
Appeal Decision

Inquiry held on 8, 9 and 10 November 2016

Site visit made on 10 November 2016

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 6 January 2017

Appeal Ref: APP/R3705/W/16/3149572

Land North of Nuthurst Crescent, Ansley, Warwickshire CV10 9PJ

- 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 C R Muller (Muller Property Group) against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2015/0370, dated 16 June 2015, was refused by notice dated 10 November 2015.
 - The proposal is development of up to 79 residential units and associated access.
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Decision

1. The appeal is allowed and outline planning permission is granted for development of up to 79 residential units and associated access at Land North of Nuthurst Crescent, Ansley, Warwickshire CV10 9PJ in accordance with the terms of the application, Ref PAP/2015/0370, dated 16 June 2015, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Application for Costs

2. At the Inquiry an application for costs was made by Mr C R Muller (Muller Property Group) against North Warwickshire Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. The appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of access. Any other details shown which would be a reserved matter, such as the layout, I shall treat as being indicative only. An obligation under Section 106 of the Planning Act is before me dated 7 November 2016 which makes provisions for local facilities and infrastructure, which I discuss further below.

Main Issues

4. As the Statement of Common Ground deals with all other matters, the main issues are:
 - The effect of the proposed development on the character and appearance of the village of Ansley; and
 - Whether the Council is able to demonstrate that it has a five year supply of deliverable housing sites.
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Reasons

Character and appearance

5. The appeal site is an enclosed field located adjacent to the northern settlement edge of the village of Ansley. From Tunnel Road the site itself is obscured by boundary trees and hedges but it is visible from Nuthurst Crescent and the Public Right of Way (PRoW) which runs alongside the southern boundary of the site, and from here I find it to be an attractive field which positively contributes to the overall rural character and appearance of the area. The appeal site is surrounded by expansive open countryside to the north and east.
6. The proposed development would, in relative terms, amount to a significant increase in the quantum of dwellings for Ansley. However because of its reasonably enclosed nature, the proposed development would not have any significant effects on the Church End to Corley-Arden Hills and Valleys Landscape Character Area (LCA), in which the appeal site lies. From what I observed at my site visit, the substantial visual effects from the scheme would be experienced only when seen by receptors adjacent to the unenclosed southern boundary and the PRoW, so the visual harm would be localised and limited. Contrary to the Council's assertion, I did not observe any particular noteworthy facet of the allotment gardens when seen from Tunnel Road. As such I am satisfied that all medium and long-range views of the development would not have significantly harmful visual effects.
7. The Council's main concerns however centre on the fact that the proposed development would fail to respect the settlement morphology of Ansley which it says is defined by a historic pattern of linear growth along Birmingham Road, and its resultant staggered and irregular eastern village edge. The morphology of the settlement is not disputed by the appellant. I observed this to be particularly perceptible and understood on the western side of Birmingham Road, where a single row of road frontage exists with few buildings behind, and where views of the open countryside are apparent and visible through the gaps between the properties.
8. The eastern side of Ansley is notably different in character, as much but not all of the defined linear urban grain has been enclosed at the rear by extensions to the village with residential development in Nuthurst Crescent, Croft Mead, Malthouse Close, Ludford Close and St Lawrence Road. Although the two are easily identifiable and distinguishable from one another, the newer dwellings nonetheless now form an integral part of Ansley's overall character, and have changed the original linear pattern of the village.
9. The proposed development would not be visible or apparent when travelling along Birmingham Road, such that the original linear pattern would remain unaffected and the origins of the village morphology would not be lost. Because of the current layout of Ansley, there would to some extent be a concentration of housing at the south eastern end of the village as a result of the proposed development. However, the existing residential development in St Lawrence Road, and the forthcoming units to be constructed on a plot of land identified at the Inquiry as 'ANS4', both of which lie at the northern end, would ensure Ansley would not be notably or unduly unbalanced.
10. The proposed development would not extend the built form of the village any further into open countryside beyond the existing development in St Lawrence

Road. While the eastern settlement edge would effectively be redrawn as a result of the scheme, the irregular and staggered edge would evidently remain albeit in a different form. Thus one of the key characteristics of the village would not be compromised.

