

Appeal Decision

Hearing held on 13 April 2016

Site visit made on 13 April 2016

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 24 May 2016

Appeal Ref: APP/D3125/W/15/3039143

Land to the West of Fruitlands, Eynsham, Oxfordshire

- 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 JA Pye (Oxford) Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 14/1009/P/OP, dated 8 July 2014, was refused by notice dated 20 January 2015.
 - The development proposed is erection of 19 dwellings with associated access and open green space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is made in outline, with all matters reserved except for access. However, I have been provided with indicative site plans, a landscape masterplan and tree constraint plans, which I have taken into account.
 3. At the Hearing the appellant presented additional evidence in the form of drawings and historic aerial photographs to illustrate the site coverage of trees, particularly in relation to habitat definitions. I agreed at the Hearing that the Council could provide written representations after the Hearing in response to this matter and these were received within the agreed timescales. The appellant was then given the opportunity to respond to the Council's comments. In addition, I asked at the Hearing if any interested parties would like to see and make comments on the Council's submissions. An interested party provided comments within the agreed timescales and again, the appellant was given the opportunity to reply. On this basis, I consider that no parties have been prejudiced by the late evidence and I have taken the representations received into account.
 4. At the Hearing, I was provided with two signed and dated Section 106 agreements. The first Section 106 agreement is with West Oxfordshire District Council (the Council), which makes provision for affordable housing and public open space, both of which include a financial contribution. The second is with Oxford County Council that makes provision for financial contributions for libraries, primary school education and transport (bus service). From the evidence that has been provided to me, I consider that the requirement for each of the sought contributions meets the three tests set out in Paragraph 204
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of the National Planning Policy Framework (the Framework or NPPF) for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (CIL) (2010). I also consider that the sought contributions comply with CIL Regulation 123 in terms of the maximum number of pooled resources, where this is applicable. As a result, I have not considered such matters further in my decision.

5. After the Hearing, the appellant provided a copy of a recent appeal decision¹ for a development in Eynsham, making particular reference to the Inspector's findings in relation to housing land supply. However, I consider that this does not affect my overall findings and is therefore not decisive. As a result, I consider that it is not necessary to seek the views of the others parties on this matter and that they have not been prejudiced.

Main Issues

6. I consider that having regard to the evidence that is before me and the above preliminary matters, the main issues of the appeal are: the effect of the proposal on the character and appearance of the area; the effect of the proposal on protected trees; the effect of the proposal on the ecological value of the site; and whether the proposal would result in the loss of recreational land.

Reasons

Context

7. The appeal site falls outside of the settlement boundary of Eynsham. Policy H7 of the West Oxfordshire Local Plan (2006) (the LP), sets out that new housing will be permitted in towns and villages in a number of circumstances. The proposal does not meet any of those circumstances. However, the Government is seeking to significantly boost the supply of housing, as set out in Paragraph 47 of the National Planning Policy Framework (the Framework). Further to this, the Framework at Paragraphs 14 and 49 identifies that there is a presumption in favour of sustainable development.
8. Paragraph 49 of the Framework sets out 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 accepted at the Hearing that at the present time it is not able to demonstrate a five year housing land supply. Consequently, the Council's policies that relate to the supply of housing, including Policy H7 of the LP, are out-of-date. Consequently, I consider that Policy H7 of the LP attracts very little weight, this is also given its age and some acknowledged inconsistencies with the Framework.
9. In such circumstances, Paragraph 14 of the Framework advises that where policies relating to the supply of housing are considered to be out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This balancing exercise is undertaken at the end of my decision.

¹ APP/D3125/W/15/3019438, dated 16 May 2016.

