



Appeal Decision

Hearing Held on 19 November 2019

Site visit made on 20 November 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal Ref: APP/J0405/W/19/3234021

Land South of Hogshaw Road, Granborough MK18 3NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr J Curtis of JFC Developments Limited against Aylesbury Vale District Council.
 - The application Ref: 18/04496/APP, is dated 10 December 2018.
 - The development proposed is the erection of 17 dwellings and associated works.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The emerging Vale of Aylesbury Local Plan (VALP) is currently at an advanced stage in its preparation. However, the evidence before me indicates that there are concerns over the soundness of the draft plan. Neither main party has sought to rely on any of the policies of the draft plan and they agree that it should be afforded only limited weight in the determination of this appeal. I concur with that assessment and, accordingly, have afforded the VALP only limited weight in the determination of this appeal.
3. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.

Background and Main Issues

4. The Appellant has submitted this appeal on the basis of non-determination of the planning application. Following the submission of the appeal against non-determination, the Council has identified the reasons the local planning authority would have given to refuse planning permission. The Appellant has seen these details and has had the opportunity to respond.
5. In light of the submissions made in this appeal, the main issues are:
 - The effect of the proposed development on the character and appearance of the surrounding area;

- Whether the proposed development is in a suitable location for housing, with particular reference to the accessibility of services and facilities and to the reliance on motor vehicles;
- The effect of the proposed development on Archaeology;
- The effect of the proposed development on Ecology; and,
- Whether the proposed development makes adequate provision for any additional need for sport and leisure facilities and education provision.

Reasons

Character and Appearance

6. The proposed development seeks to introduce a number of residential dwellings arranged around two distinct cul-de-sacs and which would be accessed via Sovereign Close and Church Lane. The appeal scheme would create a new settlement edge to the west of Granborough, with the site occupying a significant portion of the eastern section of the abovementioned substantial area of agricultural land. Whilst I acknowledge that the site was identified within a recent Housing and Economic Land Availability Assessment (HELAA) as a site suitable for up to forty residential units, the HELAA makes it clear that it does not allocate sites for development nor considers whether individual sites are acceptable for development.
7. The appeal proposal would alter the agricultural appearance of the site to that of a domestic residential one and, consequently, would have an urbanising effect on this location. Whilst I acknowledge that there is built development to the east of the site, the site is surrounded to the north, west and southwest by a pattern of substantial agricultural fields which, in my view, help define the site's location within the countryside. Consequently, the scheme would appear as an encroachment into the open countryside. This would represent an undue visual intrusion into the open countryside and would thereby detract from the predominately rural character of the surrounding area.
8. The change to the rural character and appearance of the site which would result from the development, would be most evident to those travelling along the public footpath which runs diagonally from southeast to the northwest of the field and which would continue through part of the proposed development closest to the proposed point of access onto Church Lane. Here, visitors currently experience uninterrupted views across the network of agricultural fields which surround the site to the north and west, and this view would be dramatically altered by the proposal with visitors travelling through part of the new development before entering into more open land beyond the appeal site.
9. Further to the above, the removal of sections of established hedgerow in order to provide suitable points of access, would further erode the rural appearance of the area and would be detrimental to its character. Whilst I acknowledge that the scheme would provide additional planting and landscaping which may help assist in screening the proposal from views close to the appeal site, such planting will take time to establish itself and consequently would not provide sufficient mitigation to the harm to the character and appearance of the surrounding area.

10. I therefore conclude that the proposal would result in harm to the character and appearance of the surrounding area and would be harmful to the intrinsic character and beauty of the countryside. The proposal would conflict with Policy GP.35 of the Aylesbury Vale District Local Plan Part 1 (2004) (the Local Plan) which, amongst other things, seeks to ensure that development respects and complements the natural qualities and features of the surrounding area. Furthermore, the appeal scheme would not accord with paragraph 170 of the Framework which requires that development recognises the intrinsic character and beauty of the countryside and should contribute to and enhance the natural local environment.