11. The loss of open countryside land and what I have found to be an attractive field would amount to harm to the character of the area. Policy NW12 of the North Warwickshire Core Strategy (Core Strategy) is predominately a design policy and such matters are not before me. Nevertheless the policy states that all development proposals must demonstrate a high quality of sustainable design that positively improves the individual settlement's character, appearance and quality of an area. The policy is relevant to the determination of the appeal and there would be some conflict with it for this reason.
12. However, its enclosed nature is such that the loss would not be widely felt. I am satisfied for the reasons set out above that the proposed development itself would not cause a significant level harm to the character and appearance of the village overall, or the landscape character or visual receptors. The overall harm would be moderate to which I attach some weight to in my decision.

Five year housing land supply

13. Paragraph 47 of the Framework requires local planning authorities to ensure that their local plans meet in full the objectively assessed needs (OAN) in their housing market area, and to identify and update sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5 or 20%.
14. Core Strategy policy NW4 states that within the plan period (2011-2029) a net amount of 3650 dwellings will be built, equating to 203 dwellings per annum (dpa). This requirement is underpinned by the Strategic Housing Market Assessment (SHMA) from 2013, and which also includes a provision of 500 additional dwellings to meet the needs arising from the neighbouring authority of Tamworth. However, the Council's five year housing calculations for the appeal do not include the Tamworth provision, and I find no evidence before me, particularly having regard to the Inspector's report into the Core Strategy, which supports this approach. I find the Council's argument that it can accordingly demonstrate a 9.4 years housing supply is accordingly unsound. That said, the Council maintains that, even adopting the 203 dpa requirement, it can still demonstrate a very healthy housing supply.
15. The main parties dispute the appropriate housing requirement. This is because a more recent SHMA from 2015 for the Coventry and Warwickshire housing market area (CWHMA) 2011-2031 shows that the Council's OAN has increased to 4740, which includes allowance for an economic uplift in both the CWHMA as well as the neighbouring Greater Birmingham, Solihull and Black Country housing market area (GBS&BCHMA). Furthermore, the Council has agreed to accept an additional 540 dwellings redistributed from the CWHMA, thus its total housing requirement is 5280. This new requirement is set out in policy LP6 of the emerging North Warwickshire Local Plan (emerging Local Plan), and the Council cites no impediment to meeting this requirement in full.
16. The Council says that because the 2015 SHMA, and indeed the emerging Local Plan, have not yet been subjected to external examination, it should be afforded little weight. I understand why the Council has formed this view, as

indeed it is entirely plausible that the evidence underpinning the 2015 SHMA will be tested when it is subjected to the development plan examination. However, I find nothing before me which doubts the inevitability that the Council's housing need will increase from that advocated in Core Strategy policy NW4. What remains to be tested is the amount of this increase. However on the evidence before me, I find it likely that the increase would be considerable. While the Core Strategy is just two years into adoption, and I acknowledge the Framework's requirement in paragraph 17 that planning should be genuinely plan-led, I nevertheless find that the 2015 SHMA is significant new evidence irrespective of the age of the development plan, and that it should form the basis of calculating the housing requirement.