Character and appearance

10. The appeal site is located adjacent to the residential cul-de-sac of Fruitlands and largely consists of relatively mature vegetation. The appeal site is bordered by residential development to the north and east, playing fields to the south and a garden centre to the west, although the garden centre is set behind a small strip of land that is not owned by the appellant.
11. As part of my site visit, I observed the appeal site from: Fruitlands; Old Witney Road; the garden centre to the west; the A40; the playground to the east; and Bartholomew Close to the southeast. In all cases, I consider that the mature vegetation on the site makes a positive contribution to the character and appearances of the area. This is particularly the case as the appeal site is, clearly by far, the largest area of vegetation on the western side of Eynsham and is located close to the settlement boundary with the open countryside to the west and south. The presence of the trees from close and medium views was notable from all locations and such views of the trees, including those glimpsed between dwellings, in my view create a pleasant semi-rural context and softens the presence of the built development around the appeal site. I consider that the appeal site therefore contributes significantly to the rural fringe of the settlement. I can therefore not agree with the appellant, that the appeal site has no significant visual character or value.
12. The indicative layout illustrates that the proposal would result in the removal of a significant level of the existing vegetation to accommodate the proposed 19 dwellings and associated infrastructure. The appellant confirmed at the Hearing that a total of 203 trees would be removed. Whilst some of the more valued trees would be retained and additional planting could be secured on the periphery of the appeal site, as identified on the indicative landscape masterplan, I consider that the presence of the housing would be clearly evident from the surrounding area. This would be in stark contrast to the current rural appearance of the appeal site, to its detriment. I agree with the Council that the proposal would demonstrably urbanise the rural fringe of the settlement and remove the significant contribution that the appeal site makes to the locality. The leafy reprieve the appeal site provides against the built development of the locality would be lost. This would cause demonstrable harm to the character and appearance of the area.
13. This loss would be particularly evident from the properties within Fruitlands itself, who currently benefit from views over the appeal site and its leafy context. There would therefore be significant visual impacts on the views that the local residents currently enjoy from these properties. Whilst I accept that such visual impacts would be localised and the housing would not appear overbearing or cause any harm to the living conditions of the occupants of neighbouring properties, this nonetheless adds to my above concerns.
14. The appellant has provided some indicative visualisations of the proposal, which I consider demonstrates my concern. It is clear from these that even after a very significant period of time (15 years), the proposal and its urbanising effect would still be clearly evident from the surrounding area. This is particularly noticeable from Figures 1 and 2, where the proposed dwellings would still tower over the boundary vegetation. Further, Figure 4 illustrates that the softening views of dense tree cover between dwellings along Old

Witney Road would be replaced with views of built development, albeit framed by some vegetation.

15. The Council has set out that the area to the west of Eynsham is likely to see additional development in the future due to other constraints, such as the Conservation Area and areas at flood risk. However, I have little evidence before me on the nature of such additional development. In any event, even if additional housing was constructed to the west of the appeal site, I consider that this does not affect my findings in terms of the important contribution the appeal site makes to the locality.
16. Having regard to the indicative layout, I accept that the density of the proposed development and the arrangement of the dwellings would be in keeping with the pattern of development in the area and I see no reason to consider that the suitable architectural appearance of the dwellings could not be achieved. However, such matters do not overcome my above concerns.
17. For all of the above reasons, I consider that the proposal would cause demonstrable harm to the character and appearance of the area. The proposed development therefore conflicts with Saved Policies BE4 and NE6 of the LP. These policies seek to ensure that: development within or adjoining the built up area do not result in the loss or erosion of an open area that makes a contribution to the distinctiveness of the area or the visual amenity or character of the locality; and that development does not result in the unacceptable loss of trees, woodlands or hedgerows that are important for their visual value.
18. I accept to some degree the appellant's view that the site is not viewed from any long distances and is somewhat contained. However, I consider that this does not diminish the positive and demonstrable contribution the appeal site makes to the locality. Given all of the above, I consider that the identified harm carries a significant level of weight against the scheme in the planning balance.

