



Appeal Decision

Site visit made on 24 April 2019

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 22 May 2019

Appeal Ref: APP/J3720/W/18/3214028

Land west of Avon Dassett Road, Fenny Compton CV47 2FW

- 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 Mr N Parkin, Hamlin Estates against the decision of Stratford on Avon District Council.
 - The application Ref 17/03520/OUT, dated 20 November 2017, was refused by notice dated 3 May 2018.
 - The development proposed is residential development and means of access for up to 39 houses on land off Avon Dassett Road, Fenny Compton.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with access for consideration at that stage. I will consider the appeal on the same basis. An illustrative layout was also submitted showing a potential layout.
3. As set out in the heading the application was originally made for up to 39 dwellings. However, during the consideration of the application by the Council this was amended so as to be for up to 16 dwellings. A revised illustrative layout was submitted. The Council made its decision based on this lower number and illustrative plan and I too will use them.
4. A Planning Obligation by agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 9 April 2019 has been submitted dealing with various matters. I will discuss this below.

Main Issues

5. The main issues are:
 - whether the proposal is in accordance with the development strategy set out in the development plan;
 - the effect on heritage assets, namely the setting of the Fenny Compton Conservation Area (the FCCA), the setting of Rectory Farmhouse, a Grade II listed building, the setting of Gredenton Hill Camp, a Scheduled Monument (SAM), and the medieval ridge and furrow field form;
 - the effect on the character and appearance of the area;

- whether the proposal makes adequate provision for affordable housing, infrastructure and associated facilities.

Reasons

Development strategy

6. The development plan for the area includes the Stratford-on-Avon District Core Strategy 2011 to 2031 (the Core Strategy). Policy CS.15 of the Core Strategy indicates that the distribution of development during the plan period will be based on a pattern of balanced dispersal. This includes Fenny Compton as a Category 2 Local Service Village. Pursuant to Policy CS.16 of the Core Strategy all Category 2 Local Service Villages together are allocated for approximately 700 new homes, of which no more than 12% should be provided at an individual settlement. The Council explains that the 12% is of the total 700 dwellings; therefore, no more than 84 dwellings should be provided at an individual settlement.
7. Following Policy CS.15, in Local Service Villages development will take place either on sites identified in a Neighbourhood Plan or through small-scale schemes on unidentified but suitable sites within their Built-Up Area Boundaries (BUABs) (where defined) or otherwise within their physical confines. No Neighbourhood Plan has been made for Fenny Compton. Policy AS.10 of the Core Strategy, dealing with Countryside and Villages, permits among other categories of residential development, small-scale housing schemes, including the redevelopment of buildings, within the BUAB of a Local Service Village (where defined), or otherwise within the physical confines, in accordance with Policy CS.15 Distribution of Development and Policy CS.16 Housing Development.
8. There is no up-to-date adopted delineation of a BUAB for Fenny Compton to take account of the level of development identified in the Core Strategy. Consequently, the appellant maintains that Policies CS.15 and AS.10 are out-of-date on the basis that any BUABs which do exist are out-of-date. However, I do not think this is correct as these two policies are not contingent on defined BUABs, as the bracketed "where defined" makes clear, but rather, when there is no BUAB, on a planning judgement as to whether any site lies within the physical confines of a village. It is a separate question as to how the allocation in the Core Strategy should be delivered.
9. The appeal site forms part of a larger agricultural field. While it abuts residential development in the village to the north it is clearly outside and separate from Fenny Compton on a separate agricultural field and lies outside its physical confines. The proposal is therefore *prima facie* contrary to Policies CS.15 and AS.10 of the Core Strategy.
10. It is next appropriate to consider the relationship to Policy CS.16 of the Core Strategy. The Council advises that in the period April 2011 to March 2018 20 dwellings were built in Fenny Compton. Furthermore, as at March 2018 there were planning permissions for an additional 87 dwellings. Of these 80 are at the Station Works site (also known as the Compton Works site). In addition, there is a resolution to grant planning permission, subject to the completion of a legal agreement, for another 20 dwellings at the Station Works site. The Council therefore asserts that the total number of dwellings for Fenny Compton would, if this appeal were to be allowed, far exceed the no more than 84

dwelling set out in Policy CS.16 of the CS. It would therefore, so the Council argues, cause harm to the development plan strategy of balanced dispersal.

11. The appellant considers that the two Station Works sites should not be considered as part of the overall allocation for Fenny Compton as they are located some distance from the main village. I visited them as part of my site visit. An appeal¹ in 2017 also considered this question. I agree with that Inspector that this site is an appreciable distance from the edge and centre of the village. I also agree with her, for the reasons that she gave, that this site should be included within the commitments for Fenny Compton. These are that the size of the sites is such that they should not be considered against the separate commitment for large brownfield sites dealt with in Policies CS.16A and AS.11 of the Core Strategy, and they would be within walking and cycling distance of the village with a connecting pavement on Station Road; thus, the sites are closely related to Fenny Compton.
12. That the Council considered another site closer to the village of Great Alne not to count towards the housing need of that village is of little weight as that related to units falling under Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) rather than dwellings. As the specified report makes clear, the Examining Inspector for the Core Strategy indicated that units in residential institutions cannot count towards the district's housing requirement. While the latest Planning Practice Guidance (PPG) guidance has clarified this, the question of needs for this specific element of the population should be considered more comprehensively across the district and housing market area under both needs and supply. This falls outside the remit of a Section 78 appeal of this nature.
13. Policy CS.16 does not set a minimum for the number of dwellings for Fenny Compton or provide a justification for permission to be granted on a site which is considered to be harmful. Allocations are to take place through a Site Allocations Plan process, and, as paragraph 15 of the National Planning Policy Framework (the Framework) makes clear, the planning system should be genuinely plan-led.
14. The previous Inspector's conclusions do not mean that the Station Road sites are necessarily deliverable within the terms set out in the Framework as published in February 2019 since the definition of 'deliverable' has changed since the earlier appeal decision. I simply do not have sufficient information to conclude on this.
15. However, as I am intending to dismiss the appeal for the detailed reasons given below, and as the appellant states the five years' supply of land for housing position is of little relevance to this appeal, I do not need to conclude as to whether the proposal would result in an exceedance of the number of dwellings envisaged in the Core Strategy for Fenny Compton so as to result in the overall pattern of balanced dispersal of housing being harmed, since this would make no difference to the overall conclusion.

Heritage matters

16. The eastern edge of the appeal site lies on the boundary of the FCCA. The exact shapes of the conservation area boundary and the appeal site are not the

¹ APP/J3720/W/16/3158740

same but taken together I am satisfied that the appeal site lies outside the FCCA and thus any effects would be to the setting of the FCCA. As the definition of "Significance (for heritage policy)" in the Glossary to the Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting. Further, as paragraph 194 of the Framework states, any harm to, or loss of the significance of a designated heritage asset from development within its setting should require clear and convincing justification.

17. The appeal site currently forms part of the agricultural setting of this part of the FCCA with views to and from the FCCA to the south and west. Although the illustrative layout does not locate any built development on the southern part of the site, views would be harmed by the introduction of a more urban entrance feature and by the proximity of new dwellings to the road. However, as most of the development would be set back into the appeal site, I am satisfied, in the terms of the Framework, that this would represent less than substantial harm to the setting and thus significance of the designated heritage asset. In line with paragraph 196 of the Framework this should be weighted against the public benefits of the proposal. I will do this in the planning balance section of this decision below.
18. There are a number of listed buildings in the vicinity of the appeal site, but the reason for refusal only refers to the effect on the setting of Rectory Farmhouse, a Grade II listed building. I am satisfied that the proposal would not affect the setting of any other listed building.
19. Rectory Farmhouse is located a short distance to the north along, and faces, Avon Dassett Road. The listing description relates to its exterior. The Council's concerns relate to the functional relationship between this building, it was a farmhouse, and the agricultural nature of the appeal site; thus any change would be to the setting of the listed building. Advice is given in the PPG and reminds² that setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. The Courts³ have confirmed that 'experienced' has a broad meaning, which is capable of extending beyond the purely visual.
20. In this case there is no evidence that the use of the appeal site for agriculture and Rectory Farmhouse had any direct functional link. The immediate area around Rectory Farmhouse has already been developed. However, given the proximity, I concur with the Council and Historic England that it is extremely likely that there would be some functional linkage between the appeal site and the farmhouse. The appeal site therefore forms part of the setting of Rectory Farmhouse. Special regard should be had to the desirability of preserving this setting⁴. The introduction of this proposal would have an urbanising effect harmful to the setting through the loss of agricultural land and the functional link. This would result in less than substantial harm to the setting and thus significance of Rectory Farmhouse. Again, I will consider the implication of this in the planning balance.
21. In its response to consultation at the application stage Historic England raised concerns about the effect on Gredenton Hill Camp, an Iron Age hill fort to the

² Reference ID: 18a-013-20140306

³ Steer v SSCLG [2017] EWHC 1456 (Admin)

⁴ See Section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

- south which, as Historic England states and I agree, commands the landscape. As a SAM it is of national importance. While this is some distance to the southwest it allows views over the whole of the village and the wider landscape for many miles. The appellant's Heritage Statement at the application stage acknowledged that its topographical location and relationships with the surrounding natural and made landscape form the fort's penumbra, and are attributes of the setting that form a part of Gredenton Hill Camp's significance. This report also acknowledges that land with links between the hill fort and penumbra is of high importance and medium-high sensitivity to change.
22. Although at some distance from the hill fort the introduction of residential development on the appeal site would bring built development closer to the SAM and would harm the rural setting. This harm would be less than substantial, but given the national importance of SAMs, in line with paragraph 193 of the Framework, great weight should be given to the conservation of the SAM.
23. One of the most striking aspects of the appeal site, and the immediate vicinity, is the landform which derives from the ridge and furrow historic agricultural practice dating back to the medieval period. All parties agreed that this represents a non-designated heritage asset. Ridge and furrow earthworks are a series of long, raised ridges separated by ditches used to prepare the ground for arable cultivation. As well as covering the appeal site the ridge and furrow continues to the south. The Heritage Statement acknowledges that it is fortunate that these earthworks were not ploughed-out, unlike many of the surrounding fields. The significance of the ridge and furrow derives from being closely associated with medieval villages of the midland region, and often remained in use, according to Historic England, for a long time after that date. It is also part of its significance that the ridge and furrow has survived into the twenty-first century.
24. There is a dispute between the various parties as to the degree of harm that would be caused by the proposal to this non-designated heritage asset. The appellant acknowledges that approximately 30% of the ridge and furrow of the open field furlongs would be removed but notes that due to the proposed illustrative layout that there would be the opportunity for greater public understanding. The appellant therefore takes the view that this would represent less than substantial harm to the heritage asset. The Council concurs with this view as to the degree of harm. Set against this is the advice of Historic England which, at the application stage on the revised proposal, considered that there would be substantial harm to the ridge and furrow.
25. To resolve this there are a number of elements that need to be taken into account. Firstly, the degree of harm, whether substantial or less than substantial, should be considered irrespective of any mitigation unless that mitigation is already in existence, which would not be the situation here. Secondly, as the PPG makes clear⁵, in general terms substantial harm is a high test, but minor works have the potential to cause substantial harm. Thirdly, it is reasonable to give considerable weight to the views of a statutory advisor, such as Historic England. Fourthly, and here very importantly, this is an outline application with only means of access for consideration at this stage. The illustrative layout is just that. However, I share some of the concerns of the

⁵ Reference ID: 18a-017-20140306

Council, discussed below, that a layout based on it would have serious deficiencies and may require additional land for built development than is shown. There is nothing to prevent development taking place in the areas shown on the illustrative plan to be used either as a retained paddock or open space and these would increase the amount of ridge and furrow lost by the proposal. The use of a planning condition to restrict the built area to that shown would not be reasonable as I consider that this would lead to an unsatisfactory design as explained below.

26. Overall, due to the importance of the ridge and furrow and the degree to which it would be affected, I conclude that the proposal would result in substantial harm to the ridge and furrow earthworks. In line with paragraph 197 of the Framework in taking into account the effect on the significance of a non-designated heritage asset a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. Again, I will conclude on this in the planning balance below.
27. The proposal would therefore be harmful to the setting of the FCCA, the setting of Rectory Farmhouse, the setting of Gredenton Hill Camp and to the medieval ridge and furrow field form. As such it would be contrary to Policy CS.8 which seeks to protect and enhance the district's historic environment for its inherent value. The text of the policy of how this will be implemented closely follows those parts of the Framework I have set out above.