17. Emerging Local Plan policy LP6 also makes an additional provision for 3790 dwellings from the GBS&BCHMA. Combined, the policy states that 9070 dwellings will be required in the emerging Local Plan period. However as the emerging policy states, this element of housing provision is only an aspiration, and the Council states that this is predicated on the need for infrastructure provisions being delivered. No evidence is before me as to what additional or new infrastructure would be needed or indeed whether it would be realistic to consider that it could be delivered. Whether the Council can accommodate these additional dwellings is therefore unproven and considerably doubtful at this stage and prior to the development plan examination, and I do not find it appropriate to consider 9070 dwellings as the housing requirement. The impeding adoption of the Birmingham Development Plan does not alter my findings on this matter.
18. It was established at the Inquiry that, basing the housing requirement on 5280, the Council's five year housing requirement including the addition of shortfall in line with the Sedgefield approach, and a 20% buffer, is 2358 dwellings to the year 2020/21, equating to 472 dpa. The main parties agree that assessed against such a requirement, the Council can only demonstrate a 4.9 years housing supply assuming all of its projected and forecasts sites, amounting to 2331 were to come forward in the next five years. However, the appellant disputes some of these sites which he says reduces housing supply to 2.8 years.
19. I find that the majority of the questioned sites would, individually, not deliver large numbers of dwellings on them. Even accounting for the issues which are currently preventing those sites from coming forward now, I heard little persuasive evidence to suggest that their delivery would be unlikely or insurmountable in the next five years. As such I am prepared to give the benefit of the doubt to the Council. However, I heard at the Inquiry that two sites where considerable numbers of housing are forecast in the next five years, identified as '*Holly Lane, Atherstone*' and '*Orchard Colliery*' for 300 and 385 units respectively, either do not benefit from all necessary planning permissions; do not have developers on board; or require the delivery of improved or new infrastructure. The Council was unable to confirm whether both sites are at a stage where their delivery would be imminent and at the rate necessary to achieve the forecasts set in the five year supply. I must therefore cast some doubt that these sites will deliver at the rate the Council suggests, and I have accepted the appellant's likely and considerably reduced forecasts for the said sites.

20. I therefore find, on the evidence before me and deducting the above sites from the forecast, that the Council's five year housing supply figure is closer to 3.5 years supply. I have not included a lapse or non-implementation rate in this calculation. While many local authorities do apply such a figure, there is no policy or guidance which requires it and the evidence before me is not sufficient to persuade me that one should be applied. In any event, I note the Council has not made any provision for windfall sites in its five year housing figures. If I applied both, it would have little overall bearing on my findings on the absence of a five year housing supply.
21. In reaching my conclusion on this matter, I acknowledge the chain of events prior to the Inquiry and the late questioning of supply sites by the appellant and its reasons for doing so, and the Council's decision to respond orally to this at the Inquiry in order to 'keep the show on the road'. However, on the two sites I have found doubtful to be delivered in the coming five years, the Council did not indicate a need for additional time to produce rebuttal evidence or that written submissions on these sites would have added anything further over the oral evidence the Council gave. Even if I were to accept the written explanations from the Council, it would not alter the agreed position between the parties that a five year housing supply could not be demonstrated.
22. I have also had regard to the two appeal decisions advanced by the Council as relevant to the appeal before me (*Ref: APP/R3705/W/16/3150188 for Delves Farm, Boulters Lane, Wood End, and APP/R3705/W/16/3150719 at 78 Tamworth Road, Polesworth*). In both cases, the Inspectors were tasked with examining the effect of the proposed development on the character and appearance of their respective areas. Neither Inspector was asked to determine the Council's five year housing land supply position nor the balancing exercise required thereafter. I can draw little direct comparisons from these decisions. In any event, I have made my decision on the evidence before me.
23. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The Council accepts that in the event that a five year supply of housing cannot be demonstrated, Core Strategy policies NW1, NW2, NW4 and NW5 are relevant housing policies and in such circumstances are out-of-date.
24. I have nonetheless afforded moderate weight to them in my decision particularly Core Strategy policies NW2 and NW5, which seek to promote sustainable growth via a settlement hierarchy, which I find consistent with Framework's approach to sustainable development. Core Strategy policy NW2 states that Ansley is a 'Category 4' settlement, and Core Strategy policy NW5 identifies a minimum of 40 dwellings for the village which I am told has already been exceeded and on sites of no more than 10 units. As I have set out above, the proposal would result in a sizeable increase in residential dwellings in the village, and significantly more than envisaged in Core Strategy policy NW5. However, these figures are a minimum requirement, and should be viewed in the context of my findings that the council cannot demonstrate a five year supply of housing land and by the level of harm it would cause, which I have already identified as being moderate.

