



Appeal Decision

Site visit made on 4 May 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/U3935/W/21/3284027

Land to the east of Berricot Lane, Badbury, Wiltshire, Grid Ref Easting: 419525, Grid Ref Northing: 180650

- 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 Bower Mapson Homes Limited against the decision of Swindon Borough Council.
 - The application Ref S/19/1755/CHHO, dated 26 November 2019, was refused by notice dated 13 April 2021.
 - The development proposed is the erection of 11 no. dwellings and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the planning application the proposed development was revised to reduce the number of dwellings proposed. To reflect that, I have taken the description of development from the appeal form and decision notice rather than that given on the original planning application form.
3. A legal agreement under section 106 of the Town and Country Planning Act 1990 (s106 agreement) dated 19 May 2022 has been submitted. This includes obligations to provide 4 affordable homes as part of the scheme, on-site ecological enhancement measures and financial contributions towards the provision of off-site allotments and recreation facilities. I shall consider the legal agreement later in this decision.

Main Issues

4. The main issues are:
 - Whether the proposed site would be a suitable location for residential development having regard to local planning policies for housing and accessibility;
 - The effect of the proposal on the character and appearance of the area having particular regard to (1) the significance of nearby listed buildings, the Badbury Conservation Area and non-designated heritage assets and (2) the special qualities of the North Wessex Downs Area of Outstanding Natural Beauty (AONB), and;
 - If harm arises, whether this is outweighed by other material considerations.

Reasons

Location and accessibility

5. Policy SD2 of the Swindon Borough Local Plan 2026, March 2015 (LP) outlines a development strategy for the Borough. It generally seeks to concentrate development in the urban area of Swindon. In rural areas, development will be located primarily at named settlements stated to be the most accessible rural settlements with the largest range of facilities. Development that is proportionate to the size and function of other villages is supported within the defined rural settlement boundaries in the development plan. Development outside of those areas is only supported in specified circumstances.
6. The strategic approach to directing most development to those settlements that benefit from a wider range of services and public transport provision is reinforced by policy TR2(a) of the LP. This stipulates that new development should be located and designed to reduce the need to travel and to encourage the use of sustainable transport alternatives, particularly walking and cycling, and provide the potential to maximise bus travel. This approach generally aligns with paragraph 105 of the National Planning Policy Framework (the Framework) which indicates that the planning system should actively manage growth in support of promoting sustainable transport objectives.
7. The appellant does not dispute that the appeal site lies outside of the rural settlement boundary for Badbury and therefore, it is in a rural and countryside location for the purposes of the LP. Neither is it expressly put to me that the proposed residential development would fall within any of the specified exceptions that would garner policy support as listed in policy SD2. Hence, on the face of it, the proposal would conflict with the Sustainable Development Strategy outlined in the LP.
8. The proposal is for 11 houses on land adjacent to the settlement boundary for Badbury. Very limited facilities are provided within the small settlement itself. Therefore, future occupants of the dwellings would be likely to have a range of travel requirements in order to access places of education and employment as well as health, recreational and shopping facilities further afield.
9. The site is approximately half a mile from bus stops on the A346 which benefit from a regular service to Swindon, where there are a wide range of facilities and employment opportunities. However, notwithstanding the presence of a footway on the A346, the pedestrian route from Badbury to the A346 would involve walking along a lane with no footway and limited lighting. It would also necessitate crossing the busy A346 to reach the westernmost bus stop.
10. The route to the nearest primary school and facilities at Chiseldon would involve a similar route and the crossing of the A346. Combined with the distance, these factors mean that the walking environment to the nearest bus facilities would not be particularly inviting for pedestrians and consequently, would make their routine use less likely. The presence of the A346 presents a notable physical obstacle to reaching Chiseldon that is likely to be off-putting to less than confident cyclists and more vulnerable pedestrians. Hence, taking these factors together, it seems likely that given the choice, future occupants of the development would opt to use the private car in preference to other modes of travel. In reaching this view, I have had regard to the paper prepared

by PFA Consulting¹. I acknowledge that it would be possible to walk and cycle to some facilities but due to the factors highlighted, it would not be particularly convenient or pleasant to do so. As such, this falls short of encouraging the use of alternatives to the car as required by policy TR2 of the LP.

