



Appeal Decision

Site visit made on 4 January 2018

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th January 2018

Appeal Ref: APP/C1625/W/17/3181366

Pier View, 34 Oldminster Road, Sharpness, Berkeley GL13 9NA

- 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 Mr Chris Easton of Easton Bevins Ltd against the decision of Stroud District Council.
 - The application Ref 16/2378/FUL, dated 24 October 2016, was refused by notice dated 3 February 2017.
 - The development proposed was originally described as "The Daisy Chain Project: energy efficient housing. 2,3 and 4 bed housing around existing hotel."
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Chris Easton of Easton Bevins Ltd against Stroud District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
4. Following refusal of the application, the appellant continued to have dialogue with the highway authority. This has resulted in additional information being submitted as part of the appeal. The Council has indicated they are now satisfied that this issue could be adequately addressed by a planning condition. I have regard to this in my decision below and no longer need to address it as a main issue.
5. The Council has indicated that they can demonstrate a five year supply of deliverable housing land as required by paragraph 47 of the National Planning Policy Framework (the Framework). This has not been disputed by the appellant. The Stroud District Local Plan (SDLP)(2015) was adopted relatively recently and there is nothing to suggest its policies are not consistent with those of the Framework. Accordingly, the relevant policies for the supply of

housing are up-to-date and the tilted balance set out in the fourth bullet point of paragraph 14 of the Framework does not apply.

Main Issues

6. The main issues in this case are:

- Whether the development is appropriately located having regard to the relevant policies of the development plan;
- The effect of the development on the character and appearance of the area, including a non-designated heritage asset;
- The effect of the development on protected species;
- The effect of the development on flood risk and drainage; and
- The effect of the development on the River Severn Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and RAMSAR site.

Reasons

Location & Strategy

7. The appeal relates to the generous grounds of a public house known as The Pier View Hotel. Part of the site lies within the settlement development limits (SDL) of Newtown/Sharpness, which is identified as a 'third tier' settlement in the hierarchy in SDLP Policy CP3. Subject to satisfying all other policy requirements, the principle of housing within the SDL of third tier settlements is acceptable in principle under policies CP2 and CP3. The area of the site ostensibly given over to what the appellant describes as affordable housing lies outside the SDL. For the purposes of the SDLP, this area is considered to be within the countryside and is the main element of concern in terms of the Council's housing strategy.
8. SDLP Policy CP2 only allows for limited development outside a SDL in accordance with other policies in the plan, including Policy CP15 which deals specifically with housing in the countryside. This states that in order to protect the separate identity of developments and the quality of the countryside, proposals outside identified settlement limits will not be permitted unless they meet one of a number of exceptions. The appellant argues that development outside the SDL constitutes a 'rural exception' under criterion 3 of this policy.
9. The appellant's appeal statement, background papers, submitted plans and the description used by the Council in its decision notice all include reference to the provision of affordable housing. The Framework defines rural exception sites as 'small sites used for affordable housing in perpetuity where sites would not normally be used for housing¹'. The appellant considers that locating all of the affordable provision in the area outside the SDL satisfies the policy requirement. However, there is no mechanism before me to ensure the dwellings in question would be delivered as affordable housing as defined in the Framework, that they would reflect the preferred tenure mix, or that they would be provided as affordable homes in perpetuity. I note that comments made by the Policy Implementation Manager that a S106 agreement would be needed, but no such agreement is before me.

¹ See Annex 2: Glossary

10. For this reason, the dwellings would not properly constitute affordable housing, would not comply with the requirements of criterion 4 in particular of SDLP Policy H4 and would not be consistent with the definition of rural exception sites in the Framework. I cannot therefore give any weight to the assertion that the scheme would deliver affordable housing.
11. Even if I were to consider the units as affordable housing, I am not convinced that what is proposed would meet other requirements of both policies CP15 or HC4. There is nothing before me which provides clear and substantive evidence of a local need as required by both policies. Reference is made to the delivery of 750 windfall units across the plan period. However, this is a district wide figure to meet general housing needs and does not relate to the local affordable housing needs of this settlement. Policy CP2 identifies a strategic site in Sharpness for 300 dwellings. In lieu of anything to the contrary, it would be reasonable to assume that any references to the delivery of 300 dwellings in this settlement would relate to this strategic site and not a general need or allocation. While the dwellings inside the SDL might meet a more general need, there is nothing which would justify development in the countryside.
12. In addition, the definition of a 'rural exception' in both Policy HC4 and the Framework is where the majority of dwellings are affordable, with limited cross subsidy from a minority of market units. Looking at the proposal as a whole, it would not provide a majority of affordable units. Indeed, it would provide no more than would normally be necessary under Policy CP9. I do not consider it to be within the spirit or intent of the policy to artificially separate out two elements of the proposal in order to justify development that would otherwise be unacceptable in principle. Therefore, not only would the lack of any legal agreement result in conflict with the policy requirement, there are a number of other reasons why development outside the SDL would not constitute a rural exception under Policies CP15 and HC4 in this case.
13. Criterion 4 of Policy CP15 allows for development in the countryside where it is demonstrated it would be enabling development required to maintain a heritage asset of acknowledged importance. The Council has identified the public house as a locally important non-designated asset. The appellant argues that the development would allow much needed investment into the building and in the business. However, there is nothing before me which fully describes or quantifies the investment needed to ensure the heritage asset is maintained, particularly in terms of the physical appearance and fabric of the building. There is also nothing which demonstrates that the level of return from the development is the minimum necessary to carry out the required investment. In addition, it is also not clear that development outside the SDL is absolutely necessary in itself to deliver the investment required. Based on the evidence before me I am not persuaded that the proposal is consistent with criterion 4.
14. Irrespective of the housing proposed within the SDL and the proximity of the site to the SDL boundary, the development as a whole would conflict with the housing strategy set out in Policies CP2, CP3 and CP15 of the SDLP. Together these seek to focus development into the SDL of settlements in the hierarchy and limit development outside SDLs to that which meets specific exceptions.

Character and appearance, including the effect on the public house.

15. The design of the dwellings proposed would not complement that of the Pier View Hotel or the pitched roof red brick semi-detached housing that sits adjacent to the site. The different building types within the scheme would share a similar contemporary design and use of materials, with garden roofs, balconies and external staircases. Although paragraph 60 of the Framework states that decisions should not attempt to impose architectural styles, it also states it is proper to seek to reinforce local distinctiveness. Paragraph 58 also states that development should respond to local character. The resulting boxy appearance of the buildings, along with the particular use of materials, would appear jarring against the more traditional forms of the adjacent dwellings and the character of the public house itself.
16. The design and access statement states that there would be no dwelling in front of the pub. However, the submitted plans include one pair of semi-detached dwellings between the pub and the road, with another in front of the building line on the northern side of the proposed access. I must consider the proposal as submitted. The pub is clearly visible through the existing wide access and is an important and prominent feature of the street scene. The setting of this large and somewhat grand Victorian building is enhanced by the open spaces at the front and side. The result of the development would be to relegate the once prominent and important feature the rear of a house. This would not only harm the setting of the non-designated heritage asset, it would also significantly diminish the contribution the building makes to the current street scene.
17. Even with new landscaping, the dwellings to the front and the side of the pub would still be highly visible components of the street scene. They would also be clearly visible to visitors to the public house. The incongruous nature of the design of these dwellings would therefore be readily apparent from a number of publically accessible vantage points. The juxtaposition of the large Victorian public house set amongst the modern flat roofed dwellings would result in an incoherent and unsympathetic form of development, particularly when also considering the character of other housing in the immediate vicinity. This would constitute harm to the visual quality of the area, which could not be remedied by landscaping.
18. Notwithstanding the conflict with Policy CP15, the dwellings to the rear of the pub would be well screened and not as harmful to either its setting or the street scene. Nonetheless, they would still represent an encroachment into a pleasant open area outside the defined limits of the settlement. This would have an urbanising impact that would add weight to my overriding concerns over the effect of the development on local character.
19. The development as a whole would therefore result in unacceptable harm to the character and appearance of the area and a non-designated heritage asset. Accordingly, there would be conflict with SDLP policies CP4, HC1, CP14 and ES10 which seek, amongst other things, to ensure development is of a layout and design which protects and enhances the built environment, is compatible with the character and appearance of an area and protects the significance of locally identified heritage assets. There would also be conflict with paragraph 135 of the Framework in relation to the protection of non-designated heritage assets.

On-site Biodiversity

20. Evidence of a main badger sett was found on the site. The recommended mitigation was to design the development so as not to affect the sett through the provision of a 30 metre buffer and/or to move the sett within the site. Reference has been made in the appellant's evidence to addressing the mitigation strategy by condition. However, it is not clear from what is before me whether or not any of the measures suggested in the Phase 1 or Phase 2 surveys would be capable of being implemented within the current layout of the development. I note that the hedgerow near to the sett is to be maintained, but this may not be sufficient on its own to ensure adequate protection considering the proximity of dwellings. Without a detailed mitigation strategy, there can be no guarantee that the potential impact on badgers can adequately mitigated. In such circumstances, it would not be reasonable to address this issue by condition as it is possible that the condition could not be discharged. This would prevent the development proceeding.
21. The Council is concerned that additional survey work for dormice and reptiles recommended in the Phase 1 Habitat survey has not been carried out. Paragraph 99 of Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The Phase 1 survey clearly states the need for further survey work. I have noted the appellant's comments that the biodiversity officer told them such surveys were not necessary. However, there is nothing to corroborate this, or that the suggested mitigation would be acceptable. In light of the advice in the circular, as there is clear evidence of the potential for other protected species on the site that has not been ruled out, it would not be appropriate to conclude that additional survey work is not needed or to address the issue by condition.
22. A bat roost was found in the roof of the pub. I am satisfied there would be no direct impact on the species, though mitigation would be needed to minimise potential impacts. To this end, a lighting scheme has been provided which the appellant states is based on advice from the ecologist. There is nothing to corroborate this in the strategy itself. Based on what I have before me, I cannot be certain that the lighting strategy submitted would provide an appropriate solution. However, unlike the matters above I consider it likely that a solution to lighting and the retention of vegetation could be found within the current layout. Therefore, if I were minded to allow the appeal then this element alone could be addressed by an appropriately worded condition.
23. Nevertheless, based on the evidence before me I cannot be certain that the development would not cause unacceptable harm to protected species, in particular badgers. Accordingly, there would be conflict with SDLP policies CP8 and ES6 which seek, amongst other things, to resist development that could adversely affect protected species without appropriate mitigation and enhancement. There would also be conflict with paragraphs 109 and 118 of the Framework which seek to minimise the impact on biodiversity.

Flood Risk

24. The design and access statement states that drainage would be achieved through a small pond, with a large soakaway to collect surface water from the

majority of the site and smaller soakaways for the buildings to the north. I have noted the comments from the Council's Water Resources Engineer and the suggestion of a condition relating to drainage. This addresses the operation and management of the agreed drainage, but not the details of any scheme itself. The comments from the Lead Local Flood Authority (LLFA) suggest that there is insufficient evidence to determine whether the measures proposed would be adequate.

25. It is not necessarily unusual to address matters such as this by condition. Before considering such a course of action, there needs to be comfort that an adequate solution within the proposed layout is achievable in practice. There is limited detail on this in the evidence. The site is currently largely open and undeveloped. Even with the use of green roofs and sustainable construction techniques, the increase in built development and hard surfacing would be likely to have some effect on surface water.
26. SDLP Policy ES4 seeks to ensure development includes sustainable drainage measures (SUDs) which are informed by specific catchment and ground characteristics and the early consideration of a wide range of issues relating to the management, adoption and maintenance of SUDs. It is not clear that this type of assessment has been carried out or that the effects have been quantified. The evidence before me does not provide me with the necessary comfort that an appropriate strategy is achievable within the layout proposed. Again, it would not be reasonable to address this by condition as there is no guarantee it could be discharged.
27. Accordingly, based on the evidence before me, there would be conflict with Policy ES4 and paragraph 130 of the Framework which seek to ensure flood risk is not increased elsewhere and the site is appropriately flood resilient and resistant.

Protected Habitats

28. The development would be located within the visitor catchment identified by the Council for the SPA, SAC and RAMSAR site. As the 'competent authority' in this appeal I am required by the Habitat Regulations to decide whether the development, either alone or in combination with other plans or projects, would be likely to have a significant adverse effect on the integrity of these designated habitats.
29. The limited evidence before me does not provide adequate comfort that there would be no unacceptable impact, including from any additional pressure from an increase in visitors. There is also no evidence relating to the effects of cumulative development in the area. Neither party has referred me to any mitigation strategies that exist for the SPA/SAC. Reference is made to further discussions having taken place and that alternative green space nearer to the site is available that would soak up any additional pressure. Again, the full outcome of the discussion is not before me and the open space in question not identified. I cannot conclude therefore that this would be sufficient to avoid any impact on the protected habitats or that it would provide satisfactory mitigation should adverse harm exist.
30. As with my concerns over protected species on the site itself, it would not be appropriate to address this issue by condition, particularly if the mitigation needed were to involve land outside the control of the appellant or required a

financial contribution. In these circumstances, acting in accordance with the precautionary principle, I find the development unacceptable in relation to this issue and thus contrary to SDLP Policy ES6, which seeks to protect all sites of European importance, including SPAs and SACs.

Other Matters & Planning Balance

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 of the Framework confirms the statutory status of the development plan as the starting point for decision making. One of the core planning principles set out in paragraph 17 of the Framework is that planning should be genuinely plan-led. The conflict with the development plan identified above therefore carries very significant weight.
32. I recognise that parts of the development are within the SDL and the development would contribute to the housing land supply. However, in the context of the five year supply, and with no evidence of a specific local need, this would not outweigh the conflict with the housing strategy or other harm I have identified.
33. Although not 'enabling development' in the context of relevant policies, I have still had regard to the benefits that would be associated with investment in the public house. I recognise the importance that such facilities can have both socially and economically in an area. However, there is no substantive evidence before me that the pub would inevitably close if the appeal were dismissed or that that the same benefit could not be achieved in another policy compliant or less harmful way. I have not therefore given this factor significant weight in my decision. While I acknowledge the investment that has been made in submitting this and previous applications, this does not justify allowing something which would cause unacceptable harm.
34. The provision of low carbon housing and the district heating system is noted. I recognise that such aspects of the development would meet the requirements of some policies in the SDLP. Future occupants would also be able to access facilities within the settlement. These factors would provide both environmental and economic benefits, which carry moderate weight in favour of the proposal. However, these benefits are not necessarily dependent on the specific character or extent of the development proposed and thus do not justify the potential environmental harm or conflict with strategy.
35. I have considered the discussions between the appellant and highway authority and am satisfied that the issue could be addressed by condition. However, a lack of harm in this respect would be neutral and weigh neither for nor against the development. The same would apply for a lack of harm associated with the effect on living conditions of neighbouring residents.
36. The appellant's concern with the way the application was handled by the Council is a matter between the two parties and has little bearing on my decision. I have considered the appeal based on the evidence before me and my observations of the area.
37. There are clearly some policy compliant elements of the proposal and some associated social, economic and environmental benefits. However, when all

matters are taken into account these factors do not outweigh the conflict with the development plan strategy, the harm to the character and appearance of the area or the significant outstanding area of concern and the potential effects on protected species, protected habitats and drainage. As such, the benefits and other material considerations considered above do not justify making a decision other than in accordance with the development plan.

Conclusion

38. For the reasons given above the appeal should be dismissed.

S J Lee

INSPECTOR