



Appeal Decision

Site visit made on 17 July 2018

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2018

Appeal Ref: APP/J0405/W/18/3195021

Land to the south of Oving Road, Whitchurch, Buckinghamshire HP22 4JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Rectory Homes Ltd against the decision of Aylesbury Vale District Council.
 - The application Ref 17/01325/APP, dated 7 April 2017, was refused by notice dated 4 August 2017.
 - The development proposed is the erection of 10 no. two and two and a half storey dwellings with associated access, parking, garaging, landscaping and all enabling works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 10 no. two and two and a half storey dwellings with associated access, parking, garaging, landscaping and all enabling works at land to the south of Oving Road, Whitchurch, Buckinghamshire HP22 4JF. Permission is granted in accordance with the terms of the application, Ref 17/01325/APP, dated 7 April 2017, subject to the conditions set out in the schedule to this decision letter.

Procedural Matters

2. As part of the appeal submissions, the Appellant has submitted amended plans which alter the site access and correct the roof profile for plot 4. In deciding whether to accept these plans, I am mindful of the principles of the Wheatcroft case (Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Another 1982).
3. In this case, the amendments are minor in nature and do not substantially change the essence of the proposal. Taking this into account, I consider that there would be no prejudice to any party by accepting these plans at the appeal stage. I have therefore determined the appeal with the amended plans in mind.
4. The Council has drawn my attention to the emerging Vale of Aylesbury Local Plan (VALP). However, from the information before me, the examination of that plan has yet to be completed and as such I can only give this limited weight in the consideration of the appeal.
5. Since the determination of the appeal application, the National Planning Policy Framework published in 2012 has been replaced with a new version being published in July 2018 (the 2018 Framework). I have invited further representations from the Council and the Appellant on this specific matter and have taken the representations received into account in my decision.

6. Paragraph 212 of the 2018 Framework outlines that the policies contained within it are material considerations which should be taken into account in dealing with applications from the day of its publication. I have therefore determined the appeal with this in mind.

Main Issues

7. The main issues are:-

- (i) the effect of the development on the character and appearance of the area;
- (ii) whether the development provides for a suitable method of drainage; and
- (iii) infrastructure provision.

Reasons

Character and appearance

8. The appeal site is located on the south side of Oving Road and consists of part of a field which at the time of my site visit was used for the grazing of horses. Between the appeal site and the carriageway of Oving Road are two hedgerows with a grassed strip between them. There is also a public right of way which crosses the site in a north-south direction.
9. From the evidence before me the site is located outside of any settlement boundary as defined by the Aylesbury Vale District Local Plan (2004) (AVLP). However, as I understand it, the policies in the AVLP relating to settlement boundaries have expired.
10. Notwithstanding that, the current built up area of Whitchurch is largely on the north side of Oving Road together with the main historic part of the village to the east. However, there is some ribbon development along the south side of Oving Road to the east of the appeal site including a doctors' surgery and some residential development.
11. However, there is not any frontage development on the south side of Oving Road to the west of the doctors' surgery with the landscape being open. The undeveloped nature, and the public footpath which crosses the site, allows for views across the appeal site and the open land to beyond despite the hedgerow fronting the road. This feeling of openness contributes to the setting of this part of Whitchurch. It is also noted that the site forms part of a designated Area of Attractive Landscape (AAL).
12. The development of the site would represent a change in the character of the appeal site, and that of this part of the village, through the introduction of further built development and the loss of some of the hedgerow fronting Oving Road.
13. Given the location of the appeal site on the south side of Oving Road, and the lack of any significant built form to the west of the doctors surgery, the site is more closely associated with the undeveloped rural landscape including the farm buildings to the south.
14. Taking all the above into account, the development would have an undesirable urbanising effect on the local landscape and would result in the permanent loss

of countryside. In coming to that view, I acknowledge that the level of harm which would arise is not significant and that the development of this site for residential purposes would not be significantly worse than any other greenfield site. Nevertheless, some harm would result.

15. I have also had regard to the layout of the site which would be a cul-de-sac running parallel to Oving Road. Whilst this type of layout is not characteristic of the general area, it is significant that Ashgrove Gardens (to the north-east of the site) has a similar arrangement. To my mind, this aspect of the proposed development does not harm the overall character and appearance of the area.
16. Turning to the impact of the development on the AAL, my attention has been drawn to a previous appeal decision at the same site (together with additional land) for the erection of 59 dwellings¹. It is noted that the previous Inspector concluded that the development of 59 dwellings would not affect any distant panoramic views and that appropriate mitigation could be provided. Given that the development before me is of a significantly smaller scale, I am of the view that the current appeal development would not give rise to any landscape harm beyond the immediate vicinity of the site and would not have a wider impact on the AAL.
17. For the above reasons, the proposal would result in harm to the character and appearance of the area and would be contrary to Policy GP.35 of the AVLP which amongst other matters seeks to ensure that new development respects and complements the physical characteristics of the site and its surroundings, and the natural qualities and features of the area. It would also be at odds with the natural environment aims of the 2018 Framework.

Drainage

18. The appeal proposal includes a surface water run-off scheme which would store such water in an attenuation tank. It would then be pumped to the foul sewer network. The Council, and the Lead Local Flood Authority (LLFA), have raised concerns over how the surface water drainage would be dealt with as part of the development as this method of surface water drainage is the least sustainable form of drainage.
19. From the evidence before me, it is unclear whether there is sufficient capacity within the existing sewerage system and the Appellant is awaiting confirmation from the Water Authority for consent to connect into the existing infrastructure for surface water drainage. Whilst some details of drainage matters have been provided by the Appellant, it is not clear whether this would provide an acceptable means of drainage for the site.
20. Notwithstanding that, I am satisfied that this could be dealt with by means of suitably worded planning conditions, along the lines of that suggested by the Council and the LLFA, should I be minded to allow the appeal.
21. Taking all of the above into account, and subject to the imposition of suitably worded planning conditions to secure an acceptable surface water drainage scheme which would ensure that there was not an unacceptable risk of flooding on site (or elsewhere), the development would accord with the drainage objectives of the 2018 Framework.

¹ Reference APP/J0405/W/16/3152177 dated 3 October 2016

Infrastructure

22. The Council have outlined that financial contributions are required to mitigate the impacts of the development in respect of off-site sport and leisure facilities (£42,072), together with the implementation and maintenance of any surface water drainage solution.
23. With that in mind, the Appellant has provided a Unilateral Undertaking (UU) which provides the requested financial contribution towards off-site sport and leisure facilities. The UU also provides for the submission, implementation and maintenance of a sustainable drainage scheme and the provision of two affordable dwellings.
24. The UU sets out that the sport and leisure contribution would be for the provision of, or improvements to, a sports pavilion and clubhouse on Whitchurch Recreation Ground off Ashgrove Gardens. From the evidence before me, such a contribution would be necessary to ensure that there would be suitable sports and leisure provision for the future occupants of the development. I also consider that the contribution would be in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations. Furthermore, the Council have confirmed that the project would not exceed the threshold of pooling more than five section 106 agreements (which would include this undertaking) and would accord with Regulation 123 of the CIL Regulations and I have no reason to disagree with that view.
25. In respect of the elements of the UU relating to drainage, and in combination with suitably worded planning conditions, to my mind there would be suitable provision made to ensure that there would be the submission and approval of a suitable scheme, and that it would be maintained as such in perpetuity.
26. Turning to the provision of affordable housing, I acknowledge that this is not a matter which the Council would normally seek on this size of development having regard to Policy GP.2 of the AVLP. Notwithstanding that, I am conscious that paragraph 64 of the 2018 Framework which states that for major development involving the provision of housing, planning decisions should expect at least 10% of homes to be available for affordable home ownership.
27. In accordance with paragraph 213 of the 2018 Framework, I have had due regard to the consistency of Policy GP.2 with the 2018 Framework and in this case I give the affordable housing aspects of the 2018 Framework very great weight. Furthermore, the evidence which I have been provided with in respect of the emerging VALP indicates that there is a great need for affordable housing in the District.
28. Taking the above into account, I consider that the provision of affordable housing is a material consideration which must be taken into account. Given the overall scale of the development I am of the opinion that 20% affordable housing would be necessary, would be directly related to the development and be of a fair and reasonable scale when taking the 2018 Framework into account.
29. For the above reasons, the UU makes appropriate provision for the delivery of the necessary infrastructure to support the development (including affordable housing) and the proposal would accord with Policies GP.86, GP.87, GP.88 of the AVLP which amongst other matters seeks to ensure that sufficient outdoor

play and sports space and related facilities and equipment is provided either directly or through financial payments in lieu of on-site provision. It would also accord with the infrastructure and affordable housing aims of the 2018 Framework.

Other matters

30. The appeal site itself is not located within a Conservation Area. Furthermore it does not contain any listed buildings nor does it fall within the Scheduled Ancient Monument at Whitchurch. The Council have considered that the development would not affect any of the nearby heritage assets given the nature of the development and its location in relation to them and I have no reason to disagree with that view.
31. I have also had regard to the numerous representations received on the proposal both as a result of the Council's consultation process and that done through the consideration of the appeal. This has included matters such as housing targets, previous planning applications, precedent issues, other developments, traffic matters including limited bus services, loss of the outer hedgerow, the impact on existing infrastructure such as schools, the surgery and the water supply, loss of outlook and light, matters relating to the public right of way and the lack of a gas supply.
32. However, whilst all of these matters are material planning considerations none of the matters raised provide for a compelling reason why planning permission should not be granted.

Planning Balance

33. The adopted AVLP dates back to 2004 and therefore was adopted some years prior to the 2018 Framework. The Council acknowledge that the development plan policies in relation to the supply of housing land are now out of date and I have no reason to disagree with that view. Notwithstanding that, they still form part of the development plan. However, in accordance with paragraph 213 of the 2018 Framework, given that they relate to housing land supply to 2011, I can only give them little weight.
34. To my mind, such policies can be considered to be most important for the determination of this application, and as such given that the housing supply policies are out of date the provisions of paragraph 11d) of the 2018 Framework come into play.
35. In addition to the above, the Appellant and the Council disagree whether there is a five year supply of housing particularly given the position with the evidence base for the emerging VALP, the recent interim findings of the Inspector examining the Plan, and the requirements of the 2018 Framework.
36. However, given that the development plan is out of date, it is of little relevance if the Council can demonstrate a five year supply of housing or not as paragraph 11d) of the 2018 Framework has already been engaged.
37. Notwithstanding that, in the context of the tilted balance, planning 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 2018 Framework taken as a whole.

38. In this case, I have found that the proposed development would give rise to some harm to the character and appearance of the area and would conflict with the AVLP and the 2018 Framework in this respect. This factor weighs against allowing the proposed development.
39. The development would give rise to some social benefits in that it would provide much needed additional housing, including affordable housing. The development would also bring some minor economic benefits through the construction process and the potential to support local facilities, together with the fact that Whitchurch must be considered to be a sustainable location. There would also be some environmental benefits through the provision of new planting and new habitat opportunities. However, this benefit is tempered by the loss of some of the hedgerow adjacent to Oving Road. These matters are in favour of the proposed development.
40. The provision of ten additional dwellings would be unlikely to have a significant effect in reducing the deficit to the housing land supply for the District of Aylesbury Vale should there be such a deficit. Nevertheless, the provision of additional dwellings is a benefit.
41. Taking all of these factors into account, and given the fact that the proposal is limited to frontage development to Oving Road, to my mind the adverse impact of the development does not significantly and demonstrably outweigh its benefits. Therefore, the development is sustainable development when considering the Framework taken as a whole.

Conditions

42. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
43. The Council has suggested an 18 month timescale to implement the permission. However, little justification has been given to this shortened timescale, and given this I do not find any reason to deviate from the standard three year timescale. For the reasons of certainty, a condition is necessary to ensure that the development is carried out in accordance with the approved plans.
44. Conditions relating to the external materials of the development and hard/soft landscaping (including implementation and maintenance) are necessary in the interests of the character and appearance of the area. Similarly, protection measures to ensure that the existing trees/hedgerow to be retained are also necessary.
45. In the interests of highway safety, conditions are required in respect of a Construction management plan (including matter such as the access for construction vehicles), provision of parking spaces, and a new footway from the site along Oving Road. Additionally, a condition is also required in respect of the public right of way which crosses the site.
46. For environmental reasons an ecological mitigation and enhancement plan is necessary. In respect of surface water drainage, conditions are required to ensure that the development does not cause undue risk of flooding on or off

site (including future maintenance and a verification report to ensure that the measures have been undertaken).

47. With the exception of the conditions relating to the protection of existing trees and hedgerows, a construction management plan and surface water drainage, it is not necessary for any of these to be pre-commencement conditions. It is necessary for these matters to be agreed prior to any works commencing as they involve matters which relate to the period of construction works, or could affect the initial site works.
48. The Council have also suggested conditions relating to the restriction of permitted development rights, external lighting and broadband. I do not find there to be any exceptional circumstances that would justify the removal or permitted development rights nor is it necessary to require details of external lighting. In relation to broadband connections, whilst I appreciate the objectives of the 2018 Framework in respect of high quality communications, I consider that this is not necessary to make the development acceptable in planning terms.
49. Additionally, the suggested conditions relating to vehicular visibility splays and details of the existing and proposed finished ground and floor levels are not necessary as the visibility splays are entirely within highway land and the site levels have already been provided as part of the application.

Conclusion

50. Taking all matters into consideration, I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans (unless other conditions result in alterations to these) : P.180.LP.01; P.180.SP.01 Rev C; 5615-P01 Rev A; P.180.DH.2209.01; P.180.DH.1530.01 Rev A; P.180.SD.1035.01 Rev A; P.180.DH.2209.02 Rev A; P.180.DH.2209.03 Rev A; P.180.DH.1825.01A; P.180.DH.1073.01; P.180.DH.1825.02 Rev A; P.180.DG.01; and P.180.SS.01 Rev B.
- 3) No development above damp proof course level shall take place until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved details.
- 4) No development above damp proof course level shall take place until full details of both hard and soft landscape works have been submitted to

and approved in writing by the local planning authority. For hard landscaping, the approved works shall be carried out prior to the first occupation of the dwelling to which it relates to (or where this does not relate to a dwelling the completion of the development). For soft landscaping, the approved works shall be carried out within the first planting season following the first occupation of the dwelling it relates to. Where hard and/or soft landscaping relates to an area not associated with a dwelling the approved landscaping works shall be carried out prior to the completion of the development.

- 5) Any newly planted tree, shrub or hedgerow or any existing tree, shrub or hedgerow to be retained, that dies, or is uprooted, severely damaged or seriously diseased, within five years of the completion of the development, shall be replaced within the next planting season with another of the same species and of a similar size, unless the local planning authority gives prior written consent to any variation.
- 6) No site clearance works or development shall take place until a scheme for protecting the existing trees and hedgerows to be retained (showing the type, height and position of protective fencing to be erected around each tree or hedge) has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details prior to any site clearance works or development taking place and shall be retained as such during the construction process and no land within the protected areas shall be disturbed.
- 7) No development above damp proof course level shall take place until full details of a site wide Ecological Mitigation and Enhancement Plan has been submitted to and approved in writing by the local planning authority. The approved details shall be provided prior to the first occupation of the dwelling where such measures are located, or the completion of the development where such measures are not within the curtilage of a new dwelling.
- 8) No site clearance works or development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include matters such as the access, parking and turning of vehicles associated with the construction process, loading/unloading of plant and materials, a programme of works, any boundary hoardings and lighting, and measures to prevent mud from the site being deposited on the highway. Construction shall not be carried out otherwise than in accordance with the approved Construction Management Plan.
- 9) Prior to the first occupation of each dwelling, the parking areas associated with each dwelling (together with the roadway required to gain access to each dwelling) shall be provided in accordance with the approved details. The proposed visitor parking spaces shall be provided prior to the first occupation of the final dwelling.
- 10) Notwithstanding the submitted details, no dwelling shall be occupied until the off-site highway works for the creation of the footway along Oving Road have been laid out and constructed in accordance with details to be submitted to and approved in writing by the local planning authority.

- 11) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the first occupation of the final dwelling.
- 12) No dwelling shall be occupied until a "whole-life" maintenance plan for the drainage to the site has been submitted to and approved in writing by the local planning authority. The plan shall set out how and when to maintain the full drainage system (e.g. a maintenance schedule for each drainage/SuDS component) during and following construction, with details of who is to be responsible for carrying out the maintenance. The plan shall subsequently be implemented in accordance with the approved details.
- 13) No dwelling shall be occupied until a verification report carried out by a qualified drainage engineer has been submitted to and approved by the local planning authority to demonstrate that the Sustainable Urban Drainage System has been constructed as per the agreed scheme.
- 14) No dwelling shall be occupied until footpath WHI/33/1 has been laid out and constructed in accordance with details to be submitted to and approved in writing by the local planning authority.