Ecology

19. The appeal site does not have any ecological designation, however, there is a dispute between the parties whether the appeal site accommodates UK Biodiversity Action Plan (BAP) Priority Habitat in the form of Traditional Orchard and Lowland Mixed Deciduous Woodland. Despite this dispute, the appellant accepted at the Hearing that the site has an intermediate to high local ecological value.
20. Examining firstly, whether the appeal site accommodates Traditional Orchard Priority Habitat, it is evident that the site accommodates numerous fruit trees. The fruit trees include apple, plum and wild cherry. The UK BAP Priority Habitat definition of Traditional Orchard sets out that these are defined as: *'groups of fruit and nut trees planted on vigorous rootstocks at low densities in permanent grassland; and managed in a low intensity way'*. The description also notes that the minimum size of a Traditional Orchard is defined as five trees with crowned edges less than 20 metres apart. It is also noted that *'They are a composite habitat, defined by their structure rather than vegetation type, which can include trees, scrub, grassland, ponds, walls, hedgerows and hedgerow trees. Traditional Orchards can take several different distribution*

patterns, including small and large patches, along linear boundaries, and trees dispersed among settlements'.

21. At the Hearing, the appellant provided drawings which illustrate the locations of the fruit trees, most notably at Figures 3, 4 and 5. This shows small groupings of apple and plum trees towards the south and southwest corner of the site. These groups both include 5 or more trees and reflect the above guidance. The appellant also provided aerial photograph dating back between 1930 and 1993. The aerial photographs in 1946 and 1949 show what looks to be an Orchard partly on the appeal site and on the adjoining land to the east that is now residential development (Fruitlands). Remnants of this can be seen throughout the aerial photographs. In 1993 it is evident that the site had become more overgrown.
22. The above definition refers to low densities of fruit trees in permanent grassland and from the aerial photographs it appears that this was the case in the past. The site has since become overgrown. The UK BAP priority habitat definition sets out that only in very few cases will there be a significant number of other tree species in a traditional orchard, unless the orchard is becoming woodland through neglect. It is evident that the site has not been managed for some considerable time. In any event, the appellant's drawings show other woodland tree species close to, and in a number of occasions, mixed in with the fruit trees, but these are not significant in number. The drawings show that the majority of the vegetation surrounding the fruit trees is scrub. Given my above findings and having regard to the above guidance, I consider that the appeal site does accommodate Traditional Orchard BAP Priority Habitat, which would be lost as a result of the proposal.
23. In terms of whether the appeal site contains Lowland Mixed Deciduous Woodland priority habitat, I consider that this matter is much more difficult to come to any robust conclusion. The relevant section of the Handbook for Phase 1 Habitat Survey (Joint Nature Conservation Committee, 2010) sets out that the decisive factor is whether qualifying tree species on the site have a 30% canopy coverage or greater. If less than 30% then it advises that the area should be considered as scattered trees. The appellant has provided drawings to suggest that the overall tree canopy coverage is approximately 22% and therefore the site is not woodland, but scrub with scattered trees. However, the Council has provided its own calculations, which consider the tree canopy coverage to be significantly higher than 30%. Both parties raised concerns about each others calculations and questions have been raised over the height and diameter of some trees and their exclusion from coverage calculations. At the Hearing the appellant set out that its calculations were to some degree based on topographical surveys and it was clear from my site visit that there did appear to be some trees that were excluded from the calculations that should have been potentially considered.
24. However, the extent to which such matters would affect the site coverage is very difficult for me to establish, given the level of uncertainties. In any event, even if I were to give the benefit of the doubt to the appellant in this regard, the proposal would still result in the loss of Traditional Orchard BAP Priority Habitat and I consider the appeal site in more general terms has ecological value. As set out above, the appellant accepted at the Hearing that the site has an intermediate to high local ecological value and the Council agrees with this opinion. The proposal would result in the loss of a significant level of

coverage of the appeal site to built development and associated areas of hardstanding and residential gardens. The removal of this habitat would to some degree be mitigated by the proposed measures set out within the habitat management plan, but the areas set aside for such purposes are relatively small when compared to areas that would be lost. Despite the other proposed enhancement measures such as planting, loggeries, bird and bat boxes and ongoing management, I consider that the proposed habitat management plan is not sufficient to overcome the significant loss of habitat within the appeal site and most notably the loss of the Traditional Orchard BAP Priority Habitat.

