



Appeal Decision

Hearing held on 14 August 2024

Site visits made on 13 and 14 August 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th of September 2024

Appeal Ref: APP/C3430/W/24/3343064

Land at School Road, Himley DY3 4LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Taylor Reed Homes Ltd against South Staffordshire Council.
 - The application is Ref 23/00124/FUL.
 - The development proposed is the erection of 11 affordable dwellings with associated works and access.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A Section 106 agreement was submitted as part of the hearing documentation, and this was discussed at the hearing. As agreed during this discussion a revised agreement was submitted after the close of the hearing. I will return to the agreement later in my decision.

Background and Main Issues

3. The northern part of the site, where 9 of the 11 dwellings would be located lies within the development boundary of Himley, and the southern part, which would accommodate the remaining 2 dwellings, lies in the Green Belt both as defined by the *Core Strategy Development Plan Document (adopted December 2012)* (CS).
4. As a result, the main issue in the appeal for the proposed development located within the development boundary of Himley is whether or not the site is a suitable location for new housing having regard to policies for new development.
5. For the part of the site located in the Green Belt the main issues in the appeal are:
 - Whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework);
 - the effect of the proposed development on the openness of the Green Belt and the purposes of including land within it; and
 - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

Proposal outside the Green Belt - whether a suitable location for new housing

6. Core Policy 1 of the CS sets out the spatial strategy for the district which seeks to ensure that growth is located in the most accessible and sustainable locations. Himley comes under "Other Villages and Hamlets" in this hierarchy. In this tier development is limited to rural affordable housing schemes provided through rural exception sites and the conversion and re-use of redundant rural buildings.
7. The appeal scheme is put forward as a rural exception site with all of the dwellings being affordable (a mixture of social rent and shared ownership) and for occupancy by local people. The S106 agreement submitted would ensure this. Policy H2 of the CS indicates support for schemes for the provision of 100% affordable housing on rural exception sites in "service villages" and "other villages and hamlets" where a need has been demonstrated in accordance with Policy H3. This policy sets out 5 criteria for rural exception sites which I consider in turn below.

Criterion (a)

8. The first criterion is that the site must lie adjacent to the existing village development boundary. As highlighted above, the appeal site lies partly within and partly immediately adjacent to the development boundary for Himley. If rural exception sites are acceptable when adjacent to the boundary, it would be perverse to say they were not if the site was located within the boundary. At the hearing the Council confirmed that despite the site being partly inside the boundary they had no objection to the proposal in this regard. As such, the proposal would meet this criterion.

Criterion (b)

9. The second criterion requires that housing need has been identified in the parish, or in one or more of the adjacent parishes, for the type and scale of development proposed. The explanatory text to the policy indicates that the local need for affordable housing should be identified through the preparation of a robust Parish Needs Survey but does not say who needs to carry out any such survey. The *Affordable Housing and Housing Mix Supplementary Planning Document (adopted April 2014)* (AHSPD) indicates that this need would usually be demonstrated by a Parish Needs Survey being conducted in partnership with the relevant Parish Council (my emphasis).
10. In this case the Parish Council has not undertaken a Parish Needs Survey. However, the appellant undertook a Housing Needs Assessment of the Parish which was submitted as part of the appeal, and assessed by the Council within their appeal statement. The appellant indicated they sought to do this in conjunction with the Parish Council but state that although the Parish Council had no objection to the survey taking place, they indicated that they did not wish to be involved with it. Moreover, the Registered Provider approached indicated they would not be involved without the involvement of the Parish Council.

