
Appeal Decision

Site visit made on 22 September 2015

by Jonathon Parsons MSc BSc (Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 18 December 2015

Appeal Ref: APP/C3105/W/15/3081152

Land to the south of Green Lane, Chesterton, Oxfordshire

- 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 Hill Residential against the decision of Cherwell District Council.
 - The application Ref 14/01899/F, dated 10 November 2014, was refused by notice dated 20 April 2015.
 - The development proposed is the erection of 10 dwellings with associated means of access, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Cherwell Local Plan 2011-2031 Part 1 (LP Part 1) was adopted on 20 July 2015. Views were sought on this plan's adoption in relation to paragraph 14 for the National Planning Policy Framework taking into account 5 year housing land supply and whether or not the proposal would comply with LP Part 1 Policy Villages 1: Village categorisation. In correspondence, the Council also corrected a reference to LP Part 1 Policy ESD 16 to Policy ESD 15.
3. A planning agreement dated 15 September 2015 was submitted during the appeal which secures affordable housing, education and transport contributions. Comments were sought as to whether the education and transport contributions satisfied Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended).
4. The comments of parties on the obligation and the policy matters referred to above have been considered under my reasoning in this decision. In my decision, I have not taken into account a late submitted appeal decision detailed by the Council because it would prejudice the appellant by introducing new evidence to the appeal proceedings.

Main Issues

5. The main issues are (a) whether or not the Council has a five year housing land supply, having regard to the housing requirement and buffer; (b) the effect of the proposal on the character and appearance of the area; (c) open space provision and (d) whether or not the presumption in favour of sustainable development under the Framework applies.
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Reasons

Background and policy

6. The site comprises open land within a larger permitted residential development for the erection of 44 dwellings, new village/sports pavilion and associated car parking, enlarged playing pitches, new children's play area, access and landscaping. As part of the scheme, there was to be informal open space which would be the location of the appeal site. The site is located off Green Lane, a road to the south of Chesterton which leads into the countryside. Along the western boundary of the site, there is a hedgerow beyond which there is an agricultural field and countryside.
7. The development plan comprises LP Part 1 and 'saved' policies of the Cherwell Local Plan (LP) 1996. 'Saved' LP Policy H18 restricts new dwellings beyond the built up limits of settlements in open countryside to those which are essential for agriculture, or other existing undertakings, or where dwellings meet an identified and specified housing need that cannot be met elsewhere. 'Saved' LP Policy C8 states that development in the open countryside will generally be resisted. The policy explanatory text at paragraph 9.12 indicates sporadic development in the countryside must be resisted if its attractive, open rural character is to be maintained.
8. The LP Part 1 classifies various villages according to their physical characteristics and range of services, with the aim of ensuring most development is in villages with the greatest number of the latter. Under Policy Villages 1: Village Categorisation, Chesterton is defined as Service Village A where minor development, infilling and conversion is permitted within the built up limits of the village. The Council has indicated that this policy seeks to manage small scale development proposals, typically but not exclusively for less than 10 dwellings.
9. Parties differ as to whether the site is within the built limits of the village. The site was formerly agricultural land and under the planning permission, currently well advanced in its implementation, the land in question is to be informal open space. Given the implementation of the planning permission, the appeal site is considered to be within the built-up limits of the village. However, explanatory text at paragraph C.262 sets out a number of criteria which are used to assess whether 'minor' development proposals are deemed acceptable under Policy 1: Village Categorisation of LP Part 1. These include the site's context within the existing built environment, whether it is in keeping with the character and form of the village, its local landscape setting and careful consideration of the appropriate scale of development.
10. LP Part 1 Policy ESD 13 "Local Landscape and Enhancement" states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local character cannot be avoided. Proposals will not be permitted if they would conflict with certain criteria. This includes that they should not cause undue visual intrusion into the countryside, undue harm to important natural landscape features and topography or be inconsistent with local character.
11. LP Part 1 Policy ESD 15 "The Character of the Built and Historic Environment" states successful design is founded upon an understanding and respect for an area's unique built, natural and cultural context. New development will be

expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards. Amongst many criteria, development proposals should contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features, such as features or views, in particular with designated landscapes.

Five year housing land supply

12. At the time the application was submitted for consideration, the Council's Housing Land Supply Update June 2014 confirmed that there was a 3.4 years projected housing land supply for the period 2015-2020. This is based on the Oxfordshire Strategic Housing Market Assessment's (SHMA) 2014 objectively assessed need figure of 1,140 homes per annum and the inclusion of a 20% buffer. In contrast, the Council's Annual Monitoring Report (AMR) 2014 (published March 2015) confirms that there would be a 5.1 year housing land supply for the period 2015-2020. This is based on the new housing requirement in the modified Submission Local Plan (February 2015) for 1,142 homes annum and a 5% buffer. The requirement is marginally higher than the level of need identified in the district in the SHMA of 1,140 homes per annum.
13. The appellant has argued on past performance that the buffer should be 20% which would result in a deficient 5 year housing land supply position, and that the housing trajectory used by the Council for deliverable housing land supply does not take into account past persistent under delivery. In this regard, the Council's AMR states past under delivery since 2006 as being due to economic conditions and Framework policy.
14. The Local Plan Inspector does not make explicit reference to the appropriateness of the 5% buffer in his report, including within the housing trajectory. However, the Inspector commented that the modified new housing total and justified housing trajectory represents a reasonable and realistic, deliverable and justified basis for meeting local needs over the plan period.¹ It is reasonable to assume that if he had concerns regarding the buffer, he would have commented on this issue and by extension, found the LP Part 1 to be unsound. Furthermore, the Council's current approach takes into account long-term trends over a longer period of time to take account of the peaks and troughs of the economic cycle in accordance with the PPG².
15. Planning Practice Guidance states considerable weight should be given to the housing requirement figures which have successfully passed through the examination process unless significant new evidence comes to light.³ In this regard, the Local Plan Inspector invited the Council to make modifications to the plan in the interest of meeting the SHMA requirements which was undertaken. Overall, and taking into account all the available evidence, statements and submissions, he concluded that, as modified, the plan is based on a full and up to date objective assessment of housing need in the area to 2031, taking account of reasonable population and household projections, having regard to all relevant local factors, including current market conditions in the district¹.

¹ Paragraph 58 of the Inspector's Report on the Examination into Cherwell Local Plan 9 June 2015.

² Paragraph 035 Reference ID: 3-035-20140306.

³ Paragraph 030 Reference ID: 3-030-20140306.

16. As the LP Part 1 has only recently been adopted with the new housing requirement for the district, it is also too soon to assess housing delivery. For all these reasons, there is insufficient evidence to demonstrate that the Council does not have a five year housing land supply and therefore paragraph 14 of the Framework should not be engaged.

Character and appearance

17. The proposal would result in the construction of 10 dwellings within a wider area that is being developed for housing. They would largely back onto the site's western and southern boundaries, beyond which there is countryside. The existing boundary hedgerow would be retained and reinforced with further planting in accordance with a submitted landscaping scheme.
18. The dwellings would be seen as a contiguous extension of the existing development and in the wider landscape, intrusion would be limited mainly due to vegetation and topography. The proposal would not affect any nationally or locally designated landscapes. However, the proposed dwellings would be seen when approaching the village from the west and across open fields from Little Chesterton Lane. Although the existing hedgerow and further landscaping along the boundaries of the site would visually break up views of the proposed dwellings, they would still be noticeable above the hedgerow and landscaping by reason of their height and scale. As part of the earlier planning permission, the appeal site would have been informal open space with opportunities for planting to soften and filter views of the permitted residential development from the surrounding countryside. Instead, the dwellings would consolidate housing on the edge of the settlement for the reasons stated and would adversely and visually intrude into its local landscape setting at a major entry point into the village.
19. My attention has been drawn to some of the Inspector's comments in the previous allowed appeal for the permitted development. In particular, the Inspector concurred with the favourable conclusions of the appellant's landscape and visual appraisal and that the development would appear as a contiguous extension of the built-up area. However, he still concluded that the proposal would conflict to some extent with LP Policy C7, which sought to resist development that would cause harm to the topography and character of the landscape. Moreover, his comments were made on a scheme that would have enabled the appeal site to be substantially landscaped as informal open space. Therefore, the circumstances are different and in any case, I have considered the appeal on its particular planning merits.
20. In conclusion, the development would harm the character and appearance of the surrounding area given the countryside setting to the village. Consequently, the proposal would be contrary to Policy C8 of the LP and Policies 1: Village Categorisation, ESD13 and ESD15 of the LP Part 1 for all the reasons indicated above.