Character and appearance

28. The appeal site lies on the transitional zone between the Northamptonshire Uplands National Character Area (NCA 95) and the Dunsmore & Feldon National Character Area (NCA 96) in Natural England's National Character Assessment. The former area is characterised by gently rolling limestone hills and valleys capped by Ironstone. It is in mixed agricultural use and woodland is sparse. The latter character area is a predominantly rural, agricultural landscape crossed by numerous small rivers and tributaries.
29. At county level the Warwickshire Landscape Guidelines place the appeal site just within the "Vale Farmlands" local landscape character type but it is also close to the "Ironstone Fringe" boundary. The former characteristic features include broad, flat vales with occasional small rounded hill and pockets of permanent pasture often with well preserved ridge and furrow. The latter shares some similar characteristics.
30. At a district level the site is within the Ironstone Hills Fringe Special Landscape Area. The key characteristics of this include rolling landscape including occasional prominent ironstone hills, ridges and slopes which forms the transition between the Northamptonshire Ironstone Hills and the Feldon Vale; a medium to large scale regular strongly hedged field pattern with occasional trees; occasional woodlands, with smaller copses in places such as those associated with steep hillsides; and mixed farmland, now dominated by arable, with pockets of permanent pasture, some with ridge and furrow.
31. Policy CS.5 of the Core Strategy indicates that the landscape character and quality of the District will be maintained by ensuring that development takes place in a manner that minimises and mitigates its impact and, where possible, incorporates measures to enhance the landscape. Proposals should protect landscape character and avoid detrimental effects on features which make a

significant contribution to the character, history and setting of a settlement. This policy indicates that Policy CS.12 of the Core Strategy sets out additional factors to be taken into account when considering development proposals in designated Special Landscape Areas.

32. Policy CS.12 of the Core Strategy states that the high landscape quality of the Special Landscape Areas, including their associated historic and cultural features, will be protected by resisting development proposals that would have a harmful effect on their distinctive character and appearance which make an important contribution to the image and enjoyment of the District. The appeal site lies within the Ironstone Hill Special Landscape Area. The policy continues that development proposals relating to settlements that lie within a Special Landscape Area must respect the current and historic relationship of that settlement within the landscape.
33. The appeal site is made up of a single field, but with a somewhat gappy, if important, hedgerow from east to west. The hedgerow around the perimeter to the west and north are better defined except immediately to the rear of the properties in Grants Close. There is no defined boundary to the south.
34. While it is acknowledged that the appeal site is adjacent to the existing built up area of Fenny Compton, the access location, which is for determination, would be a short distance away from the physical confines of the village with a small intervening area to the south of Buttercup Barn and Meadow Barn to the north. From Avon Dassett Road it would therefore give the impression of a small, separate, enclave of development.
35. The illustrative layout is described as seeking to take design cues from a "farmstead". However, I agree with the Council that this layout does not show how parking would be satisfactorily achieved for both occupiers, their visitors and those visiting the site for recreation or edification of the ridge and furrow, and some of the garden areas seem to be rather small given existing vegetation and ecological constraints. While the proposal is for "up to" 16 dwellings there needs to be reasonable confidence that such a number of dwellings could be located on the site in a satisfactory manner, and the illustrative layout does not provide that.
36. In the previous section I considered the heritage importance of the ridge and furrow; in this section I consider its landscape importance. It is an important part of the landscape and the proposal would result in its partial loss. Given the importance of the field to the setting of Fenny Compton, I consider that this would be significantly harmful as it would detract from the distinctive character and appearance of the area generally, and which specifically includes ridge and furrow. While some landscaping could be introduced, this should not be seen as a way of making acceptable otherwise unacceptable development.
37. The proposal includes open space, and there is no reason why this could not be in the approximate locations shown on the illustrative layout. However, this would be a managed open space rather than an agricultural field or paddock and would not mitigate the harmful effects. There would therefore be the loss of permanent pasture with ridge and furrow which is identified as one of the landscape characteristics of the area.
38. Consequently, the proposal would be harmful to the character and appearance of the area and I give this harm significant weight. It would therefore be

contrary to Policies CS.5 and CS.12 of the Core Strategy as set out above and would be contrary to paragraph 170 of the Framework in that it would not enhance the natural and local environment by adequately recognising the intrinsic character and beauty of the countryside as identified in the various landscape studies set out above.

