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## Appeal Decision

Site visit made on 24 April 2019

**by R Norman BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> May 2019**

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**Appeal Ref: APP/J0405/W/18/3211260**

**Land at Biddlesden Road, Westbury NN13 5JL**

- 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 David Owen, Owen Trust against the decision of Aylesbury Vale District Council.
  - The application Ref 17/04058/AOP, dated 23 October 2017, was refused by notice dated 15 August 2018.
  - The development proposed is the erection of up to 20 residential dwellings with all matters reserved other than access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The proposed development is in outline with only access arrangements committed at this stage. All other matters (landscaping, external appearance, scale and layout) are reserved for later consideration. Layout plans have been submitted which I have had regard to but taken as indicative only in all but access details.
3. The original description of development on the application form was for 23 dwellings. Both parties have confirmed that the development was amended to 20 dwellings during the application process. I have therefore amended the description to reflect the correct number of dwellings in the above heading.

### Main Issues

4. The main issues are:
  - The effect of the development on the character and appearance of the area, the landscape character and visual impact;
  - The effect of the development on biodiversity; and
  - Whether the proposed development would, if necessary, provide suitable contributions towards local infrastructure.

## Reasons

### *Character and appearance and landscape*

5. The appeal site is located along Biddlesden Road and currently comprises part of a paddock area which wraps around the side and rear of the existing dwellings. It is bounded by the rear gardens of the existing dwellings on Biddlesden Road and Brackley Road. A group of mature trees is located to the far side boundary of the paddock and trees are also present to the rear of the site.
6. The proposal would introduce residential development into the site up to a maximum of 20 dwellings. At this stage the access is committed and would run along the side of the site adjacent to No 10 Biddlesden Road. Indicative layouts have been provided however the layout, external appearance, landscaping and scale of the properties have not been committed at this stage.
7. The appeal site is rural in character but sits between the built form of the village and the open countryside. Whilst it adjoins existing development, the site itself has a strong visual and physical connection with the natural landscape consisting of the group of trees and the open countryside opposite the site and beyond the trees. Although gated and fenced, the site contributes to the transition between the village and the rural landscape and I therefore find it to be an important area of land which contributes to the visual and rural character and appearance of the area.
8. Although the layout of the development is not yet committed, the site boundaries would result in an in-depth development which would wrap around the existing residential properties. This form of development would be out of keeping with the edge of village characteristics of the existing linear developments, which are predominantly set within reasonably large plots. An estate-style development would provide a much harder edge to the village and would result in the urbanisation and loss of part of this transitional piece of land. It would therefore fundamentally alter the rural character of the site and erode the contribution it makes in this regard.
9. A public right of way runs adjacent to part of the site. The layout is not yet committed however it is likely that the users of the right of way would be in proximity to several of the houses. Whilst users of this footpath would have a view of the proposed development, this would only be for a small section of the footpath and would not adversely impact their enjoyment to an unacceptable degree. The remaining footpath beyond the site would open out into wider views of the surrounding countryside.
10. There is some dispute over the relevance of Policy RA.8 of the Aylesbury Vale District Local Plan (2004) (AVDLP) and the sites location in relation to the local landscape areas or area of attractive landscapes. The Appellant has submitted an extract from the Aylesbury Vale Landscape Character Assessment showing the Landscape Character Areas which cover much of the District. The appeal site appears to be located within the Westbury – Biddlesden Great Ouse Valley. Although much of the District is incorporated into the various Landscape Character Areas, I find that Policy RA.8 is relevant to the appeal proposal.
11. The Appellant has referred to the Housing Economic Land Availability Assessment (HELAA) which identifies that around 20 units may be possible in

Westbury. The Council have identified that the HELAA forms part of the evidence base for the preparation of the emerging local plan. The HELAA forms an initial basis, which then is subject to further consideration as part of the application process. I therefore find that as the HELAA is to inform the emerging local plan, its findings do not determine the acceptability of specific sites.

12. Consequently, I find that the proposed development would be harmful to the character and appearance of the area and would have an adverse visual impact on the rural attributes of the surrounding area. It is therefore contrary to Policies GP.35, GP.38 and RA.8 of the AVDLP. Collectively these seek to ensure that new development respects and complements the natural qualities and features of the area and landscape character and conserves existing natural features, amongst other things. I find that there is no conflict however with Policy GP.84 which seeks to protect public rights of way.

#### *Biodiversity*

13. The appeal site forms part of a paddock area with, at the time of my visit, reasonably long grasses covering the site. The site is also bounded by trees and hedging. The Appellant notes that the site is heavily grazed and regularly mowed and has provided an Ecological Survey to support the proposal (August 2017 – Updated November 2017). This Survey considers habitats and vegetation, bats, nesting birds, badgers and hedgehogs, amphibians and reptiles.
14. The Survey identified the site as species-poor in general with some characteristics of MG5 grassland. It identifies habitats within the site including bramble scrub areas and the boundary trees and hedging. The walkover survey identified that the site may form a small part of the foraging area for bats and the hedgerows and trees have potential for nesting birds. Potential for suitable habitats for Great Crested Newts and reptiles was also identified in the bramble scrub.
15. The Appellant has submitted a Unilateral Undertaking (UU) which includes provision for a Biodiversity Offsetting Scheme. This would take the form of a receptor site which would provide biodiversity gains to offset the impact on the existing site. This is noted, however it has not been sufficiently identified that there are suitable areas of land that would be available for such offsetting. Accordingly, I find that insufficient information has been provided to ensure that the development would not have an adverse impact on biodiversity and the natural habitats in the area.
16. Consequently, the proposed development does not comply with Policies GP.35 and GP.38 of the AVDLP which seek to conserve natural features of value and complement the natural qualities of the area, or paragraph 170 of the National Planning Policy Framework (2019) (the Framework).

