



Appeal Decision

Site visit made on 13 August 2018

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 September 2018

Appeal Ref: APP/U2370/W/18/3202666

Springfield Cottage Farm, Cart Gate, Preesall FY6 0NP

- 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 and Mrs Halliwell against the decision of Wyre Borough Council.
 - The application Ref 17/00933/OUTMAJ, dated 2 October 2017, was refused by notice dated 4 April 2018.
 - The development proposed is up to 11 new residential dwellings with access applied for off Cart Gate.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application that led to this appeal was in outline with only access for detailed consideration at this stage. I have assessed the planning merits of the appeal on this basis, and have treated the plans as indicative insofar as they depict other reserved matters.
3. In the interests of clarity, in the banner heading above, I have included a revised version of the description of development as it appears on the Council's Decision Notice rather than the one from the application form¹. The outline status of the proposed development is clear from elsewhere in the banner- and amendments to the appeal scheme during the course of its determination reduced the number of dwellings proposed at the site.
4. The Council's appeal statement indicated that the proposed development could be liable for affordable housing contributions, and I noted the appellants' intentions to enter into a planning obligation to secure this aim. As no obligation accompanied either the application or appeal documents I allowed time for the appellants to submit one, and for the Council to make comments on the submission. Consequently, on this basis, I consider that no prejudice would occur to the parties as a result of me taking this additional material into account in my assessment of the planning merits of the appeal.
5. As the five year housing supply position is a relevant consideration in this case, and the examination into the emerging Local Plan² is ongoing, I accepted some

¹ Which was "outline application for 16 new dwellings on a brownfield site with improved existing access"

² Publication Draft Local Plan 2011-2031

late material related to these matters from the Council and allowed the appellants time to respond to its contents. Consequently, I consider that no prejudice would occur to the interests of the parties as a result of me taking this additional material into account in an assessment of the appeal scheme's planning merits.

6. The Ministry of Housing Communities and Local Government issued the new National Planning Policy Framework (the Framework) on 24 July 2018, which supplanted the version relevant at the date of the decision notice on the application that led to this appeal. The Framework establishes³ that it is a material consideration in planning decisions from the day of its publication. Comments were sought from the parties regarding the bearing of the new Framework on the appeal, and as a consequence I consider that no prejudice would occur as a result of me taking its contents into account in an assessment of the planning merits of the case.

Main Issues

7. I consider the main issues to be firstly, whether the proposed development would make an adequate contribution towards the provision of affordable housing having regard to national and local policy; and secondly, the effects of the proposed development on the character and appearance of the area.

Reasons

Site, surroundings and proposed development

8. Situated adjacent to Cart Gate a gently winding road, in surroundings of a rural character, the appeal site includes a more or less level area, with some hardstanding close to its access, with outbuildings, shipping containers and other bulky items present there at the time of my site visit. Also included in the appeal site is some open space to the rear, and rising embankment to the side of the level space. To one flank of the appeal site, there are dwellings of varying styles and setbacks from the highway, and across the road are school playing fields. Much more open fields of an agricultural character are situated to the rear of the appeal site, and to its side also, where a dramatic change in levels means that the adjoining land is elevated considerably above the appeal site. Whilst the area has a rural character the site is closely associated both visually and functionally with the residential and other development within its immediate surroundings. The appeal scheme would see the development of the site for residential use, utilising its existing access albeit with some alteration.

Policy Background

9. The appeal site is located outside of a settlement boundary for the purposes of Wyre's Local Plan (adopted July 1999) (the Local Plan), and as a result, the proposed development would conflict in principle with Policy Sp13, insofar as amongst other things, it seeks to restrict development in the countryside. Whilst I note the appellants' view regarding the age of the Local Plan, it nevertheless remains the development plan for the Borough.
10. Part of the appeal site is also outside of the settlement boundary set out within the emerging Local Plan and its residential development would thus conflict

³ At paragraphs 2 and 212

with its settlement strategy. As the examination of the emerging Local Plan is ongoing, and the appointed Inspector has issued post- hearings advice, I consider that it has therefore reached an advanced stage of preparation. Nevertheless, I have been supplied with no evidence regarding the amount of outstanding objections to the settlement boundary and related emerging policies. Consequently, the emerging settlement strategy is a consideration which attracts only moderate weight in the overall planning balance.

Planning Obligation

11. The Council accepts that no extant development plan policies trigger a requirement for affordable housing, but instead relies on Policy HP3 of the emerging Local Plan, which identifies a 10% affordable housing requirement for developments of 10 dwellings or more on sites such as the one subject to this appeal. I am mindful once again of the advanced stage of plan preparation, and whilst I have not been supplied with any details regarding the amount of outstanding unresolved objections to this policy, its development has been supported by a Viability Study and a Strategic Housing Market Assessment. Consequently, Policy HP3's approach attracts considerable support from the Framework⁴, which sets out that the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies. This emerging Local Plan policy is accordingly, a matter to which I attach considerable weight in this instance.
12. Moreover, due to this policy background, and the substantive material that supports the required contribution in Policy HP3, I consider that an obligation would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to it. An obligation for affordable housing would thus meet the three criteria set out both within the Framework⁵, and the Community Infrastructure Levy Regulations 2010 (as amended)⁶ (the Regulations). In arriving at this view, I am also mindful that the appellants have not sought to question the necessity for an affordable housing contribution. Whilst the lack of a contribution did not form the basis of one of the Council's reasons for refusal on the application that led to this appeal, I consider nevertheless due to the compliance of such a contribution with the three tests set out in the Framework and the Regulations that it is a relevant consideration at this appeal stage.
13. In these regards, I note the contents of the letter⁷ (the letter of intent) signed by the appellants confirming their "intent to agree to the planning obligation". However, this does not equate to a planning obligation for the purposes of the Town and Country Planning Act 1990 (as amended) (the Act), as the letter of intent does not identify all those with interests in the land comprising the appeal site, and does not provide a mechanism to ensure that the agreement is enforceable against any successors in title. Moreover, the letter of intent is not a deed, and does not meet the formalities set out in Section 106(9) of the Act in that it does not state that it is a planning obligation and does not identify the land in which the persons entering the obligation are interested. These considerations, taken together, lead me to the view that the letter of intent does not therefore bind any subsequent owners of the site and is unenforceable