Affordable housing, infrastructure and associated facilities

39. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 56 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
40. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
41. Policy CS.18 of the Core Strategy requires, in accordance with various thresholds, all new residential development that incorporates or comprises use as a dwelling house within Use Class C3 to contribute to the provision of affordable housing, subject to viability. Policy CS.25 of the Core Strategy indicates that, where it is justified by the scale of new development, developers will be expected to contribute towards the provision of open space in order to help achieve the standards set out in the Council's Open Space, Sport and Recreation Assessment. Policy CS.26 of the Core Strategy seeks contributions towards local public transport services where necessary to provide mitigation against unacceptable transport impact from that development.
42. The Planning Obligation provides for 35% of the overall total of dwellings to be affordable housing as defined in the Framework either physically or through a fractional contribution. The Obligation would provide contributions towards parks and gardens and amenity space, and play facilities in the parish of Fenny Compton, for bus shelters, improvements to specific public rights of way and a sustainable travel pack contribution. It would also make a contribution towards the implementation of a traffic regulation order to amend the speed limits on the Avon Dassett Road in the interests of highway safety.
43. I have considered each of these contributions and consider that they meet the tests set out above and that none would either exceed the totting up provisions of Regulation 123 or represent double counting with the contributions to be made under the Community Infrastructure Levy.

Other matters

44. Local residents have raised a number of additional concerns. Reference has been made to emerging plans from the Council and a Neighbourhood Plan with the site being stated as being outside the BUABs in those documents. However, both of these plans are at a very early stage in preparation and, in line with paragraph 48 of the Framework, can only be given very limited weight.

45. Concern has also been expressed about flooding and drainage. However, I am satisfied from the information submitted with the application and the consultation replies from the responsible bodies that the proposal would not be at an unacceptable risk of flooding or add to flood risk elsewhere.
46. At the site visit I went into the rear garden of one of the properties in Grants Close. I can well understand the concerns of the occupier and his neighbours as to the effect on the outlook from those properties. However, the built development could be designed so that it would be sufficiently distant from the dwellings in Grants Close so as not to lead to a harmful effect on the outlook from the properties to lead to harm to the living conditions of the occupiers. In planning terms there is no right to a private view over a landscape, and no additional weight can therefore be given to the harms I have identified above.

Planning Balance

47. The appeal proposal would be located outside of the physical confines of Fenny Compton and would be contrary to Policies CS.15 and AS.10 of the Core Strategy. It would also be contrary to Policy CS.8 in respect of heritage matters and Policies CS.5 and CS.12 of the Core Strategy in relation to landscape and visual effects.
48. It would result in less than substantial harm to the settings of the FCCA, Rectory Farmhouse and Gredenton Hill Camp, all of which are designated heritage assets and result in substantial harm to the ridge and furrow, a non-designated heritage asset. Special attention should be given to the harm to the setting of Rectory Farmhouse, and great weight to the conservation of all heritage assets.
49. The proposal would also be harmful to the character and appearance of the area to which I have given significant weight.
50. The appellant has identified a number of benefits of the development. To the delivery of 16 dwellings and a proportion of affordable housing I give significant weight. However, I do not give any additional weight to the delivery of affordable housing in itself, as it is needed to make the scheme policy compliant, and it is not suggested that there is a particular deficiency in affordable housing in the district as a whole. These are public benefits.
51. The appellant has suggested that by delivering open space on the remaining ridge and furrow areas of the site and providing interpretation boards that this would off-set some of the harm to that heritage asset. As set out above this is not the correct test. However, such delivery and provision would be a public benefit. I give this very little weight as the location is such that it would be predominantly used by the residents of the proposal, which would then be principally a private benefit.
52. The appellant has suggested a number of heritage benefits consisting of the public parking and access path, a new view of the hill fort, strengthening of the hedge lines, evidencing of the ridge and furrow and preservation of the remaining ridge and furrow. As noted above, the illustrative layout does not show how this parking would be delivered so I can only give this limited weight. While appreciation of the ridge and furrow may not be well known at present, the benefit of the proposed boards and provision of open space, along

with the ancillary benefits, would not anything like outweigh the harm to the non-designated heritage asset caused by the development.

53. There would be a benefit to biodiversity from the additional landscaping, but this should be given limited weight due to its physically small extent. The matters secured in the Planning Obligation are needed to mitigate the effects of the development and consequently are only neutral in the final balance.
54. The appellant has also suggested that some further heritage specific public benefits could be secured by condition. However, I consider that none of these specifically relate to the development proposed and therefore, following the guidance in the PPG on the use of conditions, imposing a condition to secure them would not be appropriate. I therefore cannot give these any additional weight.
55. The determination of the appeal should be in accordance with the terms of the development plan unless other material considerations indicate otherwise. For the reasons given above, the proposal would be contrary to the plan as a whole, and I conclude that there are no other material considerations, either individually or cumulatively, to outweigh this.

Conclusion

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

RJ Jackson

INSPECTOR

Richborough Estates