Informal open space

21. The proposal would result in the loss of informal open space that was part of a permitted residential development.
22. LP Part 1 Policy BSC 10 "Open Space, Outdoor Sport and Recreation Provision" states that the Council will work to ensure sufficient quantity and quality of,

convenient access to open space, sport and recreation provision is secured through a number of measures. This includes protecting existing sites.

23. The appellant maintains that there is no requirement to maintain the open space on the site. The Council indicate that the appellant is obligated under a previous legal agreement to provide it but this does not provide evidence of need, and the need for the open space may have changed since the date of the agreement. In this regard, there is no up-to-date policy assessment regarding deficiencies or surpluses of open space in the area for me to assess whether the need for the space to serve recreational needs is justified. Therefore, in the absence of any evidence to counter the appellant's view, I am not persuaded that the loss of the informal open space would be harmful and conflict with LP Part 1 Policy BSC 10.

S106 agreement

24. The legal agreement would secure contributions for education (£44,475) and transport (£7,000), and affordable housing provision on the site. The education contribution would be put towards the enlargement of Chesterton Primary School whilst the transport contribution would be used for improvements towards cycle access between Chesterton and Bicester Park and Ride. The affordable housing contribution would secure four affordable dwellings on the site. The County Council has provided a written justification for the need and costs for the education and transport infrastructure, and there are fewer than 5 obligations in place so satisfying Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010. The affordable housing would meet a need identified under LP Part 1 Policy BSC 3 "Affordable Housing". For these reasons, I am satisfied that the obligations within the agreement meet the statutory tests under Regulation 122 of the CIL Regulations.

Presumption in favour of sustainable development

25. The Framework states that at its heart, there is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-making. There are three dimensions to sustainable development, economic, social and environmental.
26. In the economic dimension, the appeal proposal would increase housing supply and choice so contributing towards economic growth. The provision of education and transport infrastructure, and affordable housing would further support economic growth. In the social dimension, the housing would supply housing for present and future generations, including affordable housing. The designation of Chesterton as a Service Village A under LP Part 1 Policy Villages: 1 Categorisation also indicates it to be one of most sustainable settlements to accommodate 'minor development' and therefore, there would be good accessibility to services and facilities.
27. In weighing up these benefits, affordable housing is a significant benefit given the need identified by LP Part 1 Policy BSC 3. However, the significance of the contribution of the dwellings to increasing the supply of housing is reduced given that the five year housing land supply has not been found to be deficient. In the environmental dimension, there would be harm to the character and appearance of the area given its location on the periphery of the village adjacent to the countryside. A Core Planning Principle of the Framework

states planning should take account of different areas and recognise the intrinsic character and beauty of the countryside. By reason of the scale and location of the proposal, the intrusion into the countryside would be great and of some considerable weight given the policy in the Framework. For all these reasons, the environmental harm would not be outweighed by the economic and social benefits and the presumption in favour would not apply.

Other matters

28. Officers originally recommended permission for the application but subsequently recommended a refusal upon a deferral at committee. Although this change of recommendation is unfortunate, the Council has put forward evidence to support its refusal of the application and now has a recently adopted LP Part 1. For this reason, this procedural matter is not determinative and in any case, the proposal has been determined on its particular planning merits based on the evidence put forward to me.

Conclusion

29. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The proposal would harm the character and appearance of the surrounding area in conflict with LP Policy C8 and LP Part 1 Policies Villages 1: Village Categorisation, ESD13 and ESD15, and the development plan as a whole. The presumption in favour of sustainable development would not apply for the reasons previously indicated. There would be some affordable housing provided but the number of units would not be sufficient to outweigh the harm to the character and appearance of the area and conflict of the proposal with the development plan.
30. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR