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## Appeal Decisions

Site visit made on 23 July 2020

**by A J Mageean BA (Hons) BPI PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 August 2020**

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### **Appeal A Ref: APP/W1850/W/19/3237625**

#### **Yew Tree Farm, Fromes Hill, Herefordshire HR8 1HW**

- 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 Claire Watkinson against the decision of Herefordshire Council.
  - The application Ref 191412, dated 15 April 2019, was refused by notice dated 22 July 2019.
  - The development proposed is residential dwelling south of Yew Tree Farmhouse.
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### **Appeal B Ref: APP/W1850/W/19/3237628**

#### **Yew Tree Farm, Fromes Hill, Herefordshire HR8 1HW**

- 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 Claire Watkinson against the decision of Herefordshire Council.
  - The application Ref 191413, dated 15 April 2019, was refused by notice dated 22 July 2019.
  - The development proposed is residential dwelling west of Yew Tree Farmhouse.
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## **Decisions**

1. The appeals are dismissed.

## **Procedural matters**

2. The applications were submitted in outline form with all matters reserved for future consideration.
3. The Council is not able to demonstrate a 5-year supply of land for housing development, with the currently published position being 4.05 years. I return to consider the implications of this later in the decisions.
4. Whilst not cited as reasons for refusing the planning applications in these cases, it has been brought to my attention that the development of these sites could have an effect on protected species. As the competent authority I am required to consider the implications of this possibility within my decisions.

## **Main Issues**

5. Both appeal sites are under the ownership of the appellant and located within the vicinity of Yew Tree Farm. Whilst the Appeal A site is located within the Bishops Frome Neighbourhood Development Plan (BFNPD) area and the Appeal B site falls just outside, in other respects the issues raised are very similar. As such I have dealt with them both in the same decision letter, addressing the distinct elements as appropriate. The main issues in both cases are:

- Whether the proposed developments would be in a suitable location, with reference to local and national policies regarding development in the countryside;
- The effect of the proposed developments on the character and appearance of the local area; and,
- Whether adequate information has been provided to enable the evaluation of possible ecological impacts.

## **Reasons**

### *Location*

6. Fromes Hill is identified within the Herefordshire Local Plan Core Strategy (2015) (CS) as one of the settlements which will be the focus of proportionate rural housing development. Policy RA2 sets out that the main focus for development will be within or adjacent to identified settlements. Specific criteria to be met include that they should be located within or adjacent to the main built up area of the settlement. Outside of these settlements Policy RA3 requires that residential development should satisfy one or more of a number of exception criteria, none of which are applicable to the current cases.
7. The supporting text to Policy RA2 sets out that Neighbourhood Development Plans (NDP) will be the principle mechanism by which new rural housing will be allocated, with a proportionate growth target given as a minimum level of new housing to be accommodated within each NDP.
8. The BFNDP does not identify development sites of less than 10 homes, but instead defines settlement boundaries within which planning policies are used to guide the form and scale of new development. As such BFNDP Policy BF2 sets out that the supply of new homes will be provided through the windfall development of sites within the defined settlement boundaries of Bishops Frome and Fromes Hill.
9. Yew Tree Farm lies outside the Fromes Hill settlement boundary, though is located adjacent to it. As such the Appeal A proposal is in conflict with the BFNDP provisions. The Appeal B proposal falls outside the BFNDP area boundary and I understand is within the Stretton Grandison NDP area, which is in draft form and has limited weight at this stage. I am aware that Stretton Grandison Parish Council have indicated their support for the Appeal B application. Nonetheless, the nearest settlement is Fromes Hill and as the site falls outside the settlement boundaries the provisions of CS Policy RA3 continue to apply.
10. The appeal documentation also indicates that the Parish Council are in support of Appeal A. More specifically, whilst the sites are outside the settlement boundary, this is apparently due to drafting errors, specifically the fact that the maps used are out of date. Be that as it may, the BFNDP was made on 20 April 2018 following the required procedures. It therefore forms part of the development plan framework for the area. Whilst NDP's can be reviewed after two years, there is no evidence before me to suggest that this has been undertaken.
11. The CS proportionate growth requirement for the BFNDP area between 2011 and 2031 translates into a minimum of 48 additional dwellings. The most

recent figures indicate that so far there have been 24 completions and there are a further 23 commitments, including the development of 20 houses recently started adjacent to the Wheatsheaf Pub. As such, and assuming these commitments are realised, the minimum figure has almost been met well within the plan period. Whilst it is possible that further windfall sites could be found within the BFNDP settlement areas, it remains that 48 dwellings is a minimum and not a target figure.

