



Appeal Decision

Hearing Held on 15 November 2017

Site visit made on 15 November 2017

by J Wilde C Eng MICE

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

Decision date: 11 December 2017

Appeal Ref: APP/D3125/W/17/3171012

Land north of Cote Road, Aston, Oxfordshire OX18 2DU

- 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 Gladman Developments Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 16/03005/OUT, dated 31 August 2016, was refused by notice dated 15 December 2016.
 - The development proposed is outline planning permission for up to 30 residential dwellings (including up to 50% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, allotments.
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Decision

1. The appeal is allowed and planning permission is granted for up to 30 residential dwellings (including up to 50% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, allotments at land north of Cote Road, Aston, Oxfordshire OX18 2DU in accordance with the terms of the application, Ref 16/03005/OUT, dated 31 August 2016, subject to the following conditions contained in the attached schedule.

Procedural matters

2. The application was submitted in outline with all matters reserved.
3. The Council's original decision notice contained three reasons for refusal. Two of these reasons related to the provision of affordable housing and flooding. At the Hearing the appellant supplied a Unilateral Undertaking (UU) which the Council confirmed resolved the issues of affordable housing provision and flooding, and I will deal with these briefly in other matters. In light of the UU the remaining main issue in this appeal is therefore as given below.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area and on the setting of heritage assets.

Reasons

The site and surrounding area

5. The appeal site is located on the north side of the village of Aston and comprises part of an arable field. The field rises very gently northwards towards a hedgerow which forms a slight crest, with the field beyond falling gently away. To the south of the site is a 20th century housing development (Foxwood) of no particular architectural or historic merit.
6. The site borders the Aston Conservation Area (CA) but the historic core of the village lies further to the west, centred around the village square, North Street and High Street. There are nine listed buildings in the village, the nearest to the appeal site being St James Church. Planning permission has been given for a housing development to the east of Foxwood which both main parties agree would shield the proposed development from views from the east. I concur with this view.

Five year housing land supply

7. Before moving onto discussion of the main issue it is necessary to investigate the Council's position in respect of its five year housing land supply situation (5 YHLS). Paragraph 49 of the National Planning Policy Framework (the Framework) makes clear that if a local planning authority cannot demonstrate a 5 YHLS of deliverable sites then their policies for the supply of housing should not be considered to be up to date. In that eventuality the application should be considered in the context of the presumption in favour of sustainable development and a 'tilted' balancing exercise ensues.
8. In the statement of common ground (SOCG) the Council's position is outlined and it contends that it can demonstrate a 5 YHLS based on the Liverpool method of allocating a shortfall and with both 5% and 20% buffers added. However, the SOCG goes on to state that the Council cannot definitively demonstrate this until comments from the Inspector examining the emerging site allocations development plan document (DPD) have been received in respect of the Council's methodology and contested matters regarding some of the allocations. It is not for me, in the context of a section 78 appeal, to pre-empt the Examining Inspector's conclusions on this issue.
9. From discussion at the Hearing, and given that the Council have been asked to submit further evidence to the examining Inspector, some of which will be subject to consultation, it seems extremely unlikely that any comments from the examining Inspector will be forthcoming before the New Year. It follows that at the present time, whilst I acknowledge that the Council have made progress towards the adoption of the DPD, they cannot definitively demonstrate a 5 YHLS. It further follows that in this instance paragraph 14 of the Framework is invoked.

In arriving at this conclusion I note that in two relatively recent appeal decisions¹ the Council accepted that it could not demonstrate a 5 YHLS using the Sedgefield method of allocating a shortfall.

¹ APP/D3125/W/15/3005737 and APP/D3125/W/15/3136376

Character and appearance

10. I have been supplied with a Landscape and Visual Appraisal (LVA) prepared by FPCR Environmental and Design Ltd on behalf of the appellant. The LVA uses the methodology described in the document *Guidelines for Landscape and Visual Impact Assessment third edition² (GLVIA)*. The GLVIA highlights the fact that there is a clear distinction between landscape and visual effects, with the former being the effect of the proposed development on the physical and other characteristics of the landscape and its resulting character and quality, and the latter being the effects on views experienced by visual receptors (e.g. residents, footpath users etc.) and on the visual amenity experienced by those people.
11. In terms of landscape effect the LVA concludes that the proposed development, by inserting housing into an agricultural field, would have a minor adverse effect on the site and its immediate context. This conclusion is arrived at by considering the landscape value of the site (such things as scenic quality, rarity and recreational value) and the change of use that is proposed. The LVA concludes that the overall effect for the site landscape features will be minor adverse and I will return to this in due course. I will now consider the effects of the proposed development in terms of the visual impact by moving around the appeal site in a clockwise direction.
12. The appeal site currently forms a buffer between the Foxwood and Foxwood Close developments and the newly built large and very noticeable dwellings to the north east (St James development). As already stated the proposed development would be screened from the east by the recently permitted development, except in very long distance views from the road to the east. It would also be largely screened by existing development from Cote Road to the south. Whilst glimpses of the roofs may be possible from Cote Road over the allotments the nursing home building is a very dominant feature that tends to draw the eye. The proposed development would not be seen from Cote Road in conjunction with St James Church.
13. Due to distance, existing development and existing trees and hedgerows the proposed development would not be visible moving west from St James Church or then north from North Street in the vicinity of Aston House and The Old Chapel, both of which are listed. Moving further north there is another listed building along North Street, known as Thatched Cottage. However, a line of tall conifers prevents Thatched Cottage and the appeal site being seen together.
14. Moving north from the Thatched Cottage the built environment peters out with the exception of the new St James development. This is, as already stated, a dominating visual presence. Glimpses of the proposed development, at a distance, would be available from several places along North Road as it heads out into the open countryside.
15. There is a public right of way (PROW) that runs approximately west-east to the north of Aston. The proposed development, particularly the roofs, would be visible from this PROW, although at a distance and through intervening vegetation. At the western end of the PROW views of St James Church would not be compromised. However, from the eastern section, due to the angle of

² Produced by the Landscape Institute and Institute of Environmental Management and Assessment

- sight, the proposed development would be seen in front of the church, extending in height to just below the base of the steeple.
16. In terms of the effect on the views from private properties the residents of Foxwood and Foxwood Close would be the most affected. The rear gardens of houses on the proposed development would back onto the existing gardens of these properties. This relationship would however be no different to that experienced by householders all over the country. Residents of the St James development would also be able to see the proposed development although there would be a buffer provided by the public open space and planting at the northern section of the proposed scheme. Residents of properties to the west of North Street would also be able to glimpse the proposed development from upper windows, although once again the proposed planting will help mitigate this, particularly in the longer term.
 17. In terms of the visual impact the LVA concludes that the proposed development would have a limited visual envelope and therefore a more limited number of visual receptors. Based on my findings above I agree with this conclusion. The LVA also concludes that there would initially be a moderate-major adverse effect on the receptors immediately adjacent to the site but that this would diminish with time as the planting became established. Other residential receptors are shown as being subject to a negligible-minor overall long term effect and the effects on receptors on the public right of way and roads are considered to be negligible. Once again I agree with this conclusion.
 18. To summarise therefore, I have found that the proposed development would have an impact on the visual receptors adjacent to it, but that this would be no different to that experienced by occupiers of dwelling all over the country. The LVA finds a minor adverse effect on the site and its immediate context due to the insertion of built form into a field. What has to also be considered is that the appeal site does to an extent form a buffer between the development along Cote Road and the recent St James development. This would in my view have a harmful effect on the character and appearance of the village but would be mitigated by the provision of the proposed allotments, open space and planting proposed within the scheme and the fact that the St James development is very dominating within the landscape. I am also aware that the neighbouring permitted development will encroach into an area to the north-east of the existing development, thereby moving built form further towards the north. In light of this I give the negative effect of the proposed development in this respect limited weight.
 19. Nonetheless there would be conflict with policies BE2 and BE4 of the West Oxfordshire Local Plan 2011 (LP). The former of these requires, amongst other things, that the landscape surrounding and providing a setting for existing towns and villages is not adversely affected. The latter requires, amongst other things, that there should be no erosion of open areas which makes an important contribution to the visual amenity or character of the locality.
- Heritage assets - the CA*
20. The appeal site helps provide a rural setting for the CA. However, the setting, in terms of the views from the north, has been somewhat compromised by the St James development. Furthermore the proposed allotments and open space to the north/north-west of the proposed development would provide some mitigation and it has to be borne in mind that the Foxwood/Foxwood Close

development and other buildings to the east of the village do not add to the significance of the CA. Nonetheless, in my view the encroachment of built form into the open field would lead to harm to the setting of the CA, although this harm would be less than substantial. In arriving at this view I take into account that the significance of a heritage asset can also be influenced by historical factors, and that the appeal site forms part of the historic development of the village as an agricultural economy.