Accessibility of Services and Facilities

11. Granborough is designated as a 'smaller village' in the Council's Settlement Hierarchy Assessment 2017, which is defined as having a small population with limited or no services or facilities.
12. Whilst I acknowledge the Appellant's submissions with regards to further assessment of village services and the potential for smaller villages such as Granborough to be elevated to a higher category in terms of settlement hierarchy, from the evidence before me and based upon observations made during my site visit, Granborough currently has a very limited range of facilities and services. These include a public house, church, a village hall and a community play area all of which are within walking distance of the site mainly along established highway footpaths.
13. Bus stops within Granborough are situated a short walk from the site on Winslow Road, providing some links to the larger settlements of Winslow and North Marston. However, the evidence before me indicates that whilst services from these bus stops are relatively frequent, there are only very limited early morning and late evening services. As such, future residents would be likely to depend on the private car to reach essential education services and employment opportunities available in nearby larger settlements.
14. Paragraph 103 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, in this instance future residents of the appeal scheme would be likely to be heavily reliant upon private vehicles in order to access day to day facilities that are simply not available within Granborough. The proposal would, in my view, contribute to a pattern of development that would be likely to cause environmental harm as a result of increased car journeys and hence carbon emissions.
15. Consequently, the site would not be in the optimum location to maximise the use of walking, cycling or public transport to access services and facilities to meet daily needs. I therefore conclude that the proposal would not accord with paragraphs 103 and 108 of the Framework in terms of reducing the need to travel.

Archaeology

16. Consultation responses were received to the planning application, from the Archaeology Officer at Buckinghamshire County Council (the BCC) and from Historic England. These, in conjunction with the findings and submissions in

relation to an earlier outline planning application¹ (the Outline Application) relevant to the appeal site, indicate that archaeological remains relating to a sunken medieval village may be found on sites in and around Granborough.

17. In this respect, I am informed that the northern section of the site lies within an archaeological notification area and that the said consultees regard this area of the site as falling within an area with the potential for significant archaeological findings.
18. The evidence before me indicates that the layout of the scheme was not informed by any investigation or evaluation of any potential archaeological remains at the site. Whilst I acknowledge that the Council's Officers comments with regards to further evaluations and assessments being subject to conditions in respect of the Outline Application, the Outline Application did not consider layout and therefore, in that instance, adjustments could have been made following proper archaeological evaluation of the site. However, the appeal scheme is for full planning permission where layout would be fixed and, therefore, no adjustments could be made to the layout of the appeal scheme in the event that archaeological evaluations demonstrated that there were remains on site which would require preservation in situ.
19. Consequently, whilst the Appellant has confirmed that they would agree to a pre-commencement condition which would require an evaluation to take place before any works start, it is possible that this could reveal archaeological remains that justify preservation in situ. If that was the case, it may not be possible to carry out the development in the layout proposed. Imposition of the Appellant's suggested pre-commencement condition would potentially make the development undeliverable, and therefore it would be unreasonable to impose it.
20. In light of the above, there is a potential risk that it would harm an important archaeological heritage asset. Accordingly, the appeal proposal would conflict with Policy GP.59 of the Local Plan and would fail to accord with paragraphs 189, 190 and 192 of the Framework which, amongst other matters, highlights the importance of sustaining and enhancing the significance of heritage assets and expects developers to submit appropriate assessments where there is potential for heritage assets with archaeological interest.

Ecology

21. In response to initial concerns raised by the Council regarding ecology, the Appellant submitted a revised Ecological Enhancement and Management Plan (the EEMP). In this respect, the Council considered that, following receipt of the EEMP, a number of the concerns no longer applied with the exception that measures required for protected and priority habitats and species had not been fully addressed, specifically with regards to the potential impact on Great Crested Newts (GCNs). GCNs are a European Protected Species under Schedule 2 of the Conservation of Habitats and Species Regulations 2017.
22. At the hearing, the Appellant's environmental and ecology agent confirmed that it was their belief that the site contained no protected species such as GCNs and that no such amphibians had been found on site visits conducted in January and July of this year. The ecology agent maintained that, as the appeal

¹ Local Planning Authority Reference: 17/03624/AOP

site consisted mainly of grazed pasture land, the site would be an unsuitable habitat for GCNs, and that the EEMP included details of the measures that would be taken in the event that, during works on the land, any GCNs were discovered at the site. Furthermore, the Appellant maintained that any additional assessments required in respect of the potential impact on protected species, could be adequately dealt by the imposition of pre-commencement conditions.