Other Matters

25. Concerns have been raised in respect of the effect of the proposed development on the local highway network particularly from the location of the access point onto the busy Tunnel Road, and whether this would undermine highway safety for oncoming traffic. I observed at my site visit that Tunnel Road was moderately busy and there was a steady stream of fast travelling cars in both directions. As I discuss below, the appellant will be obligated to pay for the extension of the 30 mph zone to include the access to the appeal site. With that in mind, no evidence is before me to demonstrate that any material harm would occur from the proposed development and its access, or that the junction could not be adequately designed to ensure sight lines would be effective to ensure adequate egress. Neither the Council nor Warwickshire County Council as the highway authority has raised this as an issue.
26. Concerns have also been raised as to the effect of the proposed development on existing infrastructure, and that there is little in the way of shops or services to meet additional dwellings. My attention has been drawn to additional development in the neighbouring borough, the boundary of which adjoins the eastern and northern edges of the appeal site. However, insufficient evidence is before me to suggest that the proposed development would place an undue burden on services so I can afford little weight to this in my decision.

Planning Obligations

27. The Council seeks a financial contribution of £6000 towards a traffic regulation order to extend the 30 mph speed limit further along Tunnel Road to include the access from the proposed development. The Council also seeks a provision for 40% affordable housing from the scheme.
28. Paragraph 204 of the Framework says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development. Paragraph 50 of the Framework seeks that development provides a wider choice of housing. The appellant has not advanced any objections to the content of the obligation. In light of the evidence before me, including the responses from the Council, I am satisfied that obligation would be consistent with the tests of Framework and with the provisions contained within the Community Infrastructure Levy Regulations 2010 in respect of pooled contributions.
29. The Council also seeks monitoring costs totalling £1250. However, no written justification for this requirement is before me, particularly given that the obligation is in the form of a unilateral undertaking and as such it is not obvious what monitoring would be required. Therefore I have not taken the monitoring contribution into account in my decision.

Conditions

30. I have considered the conditions suggested by the Council against paragraph 206 of the Framework, and made changes necessary to comply with those requirements.
31. A condition specifying the numbers of dwellings that can be developed on the appeal site is necessary for the avoidance of doubt. Because of the proximity of the railway line to the site, I am satisfied that a condition restricting pile

driving is necessary to ensure such works would cause no harm to the rail infrastructure. A condition requiring the details of surface water drainage is necessary in the interests of sustainable construction. While no specific evidence of the presence of bats is before me, a condition requiring a survey prior to removal of any trees on site is necessary as a precautionary measure and in the interests of habitat preservation. A condition requiring details of pedestrian and cycle routes through the site is necessary to promote sustainable access and movement. A condition for the submission and approval of a construction management plan is necessary in the interests of the living conditions of occupiers of surrounding properties.

32. The Council has suggested a condition requiring compliance with the two approved plans. However, one relates only to the red line plan and as such it is not necessary. A condition is required to ensure the vehicular access is taken from Tunnel Road as shown on the second drawing. But because there is insufficient detail of it on the submitted drawing, I find that a further condition is necessary requiring details of the access from Tunnel Road, and I incorporate details on visibility splays within the wording to be submitted to the Council.
33. Matters relating to foul sewage are controlled under other legislation. Insufficient evidence has been advanced by the Council for the need for a scheme for the provision of adequate water supplies and fire hydrants on the site. These conditions I find are unnecessary and I have not imposed them.