25. The proposal therefore runs contrary to Policy NE13 of the LP, which seeks to safeguard, maintain and enhance priority habitats within the District and identifies that proposals should include measures to mitigate any effects upon features of nature conservation value. However, bearing in mind that the site does not have any statutory designations and the species recorded at the site could be described as common or abundant, I consider that the identified harm to the ecological value of the site attracts a moderate level of weight against the scheme.
26. I acknowledge that no statutory consultees raised any concern with regard to ecological matters and that the officer recommendation was for approval. However, I consider that this does not affect my overall findings, which are based on the evidence that has been placed before me as part of the appeal, which includes new evidence since the Council's determination of the scheme.

Trees

27. As set out above, the proposal would result in the loss of approximately 203 trees. The site is covered by a 'blanket' Tree Preservation Order (TPO), which was put in place following the Council's refusal to grant planning permission for the proposal. The evidence that is before me in relation to the TPO sets out that the reason for the TPO being put in place was to recognise the visual and ecological value of the site. The appellant disputed the suitability of the TPO and contested the Council's decision to impose the TPO, this was also refused by the Council and the TPO remains in place.
28. I accept the appellant's view that some of the trees are in decline, the majority of the trees are not of high quality, and that those which are of good quality, in the main, are retained. However, 5 Category B trees would be lost. Given my findings in relation to the positive contribution that the collective trees make to the character and appearance of the area and in terms of their ecological value, the removal of a significant number of trees, including some of moderate quality, must weigh against the scheme.
29. The proposal would result in the loss of a significant number of protected trees, including 5 Category B trees. Whilst I accept that some new planting would occur, this would be relatively limited compared with the number of trees that would be lost. The proposal therefore conflicts with Policy NE6 of the LP that ensures development does not result in the unacceptable loss of trees, woodlands or hedgerows that are important for their visual and biodiversity value. Having regard to all of the above, I consider that the physical loss of the protected trees carries moderate weight against the scheme in the planning balance.

Loss of recreational land?

30. The Council and interested parties are of the view that the proposal would result in the loss of recreational land. Whilst I acknowledge the evidence in this regard and I do not doubt that in the past, local residents have been able to utilise the site for recreational / amenity purposes, I am mindful that the site has no formal open space designation and is privately owned by the appellant.
31. I accept that the appeal site formed part of the 1982 planning permission for the adjacent housing and was considered to be open space to serve the housing, as part of that development. However, the 1982 planning permission did not include any mechanism to secure the use of the appeal site for such purposes in perpetuity.
32. Given all of the above, there is no evidence before me to suggest that the proposal would result in the loss of recreational land or public open space. I consider that this is a matter of neutral weight in the planning balance.

Other matters

33. The proposal would deliver 19 new dwellings, including 50% affordable housing through the provision of 9 on-site dwellings and a financial contribution towards off-site provision. In addition to these social benefits, there would be some associated economic benefits, although these would be more modest. At the Hearing, the level of the Council's shortfall in terms of housing land supply was discussed and after the Hearing, I was referred to a recent appeal decision² in this regard. However, from the evidence that has been put before me, I consider that it is not possible to come to an accurate or robust view in relation to the exact shortfall. In any event, whatever the exact shortfall maybe, I consider that the social and economic benefits of the proposed new dwellings should be afforded significant weight in favour of the scheme in the planning balance.
34. I accept that the appeal site has good access to local services and facilities and that Eynsham is a sustainable location for further housing. However, I consider that the acceptability of the proposal in this regard is a matter of neutral weight.
35. Interested parties have raised a large number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Planning balance and overall conclusion

36. The Council's policies that relate to the supply of housing are out-of-date. Therefore, Paragraph 14 of the Framework advises that where policies relating to the supply of housing are considered to be out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
37. The proposal would make provision for 19 new dwellings towards the Council's housing land supply, including affordable units. There would also be some

² APP/D3125/W/15/3019438, dated 16 May 2016.

associated economic benefits. I consider that these benefits attract a significant level of weight in the scheme's favour, particularly given the Council's current position in relation to housing land supply.

