



Appeal Decision

Site visit made on 19 July 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 25 August 2016

Appeal Ref: APP/F0114/W/16/3146966 Land at Wells Road, Hallatrow, Somerset

- 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 Bloor Homes Ltd against the decision of Bath & North East Somerset Council.
 - The application Ref 15/01335/OUT, dated 20 March 2015, was refused by notice dated 12 January 2016.
 - The development proposed is the erection of 15 dwellings and associated infrastructure.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 15 dwellings and associated infrastructure on land at Wells Road, Hallatrow, Somerset in accordance with the terms of the application, Ref 15/01335/OUT, dated 20 March 2015 and subject to the conditions set out in the Schedule to this decision.

Preliminary matters

2. The planning application was made in outline with all matters reserved for future consideration. I have determined the appeal on the same basis and have treated the supporting illustrative masterplan accordingly.
 3. On considering the Appellant's Statement of Case it has become apparent to the local planning authority that High Littleton School is intending to increase its capacity through internal alterations and a small extension to the existing buildings. The local planning authority has advised that it was unaware of this intention at the time the appeal proposal was refused.
 4. Following discussions with High Littleton School it has now been confirmed that, as of September 2016, the school will increase capacity by 35 spaces. In light of the increase in capacity, the pupil projection for High Littleton School has been recalculated and shows that at the time the appeal proposal is likely to be generating children, in 2019, the School would have sufficient capacity to accommodate the additional pupils.
 5. Therefore it is explained that the local planning authority's previous objection to the scheme, on the grounds of a lack of school places, is no longer applicable and has been overcome. On the basis of the evidence before me, I find no reason to disagree.
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6. Now that the school capacity issue has been resolved, the local planning authority consider that Hallatrow, can now accommodate 10-15 dwellings in line with Policy RA2 of the Core Strategy for Bath and North East Somerset (CS) and is therefore sustainable. Although concerns have been raised by interested parties regarding existing infrastructure within the village, the local planning authority no longer object to the principle of development, provided there is no other harm. On the basis of the evidence before me, I agree with this view.
7. Although landscape harm also formed part of the reason for refusal, it is explained that the fact that Hallatrow is now expected to accommodate 10-15 dwellings this will clearly result in some corresponding landscape harm and that this is a significant material consideration. It is therefore highlighted that there is a balance to be made between landscape harm and the provision of housing which is otherwise acceptable in policy terms. In this case the local planning authority consider that, when judged on its merits, the landscape harm is not in itself significant and that a refusal solely for this reason could not be justified or defended. Again I find no reason to disagree and find further significant weight in favour of the proposals from the benefits arising from the provision of five affordable housing units.
8. In light of the above, the Council is of the view that its reasons for refusal have now been overcome and is therefore not seeking to defend the appeal. Notwithstanding this the Council has highlighted that the appeal proposal is required to meet other policies within the Development Plan and its Planning Obligations Supplementary Planning Document (SPD). To this end, it is explained that a Unilateral Undertaking (UU) has been negotiated and agreed between the appellant and the local planning authority. Whilst I have not received confirmation that the signed UU submitted as part of the appeal documents is that which has been agreed between the parties, I have nevertheless formally considered it as part of the proposals currently before me.

Main issue

9. Therefore, having regard to the above, the main issue is whether the submitted UU accords with provisions of Regulation 122 of the Community Infrastructure Regulations 2010 (CIL) and the tests for obligations contained therein and as policy tests in the National Planning Policy Framework (the Framework).

Reasons

10. The Planning Obligations SPD explains that the need for affordable housing in the District is high and the CS makes provision for 3,290 new affordable homes over the plan period up to 2029. The UU covenants to provide five Social Rented Affordable Housing Units. This accords with CS Policy CP9 which requires an on site provision of 30% affordable housing in developments of 10 dwellings and above. Accordingly the obligation would be fairly and reasonably related to the development proposed. It is evidently directly related to the development and also is necessary to make the development acceptable in planning terms. I have therefore taken this obligation into account in my decision.
11. CS Policy CP7 states that existing and new green infrastructure must be planned, delivered and managed as part of creating sustainable communities. Paragraph 114 of the Framework states that local planning authorities should set out a strategic approach in their local plans, planning positively for the