Planning Balance and Conclusions

34. Bullet point 4(1) of paragraph 14 of the Framework is engaged because I have found that the Council cannot demonstrate that it has a five year supply of housing. This is reinforced by the fact that the Council is not progressing its Draft Site Allocations Plan and Draft Development Management Plan such that there have been delays in bringing forward housing sites through a Local Plan to meet the housing requirement. Paragraph 14 of the Framework states that a presumption in favour of sustainable development exists and should be seen as a golden thread running through decision-taking. Where the development plan is absent, silent, or relevant policies for the supply of housing are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
35. I agree with the main parties that the proposed development would have social and economic benefits in providing new dwellings to meet the needs of present and future generations, would provide local construction employment opportunities and support accessible local services. The proposed development would also make worthwhile contributions to the supply of housing and affordable housing in the borough and help contribute to the five year supply. I attach considerable weight to these benefits. As I have stated above, developing an open and attractive field would inevitably result in harm to the character and appearance of the area but for the reasons I have already outlined above, this harm would be moderate.
36. In applying the tilted balancing exercise required by bullet point 4(1) of paragraph 14 of the Framework, I find that the moderate level of environmental harm I have identified would not significantly and demonstrably outweigh the benefits of the scheme. I therefore find the proposal would

amount to sustainable development in accordance with the Framework when taken as a whole, and that a presumption lies in its favour. The proposed development would conflict with Core Strategy policies NW1, NW2, NW4 and NW5, which seek to direct growth towards a settlement hierarchy. However for the reasons given above, these policies are out-of-date and only moderate weight can be attached to them. I find that the presumption in favour of sustainable development outweighs this conflict and that with Core Strategy policy NW12, details of which I have outlined above.

37. For the reasons given above I conclude that the appeal should be allowed.

R Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to the Local Planning Authority for approval in writing before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No more than 79 dwellings shall be constructed on the site.
- 5) No vibro-impact or piling works shall be undertaken on the site unless in accordance with a scheme which has first been submitted to the Local Planning Authority for approval in writing.
- 6) No development shall commence on site until a detailed surface water drainage scheme for the development based on sustainable drainage principles and an assessment of the hydrological and geo-hydrological context of the site has been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details.
- 7) The means of vehicular access shall be carried out as illustrated on the approved drawing Sketch Layout 2 MP5002 SK02.1.
- 8) No development shall take place until a details of the site's vehicular access and visibility splays on to Tunnel Road has first been submitted the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details prior to occupation of the dwellings. There shall be no obstruction of any kind within the approved visibility splays.
- 9) No development shall take place until a scheme to provide for both pedestrian and cycle access into the development hereby approved from Nuthurst Crescent has first been submitted the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details prior to occupation of the dwellings.
- 10) No development shall take place on site until a Construction Management Plan has been submitted to the Local Planning Authority for approval in writing, which shall remain in force throughout the construction period. The Plan shall provide details of the arrangements for:
 - Details of the location of storage compounds, haul roads and car parking for site operatives and visitors;
 - Details of the hours of working and the hours of delivery of goods, plant and materials;
 - Wheel washing facilities and any dust suppression measures;
 - Noise control during construction;
 - Site lighting details;
 - Measures for the protection of trees that are to be retained;

- Details of household refuse from occupied dwellings during construction; and
 - Details of the contact for any local concerns with the construction activities of the site.
- 11) No development shall take place until a bat survey has been undertaken in respect of all of the trees to be removed and the findings together with any mitigation measures have first been submitted to the Local Planning Authority for approval in writing.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth of Counsel Instructed by Mr Steve Maxey

He called:

Mrs Dorothy Barratt Planning Officer
BA (Hons) DUPI MRTPI

FOR THE APPELLANT:

Mr Killian Garvey of Counsel Instructed by Mr Charles Robinson

He called:

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Mr Charles Robinson DLP Planning
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DOCUMENTS SUBMITTED AT THE INQUIRY

1. Document entitled 'Select Committee on National Policy for the Built Environment Building better places' by www.parliament.uk
2. Strategic Housing Land Availability Assessment 2015
3. Table of housing completions and expired permissions 2006/07 to 2015/16
4. Updated Unilateral Undertaking dated 7 November 2016
5. Folder of Core Documents of Legal Submissions
6. Extract of the South Oxfordshire Local Plan 2032 Preferred Options dated June 2016
7. Table on the agreed position between the parties on the five year housing position assuming different scenarios