38. On the other hand, I have identified that the proposal would cause harm to the character and appearance of the area, which carries significant weight against the scheme. The proposal would also result in the loss of Traditional Orchard UK BAP Priority Habitat and would harm the ecological value of the site, which attracts moderate weight against the scheme. In addition, the proposal would result in the physical loss of a significant number of protected trees (including 5 'Category B' specimens), which also attracts moderate weight against the proposed development.
39. On balance, I consider that the social and economic benefits of the scheme are significantly and demonstrably outweighed by the totality of the identified environmental harm and associated development plan conflict. Consequently, the proposal does not constitute sustainable development, when the Framework is considered as a whole. For the avoidance of doubt, I would come to the same conclusion, even if I accepted that the Council only had 3.21 years of housing land supply, as suggested by the appellant. The appeal is therefore dismissed.

Jonathan Manning

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

S Wright	JA Pye (Oxford) Ltd (Appellant)
A Divall	West Waddy ADP (Agent)
J Ashton	West Waddy ADP
M Dawber	West Waddy ADP
A Beaumont	AA Environmental
J Thornber	AA Environmental
T Lynch	Landscape Architect
R Davidson	Arboriculturalist

FOR THE LOCAL PLANNING AUTHORITY:

C Wood	West Oxfordshire District Council
R Willder	On behalf of West Oxfordshire District Council

INTERESTED PARTIES

R Oliver	Oxfordshire County Council
L Kennedy	Local resident
R Higgins	Local resident
D Hill	Local resident
S Dearing	Local resident
J Ostle	Local resident
B M ^c Namara	Local resident
J Lambert	Local resident
M Kennedy	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed and dated Section 106 Agreement with Oxfordshire County Council, submitted by the appellant.
2. Signed and dated Section 106 Agreement with West Oxfordshire District Council, submitted by the appellant.
3. CIL Compliance Statement, submitted by the Council.
4. CIL Compliance Statement, submitted by Oxford County Council.
5. Signed Statement of Common Ground, submitted by the appellant.
6. List of planning conditions, provided by the appellant.
7. Lowlands Area Planning Sub-Committee minutes (19 January 2015), provided by the Council.
8. Lowlands Area Planning Sub-Committee Report of Additional Representations (19 January 2015), provided by the Council.
9. Eynsham Parish Council Minutes, dated August 2014, provided by the Council.

10. Details of Asset of Community Value Nomination, dated 29 January 2016, submitted by the appellant.
11. UK Habitat Action Plan Priority Habitat Descriptions – Lowland Mixed Deciduous Woodland, copy provided by the Council.
12. UK Habitat Action Plan Priority Habitat Descriptions – Traditional Orchards, copy provided by the Council.
13. JNCC Woodland Definition, provided by the appellant.
14. JNCC Traditional Orchard Definition, provided by the appellant.
15. Tree Retention Figures and TPO Plan, submitted by the appellant.
16. Bundle of drawings in relation to habitat definitions (Figures 1, 2, 3, 4 and 5), submitted by the appellant.
17. Drawing 153425/01 (Historical Photograph Record Sheet 1), submitted by the appellant.
18. Drawing 153425/02 (Historical Photograph Record Sheet 2), submitted by the appellant.
19. Letter and bundle of plans in relation to the 1982 planning permission, provided by Mr Dearing.

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