- creation, protection, enhancement and management of networks of biodiversity and green infrastructure. The Council's Planning Obligations SPD highlights that green infrastructure should be central to the design of new developments. On this basis, the SPD explains that there is no specific threshold above which green infrastructure must be considered.
12. I am satisfied therefore that the obligation relating to the provision of public space, as defined, is necessary to make the development acceptable in planning terms and that it passes the remaining statutory and policy tests.
 13. I note that the Council's SPD highlights that CS Objective 6 includes promoting and delivering employment, training and regeneration opportunities that can contribute to a reduction in the health and social inequalities across the District. I also note that Objective 6e states that the "*Delivery of economic development will also be facilitated by the B&NES Economic Strategy, the Regeneration Delivery Plans and the Development Management process. Working alongside local communities and partners will be essential to deliver the ambitions of the Economic Strategy and developers may be asked to support the objectives of the Strategy through a Targeted Recruitment, Training and Supply-chain Protocol.*"
 14. Whilst I acknowledge the benefits of such initiatives, I have not been provided with any evidence why this would be necessary to make this particular development acceptable in planning terms. Consequently, I am unable to conclude that such an obligation would comply with the provisions of CIL Regulation 122 and the policy tests of paragraph 204 of the Framework. Hence, in my view it would not be lawful to take it into account as a reason for granting planning permission.
 15. Whilst matters relating to access are reserved for future consideration, I note and agree with the most recent response from the Highway Authority that suitable access can be achieved at this site. Having regard to the earlier responses from the Highway Authority and local representation received, it is evident that the future reserved matters application will be required to addresses all the relevant highways capacity, operational, safety and design issues, and comply with local and national design standards current at that time.
 16. In these circumstances I consider that a covenant ensuring the funding, construction and completion of the highway works required as part of the reserved matters approval is necessary to make the development acceptable in planning terms and would also accord with the other criteria of CIL Regulation 122 and paragraph 204 of the Framework.
 17. In light of these findings, since the obligations relating to Targeted Recruitment and Training, fail to meet one or more of the tests set out in CIL Regulation 122 and paragraph 204 of the Framework, I am unable to take them into account in determining the appeal. I do though give significant weight to the obligations relating to affordable housing, public space and highways, which I find to meet the aforementioned tests.

Other matters

18. It has been brought to my attention that the Old Tenniscourt Farmhouse is a grade II listed building. Paragraph 132 of the Framework makes clear that

great weight should be given to the conservation of designated heritage assets, and to their setting. In this regard, given that the appeal site frontage lies to the west of the listed building, on the opposite side of the road, and with a number of intervening buildings, I am satisfied that the proposal would preserve the setting of the Old Tennisclub Farmhouse.

19. I note the level of objection raised by local residents on matters relating to highway safety but on the basis of the evidence before me and my observations at the time of my site visit, I find no reason to disagree with the Council that safe access can be achieved for the level of development proposed.
20. The Local Ward Member has raised concern about the safety of the access to the local school, however, I have not been provided with any evidence to substantiate this matter, thereby limiting the weight I am able to afford to it.
21. Having regard to the evidence before me, I also agree with the Council that subject to the imposition of an appropriate condition, the proposal is unlikely to harm ecological value and habitats in the locality.
22. Whilst the need for additional housing is raised, paragraph 47 of the Framework anticipates a significant boost to housing supply and this is a matter which weighs in favour of the appeal proposal.
23. I acknowledge that the Local Ward Member's preference is for a natural, evolution and expansion of the village through windfall development, however, I have no evidence how this would be achieved and in any case, such proposals are not currently before me.
24. Concern is raised that the land is an important intrinsic flood drainage system, however, subject to a condition requiring the provision of a drainage strategy, no objection is raised by the Council's Drainage and Flooding Team and I see no reason to disagree with this approach.
25. Concern is expressed that the development would 'open the door' for further development of a larger area, however, I have no evidence to suggest that the prevailing and emerging development plan policy framework would not prevent unjustified residential development in this location.
26. Finally, in general, the courts have taken the view that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, could not be a material consideration.