#### *Infrastructure Contributions*

17. The Appellant has submitted a Unilateral Undertaking (UU) dated 8 January 2019. This UU makes provision for a sport and leisure contribution, an education contribution, payment of the Traffic Regulation Order funding, the submission of a Biodiversity Offsetting Scheme and the submission and implementation of a SUDS scheme.

18. The Council have reviewed the submitted UU and have raised several objections including the lack of affordable housing provision, lack of reference to the pedestrian refuge, lack of a monitoring contribution and no contribution towards primary school education.
19. The Appellant has disputed the 10% affordable housing requirement. Policy GP.2 of the AVDLP requires the provision of affordable dwellings on developments of 25 or more dwellings or sites of 1 hectare or more. It states that the Council will assess the circumstances of each proposed development individually and will take into account the need locally for affordable dwellings.
20. Whilst the appeal proposal would fall under the Policy threshold of 25 dwellings, the Council have referred to the provisions of the Framework. Paragraph 64 states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area. The Glossary to the Framework defines Major Development as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.
21. I have had regard to the documents provided by the Council, including the Affordable Housing Policy Interim Statement (2014) and the Affordable Housing Supplementary Document (2007). However, I note from the Council's CIL Statement that the Council's assessment of the affordable housing contribution appears to conclude that this does not meet the relevant tests in terms of being necessary or fair and reasonable. Accordingly, based on the information before me I conclude that an affordable housing contribution would not be reasonable or necessary in this instance.
22. The Council have provided justification for their requested contributions in relation to their compliance with the CIL Regulations. They conclude that contributions towards green infrastructure, play and sports facilities, a SUDS scheme, secondary school contributions, and highway improvement works are necessary, directly related and fair and reasonable. I note in their Statement the Council raise concern over the lack of primary school contributions however in their CIL compliance table there appears to be no requirements for primary contributions.
23. I have considered the submitted UU against the CIL Regulations. However, given lack of reference to the off-site highway works, I find that the submitted legal document does not meet the necessary requirements. Accordingly, the proposed development would not meet the social, economic and environmental objectives of the development plan and the Framework and would therefore be contrary to the provisions of Policies GP.86 – 91 (excluding GP.89) and GP.94 of the AVDLP. These seek to secure sufficient outdoor play space, sports facilities and community facilities, amongst other things.

#### *Other Matters*

24. The Appellant has challenged the Council's 5-year supply of housing land following the interim findings into the emerging Vale of Aylesbury Local Plan. The Appellant highlights that the published findings show a small deficit and accordingly the tilted balance should be applied. Were I to find in favour of the Appellant on this matter, this would render the Policies for the supply of housing out of date. The proposed development would provide up to 20

- dwelling towards the Council's supply of housing. However, I have considered this against the minor deficit that the Appellant has highlighted. Furthermore, the Policies that the Appeal has been considered against do not form those for the supply of housing and consequently I give Policies GP.35, GP.38 and RA.8 full weight in the determination of the proposal. Accordingly, even if there were a shortfall in the Council's 5-year housing land supply, the proposed development would make only a moderate contribution to this and would not be sufficient to outweigh the conflict with the development plan as a whole.
25. Westbury is classed as a Smaller Village in the Draft Vale of Aylesbury Local Plan and the Appellant has referred to emerging Policy D3. However, given the current stage of the process of the draft local plan I give this limited weight.
26. The Appellant has also noted the provision of a pedestrian refuge, although this has not been secured by the submitted UU. However, taken collectively with the contribution that the development would make to the 5-year housing land supply, these considerations do not outweigh the harm to the character and appearance of the area, insufficient information relating to biodiversity and ecology, and lack of the required financial contributions identified above.
27. The Appellant has referred to another appeal decision (ref: APP/J0405/W/17/3168864). I have limited details of this case and therefore cannot determine that it is materially similar to the scheme before me. The Council have highlighted key differences between the appeal proposal and the referenced appeal decision and therefore I give this example limited weight in my consideration of the proposal.
28. Local objections have been received concerning, in addition to the above matters, highway safety, impacts on the living conditions of nearby occupiers and concerns over the provision of the access. However, given my findings above it is not necessary for me to consider these matters further as they would not alter my overall conclusions.
29. I note the Appellant's frustration in relation the outcome of the application following the pre-application advice that was provided by the Council. However, pre-application advice is usually given on a without prejudice basis and cannot therefore guarantee a favourable outcome once a formal application is made. This would be a matter for the Appellant to take up further with the Council.

### **Conclusion**

30. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be dismissed.

*R Norman*

INSPECTOR