

Appeal Decision

Site Visit made on 2 November 2021

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/L3245/W/20/3263642

Land off Lowe Hill Road, Wem SY4 5UR

- 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 Tootell on behalf of Metacre Limited against the decision of Shropshire Council.
 - The application Ref 20/01054/OUT, dated 4 March 2020, was refused by notice dated 12 June 2020.
 - The development proposed is Outline planning application for the erection of up to 100 dwellings (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 100 dwellings (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved, at Land off Lowe Hill Road, Wem SY4 5UR, in accordance with application Ref: 20/01054/OUT, dated 4 March 2020, and subject to the conditions in the attached schedule as well as the provisions within the completed Section 106 legal agreement.

Applications for Costs

2. Applications for costs have been made by Metacre Limited against Shropshire Council, as well as by Shropshire Council against Metacre Limited. These applications are subject to a separate decision.

Preliminary Matter

3. Following the submission of the appeal, a revised National Planning Policy Framework (the Framework) was published. The main parties were consulted in relation to this matter, and any comments received have been factored into my assessment of the appeal.

Procedural Matters and Main Issue

4. When first lodged, the appellant requested that the appeal be heard by way of an Inquiry. However, due to the issues under consideration, a Hearing was eventually scheduled for 2 November 2021.
5. The original planning application was refused on the basis of two reasons. The first refusal reason related to landscape and visual harm, as well as harm to local biodiversity. However, in support of their appeal, evidence has been provided by the appellant to overcome these matters. The Council, as well as

other interested parties, have had the opportunity to fully appraise this information, and in preparation for the planned Hearing, the agreed Statement of Common Ground confirmed that the Council no longer wanted to rely on the first refusal reason.

6. I note that there has been objection to the proposal by third parties, as well as Wem Town Council, however, these parties have also had the opportunity to comment on the additional evidence. Accordingly, I am satisfied that the additional evidence provided by the appellant should be accepted to aid my assessment of the appeal, and that in taking this course of action, interested parties have not been compromised.
7. The additional information is thorough and has been suitably scrutinised, including by a qualified Ecologist on behalf of the Council. I note the ongoing concerns presented by Wem Town Council, however, no substantive or compelling evidence to challenge the agreed findings of the Appellant and Council has been provided. Accordingly, on the basis of the evidence before me, I have no reason to disagree with the revised stance of the Council.
8. The second reason for refusal related to insufficient justification and information being provided for the development of land that is located beyond the housing allocation. Accordingly, the outstanding main issue is whether the location of the appeal site is suitable for the development proposed, having regard to the requirements of local and national policy.

Reasons

9. The majority of the appeal site is allocated for housing through the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev). The allocation, WEM003, is referred to as Land off Pym's Road and makes provision for 100 houses. The SAMDev also states that the design of the site may include additional land for community facilities. Despite this allocation, the western-most portion of the appeal site is located beyond the land identified within the SAMDev.
10. As identified above, based on the additional information provided by the appellant, the Council is satisfied that the proposal would not give rise to any unacceptable landscape or biodiversity harm. The proposal seeks outline planning permission so specific details regarding these matters can be suitably controlled at the Reserved Matters stage. Accordingly, the Council's concerns now only manifest themselves in the additional land located to the west of the appeal site. This land is not allocated and is not located within a defined settlement boundary. As a consequence, for the purposes of local policy, this portion of land is located within the countryside.
11. Policy CS3 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (CS) relates to the Market Towns and Other Key Centres in the district. Wem is identified within the policy, and amongst other things, the Policy confirms that balanced housing and employment, of an appropriate scale and design that respects each town's distinctive character and is supported by improvements in infrastructure, will take place within the towns' development boundaries and on sites allocated for development.
12. In refusing planning permission, the Council have also referred to Policy CS5 of the CS and Policies MD2 and MD7a of the SAMDev. Policy CS5 of the CS

requires that new development will be strictly controlled in accordance with national planning policies protecting the countryside. Policy MD2 of the SAMDev requires amongst other things new development to consider design of landscaping and open space holistically as part of the whole development, including natural and semi-natural features. Policy MD7a relates to the managing of housing development in the countryside and states that new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Centres and Community Hubs and Community Clusters.

13. I note the wording of Policy CS3 of the CS, however, in my judgement, when read as a whole, local policy is consistent with the Framework. That is to say it promotes development within settlement boundaries and on allocated sites but does not specifically preclude other development. Indeed, the housing allocation itself acknowledges that additional land may be included, albeit for community facilities. As a consequence, the local policy framework is such that development in the countryside should be strictly controlled, having due regard to the environment in which it would be located. It is therefore in this context that the appeal should be assessed.
14. Based on the evidence before me, following the allocation of WEM003, a major gas pipe was identified as crossing the site. The size of the pipeline brings with it an easement requirement of 15 metres to either side, and therefore introduces a substantial no-build zone within the allocated parcel of land. The Council recognise this gas main as a constraint on the site, and on the basis of the evidence before me, I have no reason to disagree.
15. The size of the no-build zone across the site has a demonstrable impact on the developable space within the allocated land. As a consequence, rather than designing the proposal at a higher density, the additional land would be utilised to enable open space and landscaping within the development, in a manner that would be sensitive to its edge-of-settlement location. Due to the Council's reservations regarding this point, the landscape impact of the proposal has been thoroughly considered and the evidence before me confirms that it has been demonstrably scrutinised. As identified above, this additional scrutiny has enabled the Council to withdraw their concerns regarding landscape and visual impact.
16. The proposal is in outline form, with all matters reserved for future consideration, other than access, and it has been supplemented with thorough evidence regarding landscape impact. The development would result in an obvious visual change to the existing surroundings, but as an allocated site, this could not be avoided. I have no evidence before me that distinguishes the visual impact between the allocated land and the unallocated land. The reports consider the site as a whole and the unallocated land would be experienced as part of the broader development. In this regard, it would be integrated with the allocated land. The proposal would not result in any isolated form of development and there is nothing compelling in the evidence before me to confirm that the visual impact of developing the unallocated land would be demonstrably more harmful than just the allocation.
17. The inclusion of the additional land has been suitably articulated by the appellant. Moreover, the additional landscape and biodiversity evidence ably demonstrates that the development on this part of the site has been sensitively considered. Accordingly, in my judgement, when assessed against the strict

controls of local policy, and having due regard to the environment in which the development would be located, I am satisfied that there is nothing in the evidence before me to confirm that the inclusion of the westernmost parcel of land would be contrary to local policy, when taken as a whole.

18. Consequently, having regard to local and national policy, I conclude that the appeal site would be suitable for the development proposed. It would therefore comply with Policies CS3 and CS5 of the CS and Policies MD2 and MD7a of the SAMDev, the requirements of which are set out above.

Other Matters

19. The appeal site is located within the catchment area of the Midland Meres and Mosses Phase 2 Ramsar Site. Paragraph 181 of the Framework requires that this be given the same protection as habitats sites, which the Framework defines as any site which would be included within the definition at Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (the Regulations). Accordingly, due to the location of the site, the requirements of the Regulations are applicable to my assessment of the appeal.
20. This requires that I, as the competent authority, must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the Ramsar. The Ramsar is susceptible to disturbance of habitats through trampling, as well as interference with habitat management, and also increased nitrification of habitats, primarily due to dog fouling. As a consequence, taking a precautionary approach, and when combined with other development within the area, I am satisfied that the proposal would result in an increase in such activity which would lead to a likely significant adverse effect on the integrity of the Ramsar.
21. Due to this effect, the Regulations place a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives. On this basis, a management plan is being prepared to ensure that recreational pressure can be suitably managed so as to protect the integrity of the Ramsar. Although this report remains in draft form, the parties have agreed that a contribution of £7,500 would assist in implementing visitor management measures to protect the Ramsar. The contribution forms part of the completed Section 106 Legal Agreement.
22. Based on the evidence before me, I am satisfied that this contribution is necessary to provide the delivery of suitable mitigation that would address the level of harm likely to be caused by the development. Accordingly, it would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). As a consequence, subject to the necessary mitigation, I am satisfied that the proposal would not result in a significant harmful effect on the integrity of the Ramsar.
23. The legal agreement also includes provisions in relation to affordable housing, as well as public open space, including maintenance. The evidence before me confirms the need for these matters and consequently, I am satisfied that the contents of the agreement comply with the requirements of the CIL Regulations. Accordingly, the submitted legal agreement is a valid document that is fit for purpose and therefore weighs in favour of the proposal.

24. I note the comments regarding flooding and drainage, however, I have no substantive evidence to demonstrate that this matter is of specific concern. No objection was raised to this matter by the Council and subject to a suitably worded planning condition, I am satisfied that flooding and drainage need not cause harm following development. I also note the concerns regarding highway safety and volume of traffic. Nevertheless, again, the evidence before me does not present a compelling case that the proposal would give rise to harm in relation to these matters. The proposal has been suitably scrutinised by the Highway Authority and no objection has been raised subject to the imposition of certain conditions. On the basis of the evidence before me, I have no reason to disagree with this approach.
25. In relation to the effect of the proposal on infrastructure such as schools, doctors and dentist practices, I have no substantive evidence before me to demonstrate that the proposal would have an adverse effect. They are not matters for which the Council have sought contributions or to which concerns have been raised. Accordingly, based on the evidence before me, I have no reason to consider that the proposal would cause demonstrable harm in these areas.

Conditions

26. Due to my findings set out above, conditions 1 – 4 are necessary in the interests of precision and clarity. In addition, conditions 5 – 9 are necessary in the interests of highway safety. Condition 10 is necessary to ensure satisfactory drainage of the site, and condition 11 is necessary due to the archaeological interest of the site. Condition 12 is necessary to protect the ecological interest of the site, and condition 13 is necessary to ensure that a suitably robust landscaping scheme accompanies the reserved matters submission. Condition 14 is necessary to ensure suitable living conditions are provided for future occupants, and condition 15 is necessary to promote sustainable travel opportunities.
27. The conditions have been taken from the agreed Statement of Common Ground and as a consequence, where conditions require information to be submitted prior to the commencement of development, the appellant has confirmed their acceptance.
28. An additional condition was suggested to establish the upper limit for development on the site, but because this matter is explicitly stated within the description of development, a condition to duplicate this matter would be unnecessary.

Conclusion

29. For the reasons identified above, the appeal should be allowed.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Approval of the details of the appearance of the development, access arrangements, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall be carried out strictly in accordance with the following approved plans and drawings: 18-14-LP01; 68591-CUR-00-XX-DR-TP-75001-P04 (Proposed Access Option 1); S18-412; and WD18-13-MP01-G.
- 5) Notwithstanding the access details as shown on Drawing No.68591-CUR-00-XX-DR-TP-75001-P04 and prior to the commencement of development full engineering details of the access layout, visibility splays and raised table shall be submitted to and approved in writing by the Local Planning Authority; the access scheme and raised table shall be implemented in accordance with the approved details and a phasing programme to be first submitted to and approved in writing by the Local Planning Authority.
- 6) No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water and phasing programme have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented in accordance with the approved details.
- 7) Prior to the commencement of development a scheme for the provision of a mini-roundabout at the junction of Lowe Hill Road and B5063 shall be submitted to approved in writing by the Local Planning Authority: the mini-roundabout scheme shall be fully implemented in accordance with the approved scheme following the occupation of the 50th dwelling within the site.
- 8) No development shall take place until details for the parking and turning of vehicles have been submitted to and approved by the Local Planning Authority. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.
- 9) No development shall take place, including any works of demolition, until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority, to include a community

communication protocol. The CTMP shall be fully implemented in accordance with the approved details for the duration of the construction period.

- 10) No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).
- 11) No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a phased programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.
- 12) No development shall take place until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained from Natural England and submitted to the Local Planning Authority.
- 13) The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include:
 - 1) Planting plans showing creation of wildlife habitats including species-rich grassland, permanent aquatic habitats and hedgerow / tree planting,
 - 2) Written specifications (including cultivation and other operations associated with wildlife habitat establishment);
 - 3) Schedules of plants, noting species (including scientific names, seed mix compositions, planting sizes and proposed numbers/densities where appropriate;
 - 4) Native species used are to be of local provenance (Shropshire or surrounding counties);
 - 5) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
 - 6) Detail of boundary treatment which will include provision for hedges.
 - 7) Implementation timetables.
 - 8) Recreational space and landscaping/plantings in relation to this.

The plan shall be carried out as approved. Any trees or shrubs which die or become seriously damaged or diseased within five years of completion of the development shall be replaced within 12 calendar months with trees of the same size and species.

- 14) Any subsequent planning application/reserve matters for development on site will include reference to a scheme for protecting the occupants of the proposed development from the traffic noise on Lowe Hill Road, to be submitted to, and approved in writing by the Local Planning Authority. The scheme shall ensure that all properties have been designed so that the following good noise standards can be achieved: 35dBA LAeq in habitable rooms in the day, 30dB LAeq in bedrooms at night, 45dB L_{Amax} in bedrooms at night and 50dB LAeq in external amenity areas. Acoustic

glazing which requires windows to be kept shut should only be used where it is not possible to resolve the issues by other design measures and where there is a clear planning need for the proposed design. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

- 15) The interim travel plan shall be implemented in accordance with the Action Plan set out in the approved details.