Historical assets - the listed buildings

21. Most of the listed buildings in the village are to the west of and a considerable distance from the appeal site. I do however have a statutory duty to consider the effect of the proposed development upon their setting.
22. I have already mentioned the four buildings that could potentially have their settings compromised by the proposed development in the last section. The only one of these that would be readily seen within the context of the proposed scheme would be St James Church. As I have already found, the proposed development would be seen in the foreground of the church when viewed from the eastern end of the PROW. Notwithstanding the Council's reason for refusal did not specifically itemise this issue, I consider that this would cause harm to the setting of the church. However, views would be from a considerable distance and hedgerows and planting would soften the impact of the proposed development. I would therefore conclude that the harm occasioned to the setting of the church would be less than substantial.
23. The Framework makes clear in paragraph 134 that where a development proposal will lead to less than substantial harm to the significance of a heritage asset, then this harm should be weighed against the public benefit. I will return to this in my planning balance.
24. There would also be conflict with policy BE5 of the LP. This requires that the special architectural, historic and environmental character or appearance of a conservation area will be preserved or enhanced. However this policy does not apply the balance required by the Framework and therefore conflict with it carries less weight than it otherwise would do.

Other matters

25. The provision of affordable housing was originally a reason for refusal by the Council. However, at the Hearing a UU was provided and I have since received a signed and dated copy. This UU commits the appellant, in the situation where the appeal is allowed, to ensuring that prior to commencement of development an affordable housing scheme would be forthcoming that would satisfy the Council's requirements. These requirements are in line with policy BE11 of the West Oxfordshire Local Plan 2011 (LP) and the Council's Affordable Housing Supplementary Planning Document (SPD).
26. The UU also commits the appellant to submitting for approval a drainage scheme and also setting up a management company to administer, maintain and repair the scheme as necessary. The Council consider that this removes the need for the third reason for refusal and I have no reason to question this.
27. The UU also provides for contributions to mitigate the proposed development in terms of sports and play facilities to be provided within the village and for a highways contribution which would go towards improving bus services through

the village. From the information provided by the Council I am satisfied that the contributions are necessary to mitigate the effects of the proposed development and that the tests outlined in Community Infrastructure Levy regulation 122 have been met.

28. As well as the issues mentioned above local residents have expressed a number of concerns and I will deal with these briefly. In terms of infrastructure provision the appellants have provided all of the requested mitigation, and I have received no compelling evidence from the relevant authorities to show that the proposed development would have such a harmful effect on other services such that the appeal should be dismissed on those grounds. Similarly I have been provided with no significant evidence to show that the proposed development would prejudice traffic flows or road safety. Indeed the Highway Authority has raised no objections related to these issues.
29. The provision of sewerage infrastructure is dealt with under other legislation and Thames Water has been consulted on the proposed development. The appellant produced an Ecological Appraisal which detailed the presence of a badger sett but also provides a mitigation strategy. This was found to be adequate by the Council's biodiversity officer and I have been given no reason to arrive at a different view.
30. Locational accessibility was not an issue for the Council who pointed out that Aston was rated as the 23rd most sustainable settlement (on a weighted basis) in the District. I acknowledge that shopping in the village is limited but there is a primary school, a car repair business, a nursing home, playing fields and village hall and a small works business area. I do not therefore consider that the location of the village and the services that it provides to be so limited that the appeal should be dismissed on those grounds.

Planning balance

31. I have found that the proposed development would cause some, although limited harm to the character and appearance of the area. There would also be an impact on the occupiers of properties bordering the site, but this would be no different to the situation that exists wherever developments impinge upon one another and I therefore afford this very limited weight.
32. The proposed development would also cause less than substantial harm to the setting of the CA and St James Church, and this harm would be on the low side of the spectrum. These issues would also cause conflict with the LP, as I have outlined earlier.
33. In light of paragraph 134 of the Framework the harm has to be balanced against the benefits of the proposal. In this particular case those benefits have to be considered against the background of a lack of a 5 YHLS and the invocation of paragraph 14 of the Framework.
34. The benefits of the proposal would be the provision of 30 dwellings of which 40% would be affordable. I give this considerable weight. There would also be benefits arising from the provision of construction jobs and other economic activity. Furthermore the proposal would provide public open space and further allotments and would overall be likely to improve biodiversity over and above its current agricultural use.