12. The National Planning Policy Framework (the Framework) refers specifically to the need for rural housing to be located where it will enhance or maintain the vitality of rural settlements. Specific reference is made to the need to avoid the development of isolated new homes in the countryside (para 79). The meaning of the term 'isolated' in this context has been considered by the Court of Appeal<sup>1</sup> which clarifies that this simply connotes a dwelling that is physically separate or remote from a settlement.
13. In the present cases the appeal sites are located close to the settlement boundary of Fromes Hill. There is a continuous pavement connecting the sites to the village and the modest range of services and facilities therein. I understand that public transport links are available here, though there is no detail of how sustainable access to a wider range of facilities and services could be gained. Notwithstanding this point, development in this location would also result in an increase in demand and support for local services, supporting the vitality of nearby settlements including Bishops Frome. In this regard the BFNDP supports small scale development to meet local needs.
14. However, it does not follow that the development of these sites would accord with other development plan policies that seek to prevent development outside of settlements. In this respect, the appeal decisions referred to by the main parties relate to a range of situations in which development outside settlement boundaries contrary to development plan policy has been a main issue. Those referred to by the appellant have acknowledged policy conflict in this regard, though have found that other material considerations have weighed in favour of the proposals. The appeal decisions referred to by the Council have identified similar policy conflicts, with no other material considerations found to outweigh that harm. As such it is clear that in such cases much depends on the particular circumstances of the case, and I return to consider the wider planning balance later in these decisions.
15. On this issue I conclude that as the appeal sites are located outside the Fromes Hill settlement boundary there would be conflict with the CS settlement policies regarding development in the countryside. However, as the sites are located within reasonable proximity to this settlement, I do not regard them as being isolated. As such the magnitude of harm associated with this policy conflict is modest. Furthermore, CS Policy RA2 refers to housing growth being supported 'in or adjacent to the main built up area' of the identified settlements. I will now consider the physical relationship of the sites to the settlement.

### *Character and appearance*

16. Fromes Hill is a modestly sized settlement whose focal point is on the northern side of the A4103, around the Uplands housing area and small trading estate. On the southern side of the road the settlement boundary has been extended

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<sup>1</sup> Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

to accommodate the development of 20 dwellings at the Wheatsheaf Pub. Beyond this a number of detached properties front the southern side of the A4103 to extend the built form to the west. Beyond the property known as Mayfield, and on the northern side of the road, buildings are much more dispersed with areas of green space and fields separating properties to provide views of the countryside beyond.

17. Whilst Yew Tree Farm is located well within the 40mph zone associated with the village, it is part of this looser structure, and is in fact the final property on the southern side of the A4103. Beyond the farmhouse fronting the main road the Farm comprises a number of outbuildings. The Appeal A site is a paddock area directly to the south west of the main farm buildings. The Appeal B site is to the west of the main farm buildings, separated from them by a field.
18. The appeal sites are not located adjacent to the main built up area of the settlement, but they are loosely associated with it. Their development would consolidate and slightly extend the ribbon of development along the southern side of the A4103. Whilst details of siting and design are reserved for later consideration, some general observations can be made. As the Appeal A site is screened by existing buildings and mature vegetation, visibility of the new structure would be limited, though it could appear in glimpsed views from the road. However, this plot is set beyond the furthest southern extent of most development in the settlement. The development of Appeal site B would be likely to be a more visible element of the street scene, particularly noting the suggested need to remove existing vegetation to improve visibility at the point of access. However, this would be set within the context of the existing loose arrangement of properties on both sides of the road.
19. There would be little or no visibility of the developed sites from the footpath to the south due to the steep north to south gradient of land and the presence of intervening mature trees and hedgerows.
20. As a result of the modest erosion of the settlement edge and intrusion into open countryside when viewed from the main road, there would be some localised harm to the character and appearance of the area. As Appeal site A is reasonably well related to existing built form the harm in this regard would be minor. Looking at Appeal site B, the development of this more visible site would cause at most a modest degree of harm. In this respect there would be some conflict with CS Policies RA2, LD1 and SD1 which together require development to be appropriate to its local context, protecting and enhancing the setting of settlements.
21. In relation to Appeal site A there would also be some minor conflict with the BFNDP Policy BF1 which requires new development to protect and enhance the character of the rural landscape and built environment, and Policy BF3 which requires development to be well related to existing village form either by infill or by sympathetic addition to the existing built development.

### *Ecology*

22. The Council has drawn my attention to the fact that the development of each of the sites may have the potential for ecological impacts, with particular reference to possible aquatic habitats within 60 metres of the sites, and the presence of trees and hedgerows around both sites. More specifically, and with particular reference to the pond located on the Appeal B site, such habitats

have the potential to support European Protected Species, such as Great Crested Newts. Both sites could also be connected with core sustenance zones for bats, also protected species, potentially using the adjacent farm buildings. I therefore must have regard to the statutory obligations on decision makers in relation to protected sites and species which are set out in the Conservation of Habitat and Species Regulations 2017, the Wildlife and Countryside Act 1981 and the Natural Environment and Rural Communities Act 2006.

23. National policy provisions<sup>2</sup> require that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Such surveys should only be required by condition in exceptional circumstances, which in my view do not arise in these cases.
24. Based on the statements from the Council's ecology consultee and my observations on site, there is a reasonable likelihood of protected species being present. However, no information has been provided to enable the evaluation of possible ecological impacts on these sites. As such, in addition to conflict with statute and national policy requirements, there would be clear breaches of CS Policy SS6 and LD2 which seek to protect sites and species of European Importance and require that development proposals should be based on sufficient information to determine the effect on environmental components, including biodiversity. Given the importance of such environmental considerations I attach significant weight to this matter.

### **Other matters**

25. The Council has additionally referred to the need for the appellant to demonstrate that the necessary visibility splays could be achieved at the point of access to the Appeal B site. However, given my conclusion overall, it is not necessary for me to address this point.

### **Planning balance**

26. The Council's 4.05 years supply of housing land falls short of the Frameworks 5 year housing land supply requirement. Therefore, the presumption in favour of sustainable development set out at para 11d) of the Framework is engaged. In these cases the application of policies that protect areas or assets of particular importance do not provide clear reasons for refusing the proposal. Additionally, I have considered the fact that in situations where the Framework paragraph 11d) presumption applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits if certain circumstances apply. This includes the requirement that the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made. However, as in this case the BFNDP was made in April 2018, these provisions do not apply.
27. In these circumstances the policies which are most important for determining the applications are regarded as being out of date, and I must consider whether any adverse effects of allowing the appeals would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In terms of benefits, the proposals would each

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<sup>2</sup> Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System

provide one housing unit, contributing to the Framework priority of significantly boosting the supply of housing. There would be similar benefits to the Framework's social and economic objectives in terms of supporting the local construction industry, and the vitality and viability of the local community. However, given the limited scale of the proposals, these factors attract at most modest weight in favour of each proposal.

28. Set against this, I have found modest harm associated with locational and character and appearance matters, and therefore some conflict with the Framework policies seeking to protect the natural and built environments. More significantly, the biodiversity concerns identified, and the associated conflict with the Framework's environmental objective, weigh significantly against these proposals. This is a decisive matter in these cases.
29. Overall, I find that the adverse effects caused by the proposals would significantly and demonstrably outweigh their benefits when assessed against the Framework as a whole. As such, the proposals do not benefit from the presumption in favour of sustainable development.

### **Conclusions**

30. Both the Appeal A and Appeal B proposals are in conflict with the development plan taken as a whole. The overall benefits of the development and other considerations do not lead me to decisions other than in accordance with development plan policies. I therefore conclude that the appeals should be dismissed.

*AJ Mageean*

INSPECTOR