23. The evidence provided to me at the hearing indicated that the appeal site falls within an area which the Council has designated as a 'Red Impact Zone'. The Council confirmed that the designation of this zone as being within an area where there was the potential for CGNs. This evidence was disputed by the Appellant who maintained that the site did not exhibit the usual characteristics of where CGNs would be found and the designation of this site was part of a broad brush approach by the Council to the area and which did not specifically apply to the site.
24. At the hearing, the Appellant maintained that there were ponds within the area where CGNs could be found but that these were located approximately 650 metres away from the site. This was disputed by the Council who advised that there were some potential ponds where GCNs could be found much closer to the site and within 500 metres.
25. During my site visits, I noted that there were a number of ponds within the gardens of some dwellings within Sovereign Close and also adjacent to the appeal site, and it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by development, is established before planning permission is granted.
26. In this instance, whilst I was provided with verbal submissions at the hearing from the Appellant that no CGNs were found during visits to the site, no evidence in the form of written reports which detailed matters such as the date, timing, prevailing weather conditions or other important factors, were submitted to support these statements. I cannot therefore be sure that CGNs are not present on the site or would be likely to be affected by the proposed development.
27. For the above reasons, and based upon the evidence before me, I am unable to conclude whether there is a reasonable likelihood of CGN being present at the site, or that in the event that CGNs were found, whether additional mitigation or protection measures would be required. In my view, the Appellant has failed to provide the necessary information to determine whether CGNs are present on site or nearby, or how this site may be used by any such CGNs. Without this information it is not possible to assess what avoidance, mitigation or compensation measures may be necessary to protect this species or its habitat.
28. The Appellant has provided a copy of a planning application response from the Council, dated 3 October 2019, which the Appellant maintains confirms that the Council consider that no further ecological assessments are necessary. However, the details provided to me relate to another planning application reference² and do not apply to this site. In relation to the appeal scheme, I do not consider this is a matter that can be satisfactorily addressed through a

² Planning Application Reference: 18/04589/APP

subsequent condition requiring further information, as such information could raise matters that bring into question the merits of the scheme as a whole.

29. On the basis of the available information, there is a reasonable likelihood that protected species may be present on site. Consequently, and in the absence of substantive evidence demonstrating otherwise, or measures to mitigate against the effects of the proposal, I conclude that the proposal would have an adverse impact on Ecology. It would therefore fail to accord with paragraph 170 of the Framework which, amongst other things, requires that development minimises the impact on biodiversity.

Planning Obligation

30. At the hearing, the main parties confirmed that it was their intention to provide deeds pursuant to Section 106 of the Town and Country Planning Act 1990 which would secure the planning obligations that were necessary to make the appeal proposal acceptable in planning terms. It was put to me that the details of such obligations had been agreed in principle and that the relevant deeds were in the process of being completed and executed. Consequently, it was agreed that further time would be provided in order that the said obligations could be completed. However, following expiry of the permitted time extension and at the date upon which this appeal has been determined, no such completed obligations have been provided.
31. Paragraph 56 of the Framework explains that planning obligations must only be sought where they meet all of the following tests as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations (CIL Regs) 2010, as amended: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
32. Policies GP.86, GP.87 and GP.88 of the Local Plan requires provision be made in relation to outdoor play space and equipped play areas. Policies GP.90, GP.91 and GP.94 requires that provision be made in respect of informal amenity space, sports and community facilities. Policy GP.2 concerns affordable housing provision which, in this instance, indicates that the proposed development should provide a minimum of 30% affordable housing. Furthermore, the evidence before me indicates and confirms that financial contributions towards education provision are required in respect of the appeal scheme. The Appellant has confirmed that they are willing to provide such a financial contribution subject to a completed planning obligation.
33. On the basis of the evidence submitted in relation to this appeal, I am satisfied that it has been demonstrated that the above contributions are reasonable and necessary. As noted above, no legal agreement has been submitted as part of this appeal and, consequently, in the absence of any legal agreements which secure the above requirements, the proposal would conflict with Policies GP.2, GP.86, GP.87, GP.88, GP.90, GP.91 and GP.94. Furthermore, the appeal scheme would not accord with the provisions of the Framework with regards to planning obligations.
34. It has been put to me by the Appellant that this matter could be resolved by the imposition of a negatively worded condition requiring that the Appellant enter into a planning obligation. However, the Planning Practice Guidance (the