In conclusion, the harm that I have identified does not significantly and demonstrably outweigh the benefits of the proposed development, which can therefore be deemed to be sustainable development as defined by the Framework.

Conditions

35. The conditions that I have imposed were originally proposed by the appellant and discussed at the Hearing. In the interest of highway safety and the amenity of future residents I have imposed a condition requiring that a vehicular route is made available to any dwelling prior to its occupation. To safeguard the recording of archaeological assets I have imposed conditions requiring a scheme of investigation and further works should archaeological assets be found.
36. Similarly I have imposed conditions relating to investigation and remedial works should the ground found to be contaminated. To protect the ecology of the area I have imposed a condition requiring the submission of an ecological management plan. In the interest of highway safety I have imposed a condition requiring the submission of a Construction Method Statement, and to ensure that the completed development is commensurate with that applied for I have imposed a condition limiting the development to 30 dwellings.
37. For certainty I have imposed a condition specifying the submitted plans and in the interest of the appearance of the completed development I have imposed a condition restricting the heights of dwellings at the north of the development.

Conclusion

38. In light of my above reasoning and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Wilde

INSPECTOR

Schedule of conditions:

- 1) Details of the vehicular and pedestrian accesses, 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 takes place 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 2 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 1 year from the date of approval of the last of the reserved matters to be approved.
- 4) The development approved shall be for no more than 30 dwellings.
- 5) No individual dwelling shall be occupied until a suitable access from Cote Road to that individual dwelling has been completed to base course level.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan – Red Line Plan (Drawing No 6486-L-100 Rev C). It shall also be carried out broadly in line with Drawing No 6486-L-104 Rev H.
- 7) Prior to the commencement of the development a professional archaeological organisation acceptable to the local planning authority shall prepare an archaeological written scheme of investigation relating to the application site area, which shall be submitted to and approved in writing by the local planning authority.
- 8) Following the approval of the written scheme of investigation referred to in condition 7, and prior to any demolition on the site and the commencement of the development (other than in accordance with the agreed written scheme of investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved written scheme of investigation. The programme of works shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the local planning authority.
- 9) No development shall commence unless and until:
 - i) A site investigation relating to ground contamination has been designed for the site using the information obtained from the desktop investigation (phase 1 desk study) Merebrook – November 2014. This shall be submitted to and approved in writing by the local planning authority prior to the investigation being carried out on site.
 - ii) The site investigation and associated risk assessment have been undertaken in accordance with details submitted to and approved in writing by the local planning authority.
 - iii) A method statement and remediation strategy based on the information submitted obtained from (ii) above, including a programme of works, have been submitted to and approved in

writing by the local planning authority. The development shall be carried out in accordance with the approved remediation strategy.

- 10) Before any works begin on site a ten year Landscape and Ecological Management plan based on the mitigation and recommendations in the Ecological Appraisal (FPCR August 2016) and as illustrated in the drawing No. 6486 - L - 104 Rev H must be submitted for approval to the local planning authority. Once approved all the works must be carried out as per the approved plan and thereafter permanently maintained.

- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority (in consultation with the local highway authority). The Statement shall provide for:
 - i) wheel washing facilities;
 - ii) measures to control/restrict construction and delivery traffic.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 12) All dwellings built in the area shaded in the illustrative Development Framework Plan ref 6486-L-104 rev H shall be no more than 1½ storeys in height.

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Miss Sarah Reid, Kings Chambers
Mr Chris Still BSC (Hons) MRICS
Mr Jason Clemons BA (Hons) MA MSc MRTPI IHBC
Mr Tim Jackson BA (Hons) Dip LA CMLI
Mr Liam Ryder MPlan MRTPI
Mr Sam Gladman

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Wood

INTERESTED PERSONS:

Mr Richard Haines	Aston, Cote, Shifford & Chimney Parish Council
Mr Paul Farrow	Local resident
Mr C Rossington	Oxfordshire County Council

DOCUMENTS

- 1 Attendance list for the appellant
- 2 Draft Unilateral Undertaking
- 3 Document EXAM 011
- 4 Officer's report pertaining to a development at North Street Farm House, Aston.
- 5 Approved Judgement in the case of Wainhomes (southwest holdings) Ltd v SoS for CLG.
- 6 Report Of the Head of Planning and Strategic Housing to the Lowlands Area Planning Sub-Committee dated 13 November 2017.
- 7 Spreadsheet of allocation sites contested by the appellant.