Conditions

27. I have had regard to the conditions that have been suggested by the Council. I have attached conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with the Act. I have specified the approved location plan for the avoidance of doubt and in the interests of proper planning.
28. As landscaping and appearance are reserved matters, details relating to both should properly be considered at that time.
29. A condition requiring a detailed drainage strategy is necessary to ensure an appropriate method of surface water drainage is installed and in the interests of flood risk management, in accordance with CS Policy CP5. As suggested by

- the appellant, a condition is also necessary to resolve matters relating to foul water drainage.
30. To prevent ecological harm and to provide biodiversity gain in accordance with Saved Policies NE.10 and NE.11 of the Bath and North East Somerset Local Plan (LP), a condition is necessary to ensure that the development is carried out in accordance with the recommendations of the supporting Ecological Impact Assessment Report.
 31. Having regard to the concerns raised by the Council's Environmental Health Officer, a condition relating to sound attenuation is necessary in accordance with LP Policy ES.12.
 32. Conditions to ensure the provision of turning areas and appropriate levels of car parking and the retention of garaging, are necessary in the interests of highway safety and to accord with LP Policies T.24 and T.26. A condition is also necessary to ensure adequate pedestrian and vehicular access in accordance LP Policy T.24.
 33. A condition requiring the development to be carried out in accordance with a construction management plan is necessary to ensure the safe operation of the highway and in the interests of protecting the living conditions of local residents, in accordance with LP Policies T.24 and D.2. A condition relating to the provision of fire hydrants is necessary to ensure adequate fire fighting infrastructure within the development.
 34. Finally, a condition is necessary to ensure the development allows for access to the agricultural field to the rear of the site for agricultural vehicles.
 35. The Planning Practice Guidance advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In this respect it is necessary for 5, 7 and 12 to be pre-commencement conditions in order to ensure that the development is carried out in a satisfactory manner and with minimum harm to the environment. I do not consider condition 13 needs to be pre-commencement and I have amended the wording accordingly. I have also amended the wording of a number of the other conditions to ensure compliance with the tests for conditions set out in paragraph 206 of the Framework.

Conclusion

36. For the reasons given above, and taking into account all other matters raised, I conclude the appeal should be allowed.

Richard S Jones

Inspector

SCHEDULE

CONDITIONS

1. Details of the access, appearance, landscaping, layout and scale (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 not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of the approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plan: A085155[D]01 (Site Location 01).
5. No development shall commence until a detailed Drainage Strategy has been submitted to and approved in writing by the local planning authority. The Drainage Strategy shall demonstrate that the development will not increase flood risk either on-site or elsewhere and should follow the SuDS hierarchy with the most sustainable measures employed first. The development shall be implemented in accordance with the approved details prior to the occupation of any approved dwelling.
6. No approved dwelling shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
7. The development shall be carried out in accordance with the recommendations of the Ecological Impact Assessment for Land at Hallatrow, Bath and North East Somerset, dated March 2015, and prior to the commencement of development details shall be approved in writing by the local planning authority of the timing of works to clear vegetation to avoid disturbance to nesting birds; appropriate measures to avoid harm to badgers and reptiles; and provision of wildlife friendly landscape design, including habitat provision, ecological enhancements and native planting where appropriate within the final design, and incorporation of green infrastructure. The development shall be implemented and retained in accordance with the approved details.
8. No occupation shall commence of those houses located adjacent to or fronting onto Wells Road, Hallatrow until an assessment demonstrating that the development has been constructed to provide sound attenuation against external noise in accordance with BS8233:2014 has been submitted to and approved in writing by the local planning authority. The following levels shall be achieved: Maximum internal noise levels of 35dBLAeq,16hr and 30dBLAeq,8hr for living rooms and bedrooms during the daytime and night

time respectively. For bedrooms at night individual noise events (measured with F time-weighting) shall not (normally) exceed 45dBLAmax.

9. Areas allocated for parking and turning approved at reserved matters stage shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
10. Any garages approved at reserved matters stage shall be retained for the garaging of private motor vehicles associated with the dwelling and ancillary domestic storage.
11. No dwelling shall be occupied until it is served by a properly bound and compacted footpath and carriageway to at least base course level between the dwelling and the existing adopted highway.
12. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority and shall include details of deliveries (including storage arrangements and timings), contractor parking, traffic management, working hours, site opening times, wheel wash facilities and site compound arrangements. The approved Construction Management Plan shall be adhered to throughout the construction period of the development.
13. No dwelling shall be occupied until fire hydrants have been provided within the development in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.
14. The layout of the development, to be submitted and agreed at reserved matters stage, shall show the provision of an access to the remainder of the agricultural field to the north of the application site along with a programme for its implementation. The access shall be provided in accordance with the approved plans and programme and shall be retained thereafter.