11. Whilst I appreciate that it might be usual and preferable for this process to be led by the Parish Council, there is nothing in the policy, the explanatory text or the AHSPD that indicates that this is an essential requirement. In this case, where neither the Parish Council nor the Registered Provider is prepared to engage with such a survey, the appellant could only undertake it by themselves. I see no reason why the results of this survey are less likely to be reflective of the need in the area because the survey was led by the developer rather than the Parish Council.
12. The questionnaire was sent to households across the parish which includes Gospel End as well as Himley. The response rate for the survey was 6%. Whilst it was suggested that this was a good response rate, I note that in another appeal¹ referred to by the appellant for a rural exception site elsewhere in the district, the response rate was 17%. This is significantly higher than in the current case. Notwithstanding the appellant's suggestion that any response rate over 5% is good, I have some concerns over the statistical validity of the results with such a limited number of responses.
13. Putting these concerns to one side, the appellant has suggested that the results indicate a need for at least 11 affordable dwellings of a range of type and tenure which the proposal would be able to meet. However, I am not persuaded that this is in fact the case.
14. Whilst 5 respondents indicated that they are likely to need alternative or additional housing over the next 1-5 years which they are unable to attain, only 1 of these actually specifically indicated that this was because they could not afford to rent or buy their own home, with others saying their need related to wanting their own home or because their home was too small or unsuitable for their physical needs. This need could therefore reflect the general limited availability of properties in the area for sale or for rent, as shown by data provided by the appellant, rather than affordability issues.
15. Similarly, even though the introduction to the questionnaire identifies that its purpose is to establish the need for housing, and specifically affordable housing, in the area, some of the responses made in relation to questions about close relatives or employees who have a need to live in the parish, and to whether family members had moved away in the last 10 years could also reflect the general limited availability of dwellings in the parish rather than the affordability of property.
16. The information provided on the number of properties for sale and rent in the parish represents a snapshot in time and will clearly change on a regular basis. However, I observed that Himley contained a wide mix of housing types and sizes that would be capable of meeting a range of housing needs, even if the turnover of stock is limited.
17. All in all, even if the response rate is such that the results are statistically valid, I am not satisfied that the Housing Needs Assessment robustly demonstrates the need for the provision of 11 affordable dwellings in Himley.
18. The appellant has also referred to national and district level data that shows the need for affordable housing, with much of the latter being part of the evidence base for the emerging Local Plan for the district. It is not disputed that this shows the district, including "Locality 5" of which the Parish forms a part, has a significant

¹ Appeal reference APP/C3430/W/19/3237890

need for affordable housing over the proposed plan period. However, the Council has indicated that this need is to be addressed through the allocations within the emerging plan, which include a number in various higher tier settlements in the locality. Whilst I accept that the emerging Local Plan has not yet been submitted for examination, I nevertheless agree that this is the most appropriate method to address the need identified for the plan period. Moreover, such evidence is at a district wide level and does not show an identified local need as required by the criterion.

19. Overall, I am not satisfied that a need for affordable housing has been clearly identified within the parish as required by this criterion.

Criterion (c)

20. Himley has a limited range of services and facilities that include a farm shop, 2 hotels and a public house. Whilst there is also a cricket club, golf centre and sailing club, such facilities would have a negligible role in serving day to day needs of existing or future occupiers. However, the village is also served by a regular bus service that operates 7 days a week, and school buses in term time.
21. The much larger village of Wombourne has a good range of services and facilities, which would be capable of meeting the majority of day-to-day needs of future residents. This village is accessible via the bus service, as well as by foot, along a road that has a footway its entire length and lighting for much of it. Whilst most of the services and facilities in Wombourne are at a distance most people are more likely to drive than walk, there is some choice for future occupiers to use alternative modes of transport.
22. Rural exception sites are by their very nature, found in places that would not normally be considered suitable as a location for housing, and where greater reliance on a car is likely to be necessary. However, in being relatively close to this main service village, future occupiers would only have to travel a short distance to be able to meet the majority of their day-to-day needs.
23. Thus, I consider that the size and scale of the proposed development and its relationship to existing services and facilities would be acceptable, and the proposal would meet this criterion.

Criterion (d)

24. A S106 agreement was submitted as part of the proposal. In accordance with this criterion, this would ensure the long-term affordability of the scheme for local people. It is disputed between the parties whether the definition for shared ownership lease should ensure the equity is limited to 80% to ensure it is not lost to the open market. However, the definition indicates that where 100% staircasing is permitted, provision would have to be made in the shared ownership lease for the registered provider to be able to re-purchase the property on any re-sale. As such, the property would not necessarily be lost to the open market.

Criterion (e)

25. There is little consistency in the design or appearance of dwellings in Himley. Properties vary in age and type – with houses, bungalows and apartments being evident. The proposal would comprise a mix of bungalows, houses and

maisonettes, whose design, scale, and materials would complement the character and appearance of the area and would sit comfortably with the properties immediately around the site. As such, I consider that the proposal would meet this criterion.