⁴ At paragraph 61

⁵ At paragraph 56

⁶ In Regulation 122(2)

⁷ From Vincents Solicitors Dated 22 August 2018

by the Council against the current owners. The letter of intent would therefore fail to secure an affordable housing contribution in relation to the proposed development.

14. For these reasons, the proposed development would conflict with Policy HP3 of the emerging Local Plan and the Framework insofar as taken together, and amongst other things, they seek to secure the provision of affordable housing to address the needs of groups with specific housing requirements. I therefore conclude, on this main issue, that the proposed development would fail to make an adequate contribution for affordable housing.

Character and Appearance

15. A considerable part of the appeal site, due to its current use and the presence of outbuildings, hardstanding and other bulky paraphernalia has a developed character. Moreover, the appeal site has a close relationship with the row of dwellings to its side, with the steeply rising land to its other side providing visual containment. Furthermore, due to the varied setbacks and depths of residential plots along Cart Gate, I consider on the basis of the indicative plans supplied to me that it would be possible to construct dwellings on the site which would not look out of kilter with the adjacent development pattern. Whilst the submitted section drawing⁸ shows some moderate cutting in to the embankment to the side to facilitate the gardens, it also shows that the bulk of this embankment could remain as it is at present, and this drawing is in any event indicative. Moreover, I am mindful that the landscaping, appearance, scale, and layout of the scheme are all reserved matters.
16. Consequently, taking these considerations together, I am satisfied that it would be possible at reserved matters stage to progress a scheme that would avoid harm to the character and appearance of the area. As a result, I can find no conflict with Policy Sp14 of the Local Plan insofar as it seeks development to be compatible with adjacent existing land uses, and to be acceptable in the local landscape.

Other Matters

17. In the Officer Report on the application that led to this appeal, the Council acknowledged that it could not demonstrate a deliverable five year supply of housing land at that date. In addition I have taken into account the appeal decisions⁹ supplied by the appellants, in which the Inspectors also found that the Council could not demonstrate a five-year supply.
18. Nevertheless the dates of those appeals are now some months in the past, and the Council has provided a more up-to-date position on the housing supply situation arising from the ongoing examination of the emerging Local Plan, and in particular drawing on the contents of the appointed Inspector's Post-Hearing Advice Note. On the basis of this material, the Council now estimates that the amount of deliverable housing land in the Borough equates to a supply of 5.19 years. Whilst this latest position has not been fully tested, the appellants have submitted no countervailing arguments that would call into question any of the assumptions on which it is based. On this basis, I consider that it has not been established that the Council cannot demonstrate a 5 year supply of deliverable housing land, or that the appeal should be considered under the terms of

⁸ As Proposed Site Section Dwg No. 051/200/11 A

⁹ APP/U2370/W/17/3174744; APP/U2370/W/17/3172417; APP/U2370/W/18/3195063

paragraph 11(d) of the Framework, relating to decision-taking where the policies that are most important for determining the appeal are out-of-date, including where authorities cannot demonstrate such a supply.

19. Nevertheless, I readily accept that the social benefits of the delivery of additional housing weigh in favour of the proposed development, as do the related economic benefits it could create both in terms of jobs and other activities during the construction phase, and through the potential of its occupants to support local services. The re-use of previously developed land also attracts support from the Framework. Due to the relatively limited number of dwellings proposed however, these are matters that carry only moderate weight in favour of the proposed development.
20. Redevelopment of the site could secure some environmental improvements- and I am mindful of the appellants' references to biodiversity gains that could be made and secured by condition. These could be environmental benefits of the scheme- nevertheless the outline nature of the appeal scheme and the lack of definitive landscaping and layout proposals at this stage mean that they carry only limited weight in its favour.
21. I note the appellants' submissions regarding the potential of the development to avoid harmful effects to residential amenity, and that details submitted at reserved matters stages could address other potential adverse effects, which were the foci of interested party comments. This could be the case; however, the potential absence of harm in these regards does not constitute a positive benefit of the scheme and accordingly, has only a neutral effect on the overall planning balance.

Planning Balance and Conclusion

22. I have found, on the basis of the submitted outline material, that the proposed development could avoid harm to the character and appearance of the area. However, this is a matter that has only a neutral effect on the overall planning balance. On the other hand, the proposed development's failure to secure an affordable housing contribution and its conflicts with national and emerging Local Plan policy in these regards are matters that attract considerable weight, which would tip the planning balance firmly against the moderate and limited weight of the matters advanced in the appeal scheme's favour.
23. Moreover, the matters advanced in favour of the appeal scheme are not of a sufficient weight to justify a decision other than in accordance with the development plan, with which, in terms of Policy Sp13 it would clearly conflict.
24. Accordingly, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR