



Appeal Decision

Site visit made on 3 July 2019

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Appeal Ref: APP/W1850/W/19/3224785

Car Boot Land adjacent Pinston House, Roman Road, Hereford HR4 7AN

- 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 John Price against the decision of the County of Herefordshire District Council.
 - The application Ref 182508, dated 5 July 2018, was refused by notice dated 19 October 2018.
 - The development proposed is a small housing development of 41 dwellings to include a mixture of low cost/social housing.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to an outline planning application with all matters reserved for future consideration. Nevertheless, the appellant has submitted an illustrative block plan and it is also set out in the Design and Access Statement that the proposed houses would be two storey with an approximate ridge height of 8 metres, which I have taken into consideration.
3. The revised National Planning Policy Framework (February 2019) (the Framework), which replaces the first version published in 2012 and subsequent version in July 2018, has been published since the Council's decision but prior to the submission of this appeal. I have determined the appeal taking account of the revised version, February 2019.

Main Issues

4. The main issues are:
 - i) whether or not the proposed development would be in a suitable location for the dwellings concerned, having regard to development plan policies;
 - ii) whether or not the proposed development would be in an appropriate location having regard to flooding risk;
 - iii) the effect of the proposed development on highway safety and the efficient flow of traffic on the highway network;
 - iv) the effect of the proposed development on the character and appearance of the surrounding area;

- v) the effect of the proposed development on the ecology of the site and surrounding area, including the River Wye Special Area of Conservation (SAC);
- vi) the effect of the proposed development on archaeological heritage assets;
- vii) the effect of the proposed development on the delivery of the Hereford Relief Road;
- viii) whether or not financial contributions towards off-site infrastructure and provision for on-site affordable housing, secured through planning obligations, would be necessary.

Reasons

Suitability of location

5. Policy SS2 of the Herefordshire Local Plan Core Strategy (the Core Strategy) sets out the strategy for delivering new homes. Policy RA2 relates to housing in or adjacent to those settlements outside Hereford listed in relation to that policy while policy RA3 clarifies that development in rural locations outside of defined settlements will be restricted to specific categories. These policies are broadly consistent with the National Planning Policy Framework (the Framework) in terms of being responsive to local circumstances and supporting housing developments that reflect local needs; and promoting sustainable development in rural areas.
6. Regarding paragraph 79 of the Framework, the proposed development would not be isolated due to the fairly close proximity to a small number of existing dwellings to the east and on the opposite side of the A4103 to the south-east. However, it is noticeably separated from the settlement edge of Hereford, with only sporadically positioned buildings and fields in between alongside the A4103. It is also noticeably separated from the built up part of the village of Stretton Sugwas to the west. As such it would not represent a development that relates to policy RA2, policy RA3 being relevant in this case.
7. In respect of policy RA3, none of the specific categories set out in that policy apply to the proposed development. That includes insufficient evidence to indicate that it could be considered as being of exceptional quality and innovative design. Although affordable housing is proposed, I have not received details to indicate that this would satisfy the criteria of being a rural exception site, and in any case there is no legal mechanism in place to ensure provision of affordable housing which I shall address further under the eighth main issue. The proposal would therefore not be in accordance with policy RA3.
8. Policy SS4 of the Core Strategy, in respect of this issue, sets out that, where practicable, development proposals should be accessible by and facilitate a genuine choice of modes of travel including walking, cycling and public transport. It goes on to state that development proposals that will generate high journey numbers should be in sustainable locations, accessible by means other than private car. I have also had regard to paragraph 103 of the Framework which states that planning should actively manage patterns of growth in support of objectives set out in paragraph 102, including that opportunities to promote walking, cycling and public transport use are

identified and pursued. Paragraph 103 goes on to state that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. It also states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in both plan-making and decision-making. Policies RA3 SS4 are broadly consistent with the Framework in these respects.

9. There is a footway alongside the A4103. However, there is not continuous lighting along it, outside of Hereford. Walking to and from Hereford to reach most services and facilities to serve day to day needs such as shops, schools, health and leisure facilities, along with a larger number of employment destinations would therefore be unlikely to be attractive for the purposes of most trips. The same would be likely in respect of cycling and in all weather conditions throughout the year. I have also received no substantive evidence of any nearby bus stops to the site. It is therefore likely that prospective residents would be heavily reliant on private motorised transport for most trips as opposed to those more sustainable modes referred to above.
10. I acknowledge that there is land allocated in the Core Strategy for a large housing development on the opposite side of the road from the site, known as Three Elms – Western Urban Expansion site. However, the Council has clarified that a planning application for that development is ongoing pending technical reports to address objections. However, as I do not have the full details of that application and, notwithstanding the site's allocation status, without planning permission in place, I have afforded limited weight to its potentially close proximity to the appeal site in respect of this issue. I have also received no evidence to indicate that the appeal site has been allocated in the Core Strategy for housing unlike that site opposite. Furthermore, I have no substantive evidence to indicate that the same accessibility issues relating to the proposal apply to the cattle market use, also on the opposite side of the road.
11. For the above reasons, and regardless as to whether or not the site can be considered previously developed land, I conclude on this issue that the proposed development would not be in a suitable location for the dwellings concerned, having regard to development plan policies. As such, in respect of this issue, it would be contrary to policies RA3 and SS4 of the Core Strategy as well as paragraphs 102 and 103 of the Framework.
12. The Council in its decision notice relating to this issue also refers to policy MT1 of the Core Strategy in its third reason for refusal. However, that policy relates to traffic management, highway safety and promoting active travel and so is not directly relevant to this issue.

Flooding risk

13. Contrary to the submitted Flood Risk Assessment (FRA), which incorrectly indicates the site location on the accompanying flood maps, the site is located wholly within Flood Zone 3 as mapped by the Environment Agency (EA) which relates to there being a high, 1 in 100 year or greater, probability of fluvial flooding despite the presence of an upstream Flood Alleviation scheme relating to Yazor Brook. I also note that the EA states that in the absence of details to the contrary, part of the site may be within the functional floodplain with a 1 in

20 year annual probability of flooding. I have not received any substantive information to indicate that this is not the case.

14. I have also had regard to paragraph 158 of the Framework which sets out, amongst other things, that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In this respect, whilst it is claimed in the FRA that the proposal relates to a change of use and therefore not subject to this sequential test, it is fundamentally a physical development of the site rather than purely a change of use. Notwithstanding this, and even if the appellant were to undertake such a test and demonstrate no other reasonably available sites with a lower risk of flooding, paragraphs 159 and 160 of the Framework then go on to stipulate that an exception test may have to be applied.
15. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in the national planning guidance. The application of the exception test should be informed by a site-specific flood risk assessment. For the exception test to be passed it should be demonstrated that: the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
16. Housing is defined under the more vulnerable development category and in light of the location in Flood Zone 3 and potentially partly in the functional floodplain, I have no substantive basis to consider that, notwithstanding the matter of sequential testing, it would not require the application of the exception test. In this respect I have received insufficient information to demonstrate that both elements of that test would be satisfied as required under paragraph 161 of the Framework. As required by paragraph 163, the application should be supported by a site-specific FRA.
17. Whilst an FRA has been submitted by the appellant, as well as the error in identifying the relevant flood zone referred to above, insufficient evidence, including in relation to comprehensive topographic levels on the site and any intervening banking details, has been provided. The reference to water levels in the FRA also relates to land to the east of the site being well under 300 millimetres, not the site itself. I therefore have insufficient basis to gain an understanding of flood risk associated with the proposed development.
18. It is stated in the FRA and by the appellant that the site has not been known to flood. Furthermore, it is stated that there are measures in place to prevent blockage of the culvert carrying the Yazor Brook under the A4103. The FRA also includes references to a drainage ditch next to that road, the raised level of the road, and also to the site being within a flood warning area. However, these claims alone provide insufficient basis upon which to consider the site and proposed development unlikely to be at risk of flooding in the future.
19. The appellant refers to the Three Elms housing site opposite having been subjected to flooding. However, I have no specific details of this and I also note that the EA highlights that that site is primarily within the 1 in 1000 year Flood Zone 2, unlike the appeal site. I also have no specific details relating to the circumstances of any other new developments locally in terms of flood risk,

including having regard to the introduction of the flood alleviation scheme. I have in any case determined this appeal on its own merits.

20. For the above reasons, regardless of claims relating to existing flood modelling not being precise, I conclude on this issue that the proposed development, in the absence of sufficient information to the contrary, would not be in an appropriate location having regard to flooding risk. As such, it would be contrary to policy SD3 of the Core Strategy which amongst other things seeks to reduce flood risk. It would also be contrary to the Framework within section 14, relating to planning and flood risk.

Highway safety and traffic flow on the highway network

21. The appellant makes reference to the site having been used as a small market site and in relation to a private commercial fishery for a number of years without any associated road traffic accidents or build-up of traffic in the vicinity of the site. I also acknowledge that the existing site access would be utilised. However, I have received insufficient substantive information relating to a comparison of trip generation and vehicular traffic patterns between the existing situation and that projected for the proposed development. As such, together with the absence of details relating to the baseline conditions on the local highway network, I am unable to undertake a proper analysis and comparison with the existing situation, particularly due to the change in land use and resultant potentially different traffic movements.
22. The appellant's submissions include reference to being able to provide a footway alongside the A4103 to the east and west of the site access. However, I do not have any substantive information relating to the extent to which this could be achieved and so have afforded little weight to this factor.
23. The appellant refers to the nearby cattle market as being a source of significant traffic problems. However, again I have no substantive information relating to such circumstances and have in any case determined this appeal on its own merits.
24. For the above reasons, I conclude on this issue that, in the absence of sufficient information to the contrary, the proposed development would be likely to pose a risk to highway safety and unacceptably reduce the efficiency of traffic flow on the adjacent A4103. As such, in respect of this issue it would be contrary to policy MT1 of the Core Strategy which, amongst other things requires that development proposals should demonstrate that the highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts; and that developments are designed and laid out to achieve safe entrance and exit. For the same reasons, it would also be contrary to the Framework which in paragraph 108 states, amongst other things, that for specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users, and any significant impacts from development on the transport network, or on highway safety, can be cost effectively mitigated to an acceptable degree; and in paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Character and appearance

25. The proposed development would occupy a site currently used for car boot sales. However, it is fundamentally an open field in between those sales. Furthermore, other than the road, it is bordered on one side by a field including a significant belt of small trees close to the intervening boundary and on the other by a band of trees alongside a small lake. Beyond these immediate surroundings on that side of the A4103 are further fields, and along the road side are only sporadically positioned small clusters of dwellings. The character on the northern side of the A4103 is therefore distinctly open. Although development on the other side of the road is also varied and sporadic, there are also larger developments such as the cattle market and other buildings in between that and the A438 further to the south.
26. The proposed development would introduce an uncharacteristically large group of dwellings close to the road on that side, outside of the main settlement of Hereford and clearly detached from it and any other smaller settlements. As such it would be likely to appear as an incongruous and jarring form of development. I acknowledge that the land on the opposite side of the road is allocated for a substantially larger housing development on open fields. However, I have considered the proposal on its own merits, taking particular account of the character and appearance of the northern side of that road.
27. I also acknowledge that the site has been considered as part of the Relief Road route. Nevertheless, I do not have details of any detailed designs of that scheme, and in any case have determined the appeal on its merits based on all of the evidence before me and my observations.
28. The appellant refers to another planning application for 69 dwellings in terms of the effect they would have on the aspect looking towards Stretton Court with the church in the background. However, I have not received the full details of that case, including its precise location, to enable a full and proper comparison with the appeal proposal. In any case, I have determined the appeal proposal on its own merits.
29. I acknowledge the intention for the proposals to comprise traditional two storey dwellings with an approximate ridge height of 8 metres and utilising materials commonly found in the locality. I also acknowledge that detailed design would be reserved for future consideration. However, for the above reasons I conclude on this issue that the proposed development would be likely to cause unacceptable harm to the character and appearance of the surrounding area. As such, in respect of this issue it would be contrary to policy LD1 of the Core Strategy which, amongst other things, requires that development proposals should demonstrate that character of the landscape has positively influenced the design, scale, nature and site selection. It would also be contrary to the Framework which in paragraph 127 states, amongst other things, that planning decisions should ensure that developments are sympathetic to local character; and in paragraph 170 that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
30. The Council in its decision notice relating to this issue also refers to policy SD1 of the Core Strategy. However, that policy relates to more detailed design considerations and so is not directly relevant to this issue in this case.

Ecology of the site and surrounding area including the SAC

31. The site falls within the catchment of the SAC. In respect of any effects of the proposal on the SAC, the appellant states that the site is a long way from the River Wye and that there are many other new and proposed developments and roadworks with streams passing through them, where the appeal site has no direct water access to the river. Notwithstanding the close proximity of the site to the Yazor Brook, such a claim on its own does not provide a substantive basis for me to consider this matter properly on its own merits.
32. It would ordinarily be necessary for me to undertake an Appropriate Assessment (AA) under the Habitats Regulations in order to determine whether the proposal would have a significant effect on the SAC. In order to enable such an assessment to be conducted, sufficient information would be necessary, including in relation to intended foul and surface water drainage, which I have not received. Nevertheless, even were I to have such information, as I am dismissing the appeal for other reasons, it is unnecessary for me to undertake the AA in this case.
33. In respect of the site itself, I note from the submissions that it has been surveyed in relation to the potential routing of the Relief Road through it. The details in the form of a brief summary of those surveys are limited and I also note the recommendations for further surveys, details of which I have not received. Nevertheless, I note that a preliminary bat roost assessment identified that the land parcel concerned was considered to provide optimal habitat for foraging bats and a high density of potential roosting sites. At the very least, further survey information and analysis would therefore be necessary in respect of bats. Without such information, I am unable to conclude that the proposed development would not have an adverse impact on the ecology of the site relating to habitats and protected species.
34. For the above reasons, I conclude on this issue that, in the absence of sufficient evidence to the contrary, the proposed development would be likely to cause unacceptable harm to the ecology of the site and surrounding area. Furthermore, insufficient information has been provided to enable an AA to be properly conducted in relation to the SAC, notwithstanding the circumstances referred to above. As such, it would be contrary to policy LD2 of the Core Strategy which, amongst other things, sets out that development proposals should conserve, restore and enhance the biodiversity of Herefordshire. In respect of this issue it would also be contrary to the Framework which in section 15 relates to conserving and enhancing the natural environment.

Archaeological heritage assets

35. The site is adjacent to Roman Road and close to the Yazor Brook. The Council highlights that due to the proximity to those features, there is the potential for prehistoric finds and deposits of interest. I have received no substantive evidence to indicate to the contrary. As such, although this is only an outline proposal, due to likely scale of development proposed based on the illustrative block plan, occupying a significant area of land, it is important to establish at this stage any potential constraints to the principle of such development. No archaeological assessment or evaluation has been submitted in this case.
36. In the absence of any information to demonstrate to the contrary, I conclude on this issue that the proposed development would have the potential to

harmfully affect archaeological heritage assets. As such it would be contrary to policy LD4 of the Core Strategy which requires that development proposals should, amongst other things, protect, conserve, and where possible enhance heritage assets in a manner appropriate to their significance and to record and advance the understanding of the significance of any heritage assets to be lost. It would also be contrary to paragraph 189 of the Framework which, amongst other things, sets out that where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Neither has been submitted in this case.

Effect on Relief Road delivery

37. Policies SS4 and HD3 of the Core Strategy together, amongst other things, relate to provision for the Hereford Relief Road as an improvement to the transport network to reduce congestion, improve air quality and road safety and offer greater transport choices; and to reduce the volume of traffic from the city centre and enable the delivery of walking, cycling and bus improvements on the existing highway network. It would therefore be of strategic importance.
38. The Council confirms that the Red Route Corridor option has been approved as the preferred route. This would be noticeably to the east of the appeal site. However, it remains to be confirmed as such, pending further consultation on the detailed proposals. Until there is that confirmation, I cannot be certain that the option for the route to pass through the appeal site would not be taken forward. As such the potential effect of compromising the strategic basis behind the need for such a relief road would significantly and demonstrably outweigh the benefits of providing the proposed 41 dwellings.
39. For the above reasons, I conclude on this issue that the proposed development would have the potential to compromise the delivery of the Hereford Relief Road contrary to policies SS4 and HD3 of the Core Strategy which are broadly consistent with the Framework in terms of promoting sustainable transport.

Off-site infrastructure and provision for affordable housing

40. In relation to the Council's ninth reason for refusal, and having regard to policies ID1 and H1 of the Core Strategy, a legal agreement has not been entered into under section 106 of the Town and Country Planning Act 1990 to secure any necessary developer contributions towards strategic infrastructure or provision of affordable housing. However, other than the need for affordable housing, the Council has not identified any specific mitigation, through financial contributions secured as planning obligations, that would be necessary relating to the effects of the proposed development on such infrastructure. I therefore have no substantive basis to consider whether any such contributions would be necessary.
41. Policy H1 relates to provision of affordable housing on sites proposing in excess of 10 dwellings which have a maximum combined gross floor space of more than 1000 square metres. The appellant has stated that affordable housing would be provided. However, the failure to secure it at this outline stage in a planning obligation means that I have no substantive basis to consider that it would be provided.

42. For the above reasons, I conclude on this issue that there is no substantive basis for the proposed development not to provide an appropriate level of affordable housing or to consider that it would be provided. As such, the proposed development would be contrary to policy H1 of the Core Strategy which is broadly consistent with paragraph 62 of the Framework relating to securing needed affordable housing.

Other matter

43. The appellant refers to only one letter of objection arising from the public consultation process concerning the appeal. He also claims that that letter, without realising it, supports the proposal due to encouragement of the use of Brownfield sites. Regardless of the level of response and the appellant's claim, I have determined the appeal on its merits based on all of the evidence before me.

Planning balance

44. Importantly, I have found that the proposed development would be unacceptable in terms of all the main issues.
45. The proposal would have the benefit of providing additional dwellings to the supply of housing in the area, particularly in light of the Council not currently being able to demonstrate a five-year supply of deliverable housing sites. Having regard to the Framework, in such situations the policies which are most important for determining the application are out-of-date. I have also had regard to the Government's objective of significantly boosting the supply of homes. The weight afforded to such provision, particularly being a fairly large number of dwellings, would therefore be significant. There would also be likely short-term economic benefits associated with the provision of jobs during the construction phase.
46. The appellant states the intention to make provision for affordable housing on the site which would potentially be a significant benefit in terms of addressing an identified local need for such housing. However, in the absence of a planning obligation to secure this, I have afforded little weight to this factor.
47. Taking all of the above findings into account, my conclusions in respect of the main issues would significantly and demonstrably outweigh the benefit, and those related benefits referred to above, of adding 41 dwellings towards addressing the undersupply of housing, even if they would be on a site claimed by the appellant to be previously developed land, when assessed against the policies in the Framework taken as a whole. It would therefore not be a sustainable form of development.

Conclusion

48. For the above reasons, and having taken account of all other matters raised, I conclude that the appeal should be dismissed.

Andrew Dawe

INSPECTOR