Conclusion on whether a suitable location for new housing

26. Whilst I consider that the proposal would accord with criteria a, c, d and e, I am not satisfied that the proposal would meet an identified local need as required by criterion b and so would not accord with Policy H3 or Core Policy 1 of the CS. Consequently, having regard to policies for new development, the site would not be a suitable location for new housing.
27. In support of the appeal my attention was drawn to the appeal referenced above where it was concluded the site did represent a rural exception site. However, in that case it was concluded that it had been demonstrated that there was an identified local need for affordable housing. This is not the case here and so the other appeal does not represent a direct parallel to this case.

Proposal within the Green Belt

a) whether inappropriate development

28. Policy GB1 of the CS sets out the forms of development that may be considered acceptable within the Green Belt. This includes limited infilling and affordable housing where there is a proven local need in accordance with Policy H2.
29. Paragraphs 154 and 155 of the Framework set out the forms of development that are not inappropriate in the Green Belt. These also include limited infilling in villages and limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites).

i) limited infilling

30. The Framework does not define what constitutes limited infilling in a village. However, Policy GB1 defines how this is to be interpreted within this district stating that it is the filling of small gaps (1 or 2 buildings) within a built up frontage of development which would not exceed the height of existing buildings, nor lead to a major increase in the developed proportion of the site or have a greater impact on the openness of the Green Belt and the purposes of including land within it.
31. Further advice on limited infilling is also found in the *Green Belt and Open Countryside Supplementary Planning Document (adopted April 2014)* (GBSPD). This advises that, as well as the filling of a small gap within a built up frontage, limited infilling is also likely to be acceptable within a tight cluster of buildings, where an additional building is unlikely to impact on the openness.
32. The appeal site has a frontage onto School Road which, in the context of the surrounding housing, forms a small gap suitable for 1 or 2 dwellings. However, the 2 dwellings would not be located in this gap but further north to the rear of the Nos 88 – 96 School Road. As such, the proposal would not be the filling of a small gap in an otherwise built up frontage.
33. Whilst the area of the site that is in the Green Belt, does currently have other properties to 3 sides, these do not form a tight cluster of buildings. Both

visually and spatially the appeal site is a significant area of open space between the existing houses. As a result, two additional buildings on this area would be likely to impact on the openness of the Green Belt. (I will discuss the impact of this specific scheme on openness later in my decision). Therefore, I consider that the appeal scheme would not represent limited infilling within a tight cluster of buildings as set out in the GBSPD.

34. Consequently, I consider the proposed development would not represent limited infilling in accordance with either GB1 or the Framework.

ii) affordable housing to meet local needs

35. As set out above the appeal scheme is put forward as a rural exception site with all of the dwellings being affordable and for occupancy by local people. Policy H2 of the CS indicates support for schemes for the provision of 100% affordable housing on rural exception sites in "service villages" and "other villages and hamlets" where a need has been demonstrated in accordance with Policy H3. This policy sets out 5 criteria for rural exceptions sites. I have considered these fully above and concluded that the proposal would not meet an identified local need as required by criterion b and so would not accord with Policy H3.

Conclusion on inappropriate development

36. I consider that the proposal would be neither limited infilling in a village nor would it be limited affordable housing to meet an identified local need. As a result, it would be inappropriate development in the Green Belt. Consequently, the appeal scheme would be contrary to Policies GB1 and H3 of the CS and the Framework.

b) Openness and purposes of including land in the Green Belt

37. The appeal site is a vacant and overgrown grass paddock devoid of any buildings and structures. The appeal scheme would introduce 2 bungalows with attached garages, parking spaces, boundary treatments and associated domestic paraphernalia, together with the access road to them. Although the bungalows would be of limited height, nonetheless the appeal scheme would introduce buildings and man-made structures where currently there is none. These would be readily apparent from the existing dwellings around the site. Therefore, both visually and spatially the proposal would impact on the openness of the Green Belt in this location.
38. The purposes of the Green Belt are set out in paragraph 143 of the Framework. The Council suggested that the proposal would be contrary to purpose (a) to check the unrestricted sprawl of large built-up areas and purpose (e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
39. Whilst the proposal would result in development on land adjacent to the development boundary of Himley, given the limited size of Himley it cannot be considered to be a 'large built-up area'. Therefore, I am satisfied that the proposed development would not be contrary to this purpose.
40. With regard to purpose (e) all Green Belt land can be considered to support urban regeneration and it is not possible to distinguish which parcels perform this to a greater or lesser degree. Moreover, the appellant highlighted that the

district, 80% of which is covered by the Green Belt, has very little previously developed land and so cannot meet its housing need on such land. I therefore consider that the proposal would have negligible impact on the fifth Green Belt purpose. Nor do I consider the proposal would be contrary to any of the other purposes.

41. Notwithstanding my conclusion regarding the impact of the proposals on the purposes of including land in the Green Belt, both visually and spatially the proposal would result in harm to the openness of the Green Belt. This adds to the harm by reason of inappropriateness.

c) Other Considerations

42. Whilst the provision of 11 affordable dwellings would be a benefit of the scheme, given its location and the fact that it would not be meeting an identified local need, I only give this limited weight. In addition, there would be social and economic benefits both during the construction period and once the dwellings are occupied. However, given the scale of the proposal, these benefits would be limited.
43. The appellant has suggested that this visually contained scheme would reduce the pressure for further sprawl on the edge of Himley. However, as Himley is not identified as a location suitable for new development in the CS, any such applications would be likely to be contrary to the development plan. Therefore, I am not persuaded that this is a benefit of the proposal.
44. The site is currently inaccessible, and the proposal would create an informal area of open space around the attenuation pond. This would benefit both existing and future occupiers and its size is beyond that required by development plan policies. I give this moderate weight.
45. The Biodiversity Metric submitted with the application showed that the proposal would result in an increase in both habitat and hedgerow units. Whilst the "headline results" page indicates that the trading rules had been met, it has come to light that, although filled in correctly, there was an error within the metric, which incorrectly showed that the trading rules had been met, when in fact they had not, as the quality of the grassland habitat to be created was lower than that which would be lost. Although as set out below the S106 would make a financial contribution to off-set this loss in habitat units, overall biodiversity would be a neutral factor.
46. The appellant has suggested that another benefit of the scheme is that it would provide an annual tax revenue of around £132,500. It is disputed between the parties whether or not this is a material planning consideration. However, given the limited tax revenue that would be generated, even if it is a material planning consideration, it would only attract minimal weight.

Other Matters

47. The appeal site lies within the setting of the "Seven Dwellings" a Grade II Listed terrace of dwellings on the far side of Bridgnorth Road. Modern dwellings already lie between this terrace and the site and between the site and the Himley Park and Village Conservation Area. As such the proposal would not have any adverse impact on, and would preserve, the setting of both of these heritage assets.

Planning Obligation

48. A signed and completed S106 agreement has been submitted. This secures the provision of the development as affordable housing as well as the type and occupancy of the units. It also secures the provision and management of the open space on the site and a Biodiversity Net Gain contribution to offset the deficit in habitat units.
49. The Council have provided a CIL Compliance Statement which sets out how the S106 agreement would meet the relevant tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and in paragraph 57 of the Framework.
50. As outlined above during the appeal process it was discovered that there was an error in the Biodiversity Metric, and the proposal does not in fact meet the trading rules with regard to habitat units. I consider that it is appropriate for the S106 to make a financial contribution to offset the loss of habitat units, even though it has only come to light during the appeal process.
51. From the evidence before me I am satisfied that all of the obligations in the S106 agreement are necessary, directly related to the development and fairly related in scale and kind. As such, it accords with the statutory tests.

Planning Balance and Conclusion

52. For the part of the site outside of the Green Belt, I consider that, having regard to policies for new development, the site would not be a suitable location for new housing. The proposal conflicts with the development plan and material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan.
53. For the part of the site within the Green Belt, the proposal would be inappropriate development in the Green Belt. This, by definition, is harmful to the Green Belt. In addition, the proposal would result in harm to the openness of the Green Belt. In line with the Framework, I give substantial weight to the harm the proposal would cause to the Green Belt. Whilst I have given consideration to the benefits cited in the scheme's favour, I consider that they do not clearly outweigh the harm it would cause. Consequently, very special circumstances do not exist. As a result, the proposal would be contrary to CS Policies GB1, H3 and Core Policy 1 as well as the Framework.
54. Consequently, for the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Luke Cottrell	RCA Regeneration
Sian Griffiths	RCA Regeneration

FOR THE LOCAL PLANNING AUTHORITY:

Jennifer Mincher	Senior Planning Officer, Development Management, South Staffordshire Council
Laura Moon	Senior Planning Officer, Development Management, South Staffordshire Council
Ross Parker	Senior Strategic Planning Officer, Local Plans, South Staffordshire Council,
Matt Wall	Ecologist, Development Management South Staffordshire Council

INTERESTED PARTIES:

Yvonne Nock	Chair, Himley Parish Council
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