be judged on its own merits dependent upon the context and character of the site involved. It states that the presence of natural screening, differences in levels and physical site features can impact upon the spacing standards required by the Borough Council.
14. It was clear from the appellant's¹ evidence that, in assessing whether 79 dwellings was an appropriate figure for the appeal site, there was no certainty that any regard had been had to the Council's SPD or to the potential impacts of the juxtaposition of 79 new dwellings with the extant neighbouring properties. The focus was on whether 79 dwellings could be physically accommodated on the site. This appears to be borne out by the Design and Access Statement, which does not touch upon this issue in any substantive detail even when considering the scheme against Building for Life criteria.
15. I am not satisfied on the basis of the evidence before me that the proposed number of dwellings could be laid out so as not to result in a significant adverse impact upon the living conditions of the occupiers of some neighbouring dwellings. I conclude, therefore, that while the appeal proposal is unlikely to have an adverse impact upon the living conditions of the occupiers of dwellings on Crewe Road, this would not be the case with regard to outlook, privacy and light for other neighbouring properties on Pool Lane. The proposal would conflict with paragraphs 17, 56 and 61 of the National Planning Policy Framework (the Framework). These seek, among other things, to ensure that planning always seeks to secure a good standard of amenity for all existing and future occupants of land and buildings; that good design should contribute positively to making places better for people; and that planning decisions should address the integration of new development into the built environment.

¹ Mr Jones' evidence to the Hearing

Whether an appropriate location

16. The Cheshire East Local Plan Strategy –Submission Version is currently undergoing Examination in Public. Some interim views have been received by the Council from the examining Inspector, but the Hearings have yet to finish and it is evident that the final report is far from imminent. There was some debate at the Hearing about the status of this emerging plan. Indeed, the Council's third reason for refusal relies solely upon it, by reference to the spatial distribution for Winterley proposed in it.
17. It is evident from the Inspector's interim views that the proposed spatial distribution of development, set out in the emerging plan, is not considered to be unreasonable. Nonetheless, his letter of 11 December 2015 is explicit that he cannot firmly endorse it at this stage. It was common ground between the main parties that as the emerging plan has yet to complete examination, and is not expected to be adopted until late in 2016, very little weight can be attributed to it. Taking account of paragraph 216 of the Framework, I agree, and have determined the appeal on the basis of adopted local and national planning policy.
18. Policy RES4 of the Cheshire and Nantwich Replacement Local Plan (the Local Plan) identifies Winterley as a village with a settlement boundary. It allows for housing development within the settlement boundary of a scale commensurate with the character of the village, in accordance with other design and infrastructure related policies in the Local Plan. Policies NE2 and RES5 restrict development outside settlement boundaries, other than where specific criteria, which the appeal scheme would not meet, are addressed.
19. It is common ground that the appeal site is beyond the existing confines of the nearest settlement and, thus, in the open countryside. Consequently, the appeal scheme would, on its face, appear to conflict with the requirements of the development plan. However, where a local planning authority is unable to demonstrate a five-year supply of deliverable housing land, Paragraph 49 of the Framework, which is a significant material consideration, indicates that relevant policies for the supply of housing should not be considered up-to-date.
20. Based upon my reading of the above policies, I consider that, in seeking to confine housing development within existing settlement boundaries, they are relevant policies for the supply of housing. I accept that they may have a linked purpose, which is to protect the countryside for its own sake, but I nonetheless consider that their housing supply role renders them out-of-date by reference to paragraph 49 of the Framework. This, in my judgment, necessarily reduces the weight that may be attributed to them.
21. It is also common ground between the parties that Winterley is a sustainable location for new residential development. I share the concerns of some local residents that Winterley of itself lacks any services and facilities of significance. Nonetheless, Haslington, which has a greater range of services and facilities, is very close by, and Winterley is served by regular and frequent bus services to nearby Crewe and Sandbach. It was also confirmed that there are bus services to the secondary schools in Sandbach.
22. I am mindful of the residential schemes already granted permission in Winterley. It may be that a view will need to be taken as to when incremental development is such that further housing in Winterley is no longer

'sustainable'. This will largely be a matter of judgment. On the basis of the evidence before me, however, I am not persuaded that the level of development proposed, which is only 34 extra dwellings above those already permitted on a large proportion of the site, would give rise to an unsustainable pattern of development. Nor would it be of such a scale, or the emerging plan so far advanced, that it could reasonably be regarded as undermining or prejudicing the plan making process.

23. Turning to the second strand of the first reason for refusal, the appeal site is a field in the open countryside. In this context, my attention was drawn to a letter from Brandon Lewis MP, Minister of State for Housing and Planning, of 27 March 2015, to the Chief Executive of The Planning Inspectorate, wherein reference is made to one of the Framework's core principles, that plans and decisions should take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside. This letter is a material consideration of great weight. It does not, however, articulate any change in Government policy or to the Framework.
24. The appeal site is bordered to the west by the busy Crewe Road, with its ribbon development, and to the south by the ribbon development along Pool Lane. On the approach to Winterley, travelling southwest and west along Pool Lane, a continuous run of dense (albeit ribbon) residential development commences some distance from the site. Consequently, there is already a clear sense of being within the village, rather than the open countryside, before one reaches the appeal site.
25. The site's appearance and character would, clearly, change as a result of the appeal scheme. There would also be an impact upon Pool Lane. However, I do not consider, given the extant planning permission for a large proportion of the site and the wider semi-rural character and appearance of this section of Pool Lane, that the scheme would appear as an incongruous incursion into the open countryside. Indeed, although I accept that the field may be of value to local residents in visual terms, it is not of particularly remarkable landscape value of itself nor does it play a significant role in the wider countryside setting of Winterley. I note that the Council's landscape officer raised no concerns in this regard.
26. The appeal proposal would conflict with the countryside development policies of the adopted development plan, noted above. Nonetheless, I consider that this conflict is outweighed by the lack of a five-year supply of deliverable housing sites. I conclude, therefore, that having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the development proposed.

Best and Most Versatile (BMV) Agricultural Land

27. The appeal site comprises around 2ha of Grade 2 agricultural land and around 0.7ha of Grade 3a agricultural land. Policy NE12 of the Local Plan states that development on BMV land will not be permitted unless the need for development is supported by the Local Plan; the development cannot be accommodated on non-BMV land; and other sustainability considerations suggest that use of such land is preferable. Some examples of such considerations are given, but they are just that. There is no definitive list. Nor does it appear that a scheme must accord with every criterion in the policy.

The policy is broadly in accordance with the Framework², which, albeit that it expresses a preference for development on non-BMV land, does not preclude development on such.

28. A number of appeal decisions were drawn to my attention where the presence of BMV land was either a factor in dismissing appeals or where it was felt to be of limited weight when allowing appeals. The parties agreed that there was no common approach. The Council also agreed that the development of substantial areas of BMV land will be necessary in order to accommodate the likely levels of housing growth required in the Borough.
29. In this context, the appeal scheme would result in the loss of a relatively small amount of BMV land. In addition, in my judgment, the lack of a five-year supply of deliverable housing sites attracts weight as a 'sustainability consideration' in favour of the use of the appeal site for the appeal scheme.
30. It was suggested that the loss of the site could impact on the economic viability of the wider farming enterprise to which it is attached. However, no evidence was presented to support this assertion.
31. I conclude, therefore, that there is no inherent conflict between the appeal scheme and the loss of, in relative terms, a limited amount of BMV land. It would not conflict with the requirements of Local Plan policy NE12, cited above.

Conclusion

32. I have found that although the appeal proposal conflicts with policies RES4, RES5 and NE2 of the Local Plan, having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the development proposed. I have also found that the loss of a limited amount of BMV land does not weight heavily against the scheme. However, I also found that the scheme would cause harm to the living conditions of the occupiers of some neighbouring dwellings. I afford this harm very significant weight.
33. The appellant has advanced a number of benefits in support of the appeal scheme. In social terms, it would provide a mix of additional market and affordable housing in what the main parties agree is currently a sustainable location. Given the Council's inability to demonstrate a five-year supply of deliverable housing sites, I give this factor significant weight.
34. In environmental terms, it was noted that there are no heritage objections. The site is in Flood Zone 1, has access to a range of services, is of low ecological value, and will be enhanced by a landscape scheme. There is no suggestion that flooding or heritage matters are significant local constraints on development and a landscape scheme would be to enhance the development and mitigate any impacts, not to improve the site *per se*. These are all factors to which I afford limited weight.
35. It was stated that the appeal scheme would be built to current Building Regulations. However, there was no suggestion that this went above and beyond what is required or expected of any modern residential development and attracts little weight.

² Paragraph 112

36. Turning to the economic dimension of sustainability, the Government has made clear its view that house building plays an important role in promoting economic growth. The appeal scheme would be likely to provide jobs directly and indirectly. This is a matter to which I afford moderate weight.
37. It was also suggested that the scheme would, through new residents and potential local expenditure, serve to support local amenities and services. However, there was no evidence that local facilities are in need of support, other than to accommodate the impacts of the appeal scheme.
38. The development would also generate New Homes Bonus (NHB) for the Council. However, as the NHB is an incentive for local planning authorities to provide housing on suitable sites, and no direct beneficial link between the spend of the NHB and Winterley has been established, I do not consider that this factor attracts weight as a benefit in the planning balance.
39. It was suggested that economic benefits would accrue to local shops and community facilities. However, there was no evidence that local shops are failing or that community facilities are in need of additional finance other than to mitigate the effects of the development proposed. Thus, I give these factors little weight.
40. Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impact of the proposed development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would not represent a sustainable form of development. Thus, for the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard Schofield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ian Ponter of Counsel
Mr Christopher Jones
Mr James Mummery

NJL Consulting
Footprint Land 7 Development

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Morgan of Counsel
Mr Daniel Evans

Cheshire East Council

INTERESTED PERSONS

Cllr John Hammond
Mr Malcolm Riley
Mrs Christine Hooper
Mr Neil Egerton

DOCUMENTS SUBMITTED AT THE HEARING

1. Draft S106 agreement
2. Timetable for Bus Services through Winterley
3. Ivan Crane v Secretary of State for Communities & Local Government & Harborough District Council [2015] EWHC 425 (Admin)
4. Further Interim Views of the Inspector on the Additional Evidence to the Examination of the Cheshire East Local Plan Strategy, December 2015
5. Statement by Mr Malcolm Riley
6. Sketch plan of a potential tree buffer on Pool Lane by Mr Malcolm Riley

DOCUMENTS SUBMITTED AFTER THE HEARING

7. Certified copy of the S106 agreement
8. Supplementary Planning Document on Backland and Garden Development
9. Supplementary Planning Document on Affordable Housing