PPG) states that³, 'A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.'

35. The PPG continues: 'However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).' The appeal scheme does not fall into the category of a complex or strategically important development. Therefore, given the advice in the PPG, it would not be appropriate to seek to secure such a legal agreement by condition.

Planning Balance

36. It is accepted by the Council that, whilst it can currently demonstrate a sufficient five year supply of deliverable housing sites, the relevant policies within the Local Plan for the supply of housing are now out of date. Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. For decision making this means that where the development plan is absent, silent or relevant policies are out of date, planning permission will be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Paragraph 8 of the Framework provides that the concept of sustainable development comprises three mutually dependent dimensions – being the economic, social and environmental elements of the proposal.
37. The Appellant considers that the appeal scheme would provide social and economic benefits through contributing to the supply and mix of housing in the area, providing construction jobs, supporting local services and facilities through new residents. These are matters to which I attach moderate weight by reason of the scale of the proposed development.
38. Whilst financial contributions towards local infrastructure and provision of affordable housing are also put forward as a potential benefits, for the reasons given above, no mechanism currently exists which would secure any such contributions or the provision of affordable housing at the appeal site. Accordingly, I give no weight to these factors in the determination of this appeal.
39. In environmental terms, I acknowledge the Appellant's submissions that provision of additional planting at the site would amount to an environmental benefit and I attach moderate weight to this consideration. However, I have found that the proposed development would cause harm to the character and appearance of the area, with potential future residents being likely to be heavily reliant on use of private motor vehicles to access everyday services and

³ Paragraph: 010 Reference ID: 21a-010-20190723

facilities. This would not accord with the environmental dimension of sustainable development.

40. Furthermore, the proposal would have a harmful impact in respect of ecological matters and would have the potential to harm the significance of a site of archaeological interest which may be of national importance. In this case, the scheme would conflict with the objectives set out in the Framework and the great weight it places on conserving ecological and archaeological assets in an appropriate manner. These are matters to which I attach significant and substantial weight in the determination of this appeal.
41. The harm set out above would conflict with the environmental and social objectives of sustainable development and, in my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the Framework when taken as a whole. The proposal would not therefore amount to sustainable development in the terms of the Framework.

Conclusion

42. For the reasons given above, I conclude that the appeal should be dismissed and that planning permission is refused.

A Spencer-Peet

INSPECTOR

APPEARANCES

FOR THE APPELLANT

J Curtis	JFC Development Limited
J Durbin	Jon Durbin Associates Limited
A Beaumont	AA Environmental Limited

FOR THE LOCAL AUTHORITY

J Bellars	Aylesbury Vale District Council
M Davey	Aylesbury Vale District Council

INTERESTED PERSONS

1. M Scholes
2. A Scholes
3. P Oakland
4. S Jennings
5. D Jennings
6. P Coates
7. E Woods
8. P Lynch
9. D Lynch
10. E O'Keeffe

DOCUMENTS SUBMITTED AT HEARING

1. Letters of Notification dated 18 October 2019.
2. Additional Appellant's Documents Folder including appendices.
3. Copy Letter from J Franklin dated 18th November 2019.