11. The appellant asserts that other villages have bus stops a similar distance from sites allocated for development in the LP or are being considered for development as part of the emerging local plan. Nevertheless, the process of allocating land for residential development as part of the development plan is complex and will take account of a multiplicity of factors. Consequently, I am not convinced that a meaningful comparison can be made with an unallocated site concentrating only on one factor. Therefore, the similarities with other villages in this regard carries little weight.
12. My attention is also drawn to a planning approval² for new housing recently permitted outside of the settlement boundary for Badbury. It is reasonably clear from the delegated report provided that the Council gave considerable weight in their assessment to the brownfield status of the land as a former builder's yard. Furthermore, it was for markedly fewer dwellings than the appeal proposal. These differences reduce its relevance with the proposal before me. Hence, although it carries some weight in favour of the proposal, this is limited.
13. Reference is also made to an assessment contained in the Swindon Strategic Housing and Land Availability Assessment 2019 (SHELAA) which the appellant asserts is evidence that the appeal site was considered by the Council to be developable. However, this document does not have the status of the development plan. Moreover, the emerging local plan is at an early stage in its preparation and therefore, will be subject to consultation and further scrutiny with regards to the ultimate allocation of development sites. As such, it attracts little weight.
14. Therefore, I find that the location of the site and its limited access to bus services and local facilities would be unlikely to encourage walking and cycling and would not provide meaningful potential to maximise bus travel. Moreover, the development would not align with the development strategy for rural and countryside locations. Accordingly, the proposal would conflict with policies SD2 and TR2 of the LP relating to the location of new housing development. In addition, it would run counter to the requirement in policy SD1 of the LP that development proposals will be accessible by walking, cycling and/or public transport.

Character and appearance, including heritage assets and AONB

15. The appeal site is adjacent to, but outside of the Badbury Conservation Area (CA). The significance of the CA is derived from a combination of factors which include the historic linear winding street pattern and layout of the village, its pastoral setting with views of the surrounding countryside, the prevalent use of local building materials and presence of vernacular thatched downland cottages. These factors are amongst those described as contributing to the

¹ Appendix U, Appellant's Statement of Case

² Planning Reference S/18/1160, Appendix R, Appellant's Statement of Case

special interest of the CA in the Badbury Conservation Area Appraisal and Management Plan, February 2009³ (BCAAMP).

16. There is a concentration of Grade II listed traditional downland cottages in the northern part of the CA. To the south of the appeal site are 24, 28 and 29 Badbury and Badbury Cottage which, with other dwellings, are informally grouped around or near a green at the northern periphery of the village. No. 24 is a small two cell thatched cottage dating from the 18th century or earlier. Nos. 28 and 29 are 17th or early 18th century modest cottages arranged in a row and have a distinctive thatched roof using eyebrow dormers. Badbury cottage also dates from the 18th century. It is of a more generous size, built of Sarcen rubble with a thatched roof, traditional sash windows and a Tudor arch lintel to the doorway.
17. North of the site, but outside of the CA lies another Grade II listed vernacular 18th century cottage, 30 Berricot Lane. It comprises a thatched cottage with a two storey slate roofed extension adjoined to it. Aside from Badbury Cottage, which is a larger dwelling conveying greater status, the mostly thatched cottages are relatively simple rural domestic buildings. The listed buildings mentioned all possess significance and special interest in part due to their architectural form, traditional historic fabric and attractive aesthetic value. Significance and special interest are also derived from the presence and proximity of the nearby rural landscape which generally emphasises the importance of land and agriculture as part of a traditional rural way of life. Nos. 24, 28 and 29 and Badbury Cottage form an important part of the fabric that characterises the CA as a whole and its significance as a designated heritage asset. I have a statutory duty⁴ to give special attention to the desirability of protecting the setting of listed buildings.
18. The appeal site is an area of largely undeveloped land comprising grass with some boundary trees and hedgerows. Due to the presence of vegetation and absence of built form, it has a natural appearance and strong countryside character. Given the topography, it is evident in the foreground when approaching the village and CA from the north along Medbourne Road. Furthermore, some glimpses are possible in gaps in the hedgerow when approaching the CA from Berricot Lane.
19. The proximity of the appeal site to the northern boundary of the CA means that it forms a sensitive part of its rural setting, and thereby positively contributes towards its significance. My observations were that it provides an immediate rural context for the surroundings in which Nos. 24, 28 and 29 and No. 30 are experienced, and to a slightly lesser extent for Badbury Cottage. The proximity and visibility of the appeal site to and from the listed buildings and as part of the wider pastoral backdrop means that it presently makes a positive contribution towards the settings of these designated heritage assets.
20. Reference is also made to 26 Badbury. Although not listed, it is an attractive detached render and brick dwelling with Victorian architectural features. It is recognised as a key building of interest in the BCAAMP. It follows that it has a degree of significance meriting consideration. However, its significance is primarily derived from the aesthetic qualities of the building and how that reflects the evolution of the CA over time. In my view, the appeal site does not

³ Section 3, Banbury Conservation Area Appraisal and Management Plan

⁴ Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

contribute towards its specific significance over and above that already identified for the CA.

21. The proposal would introduce 11 houses broadly arranged as four larger detached houses, a cranked terrace of smaller units and a terrace of dwellings addressing Medbourne Road. The presence and distribution of the structures would encroach into an area generally free from built form and would markedly change the character and appearance of the land resulting in a sizeable northern extension to the small settlement of Badbury. Each dwelling is likely to have associated lighting, boundary treatments, vehicles, outbuildings, domestic paraphernalia and ornamental planting. Consequently, despite the meadow and pond area, proposed planting and existing boundary hedgerows shown on the landscape layout⁵, the strong countryside character would be displaced by a prevailing domestic one.
22. Furthermore, the layout includes a cul-de-sac with a main turning head and private drive offshoots around which the four detached units are arranged. This contrasts with the tighter arrangement of terraces and parking court on the eastern part of the site. Owing to these factors, the overall configuration would possess characteristics more in common with modern suburban residential development than the organic informal linear form generally seen in the CA. As such, it would not successfully integrate with, nor preserve, the pattern of development in the village. Whilst the appellant refers to four other cul-de-sacs within Badbury, my observations were that these gave the impression of rural lanes or informal access drives. None are clearly shown to be of a similar width and serving as many dwellings as the proposal before me.
23. My attention is drawn to the materials and detailing which have been chosen to reflect some of those traditionally seen in Badbury. It is stated that the proposal would reference the historic flavour of Badbury⁶ and share a majority of identified characteristics⁷ with existing housing. However, this would not fully address or outweigh my more fundamental concerns regarding the presence and appearance of an unsympathetic suburban layout in this sensitive context.
24. Furthermore, although the design seeks to use traditional features including for example, dormers and cat-slide roofing, the proposed thatched dwellings are not demonstrably shown to accurately replicate the height and proportions of nearby traditional thatched listed housing. Situated so close to historically authentic examples of listed thatched downland cottages, I am concerned that the proposed thatched dwellings would, by comparison, appear harmfully disproportionate and contrived. Moreover, there appears to be little basis in the settlement pattern at Badbury for the proposed juxtaposition of large, detached units with a cranked terrace, which in this sensitive context would have a jarring effect.
25. The proposals would be apparent from the public right of way towards the north of the site. Moreover, the position of the access to the cul-de-sac on the approach to the settlement and CA would give added prominence to the development, especially at times of the year when hedgerows are not in full leaf. These factors would exacerbate the degree of harm.

⁵ Drawing 069/400 Rev E

⁶ Design Review Panel Report, Appendix M, Appellant's Statement of Case

⁷ Statement of Built Form Resource Ltd, Appendix N, Appellant's Statement of Case

26. In forming my views, I have taken account of the reports from the Design Review Panel and the analytical comparison of design components produced by Built Form Resource Ltd. However, the Swindon Residential Design Guide, Supplementary Planning Document, June 2016 advises that elements within the context work to support the overall character of a place. Together character and context form the essence of place-making. These are matters upon which I must form my own judgement considering the entirety of evidence before me, including my own observations. When the design components of the proposals are considered holistically, the overall composition and scale of development would not be favourable to the rural character and appearance of the area, nor the significance of the designated heritage assets identified.
27. Consequently, I find that the proposal would have an adverse impact on the rural character and appearance of the site that would harm the relationship of the settlement with its natural surroundings. The factors identified would adversely affect the way in which the listed buildings and CA would be experienced. Therefore, the development would fail to preserve the special interest of the Grade II listed buildings and setting of the CA. It follows that there would be some harm to the significance of each as designated heritage assets. However, in all cases, given the relatively moderate scale of the development, this would be less than substantial harm.
28. Paragraph 202 of the Framework states that where the development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Paragraph 199 of the Framework stipulates that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
29. The main public benefit of the proposal would be the provision of 11 energy efficient dwellings in an area where there is a significant shortfall in supply, and in particular the provision of four affordable homes towards the mix of housing. I am mindful that paragraph 69 of the Framework recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area as they are often built out relatively quickly. Hence, these matters attract significant positive weight.
30. In addition, there would be economic benefits arising from the construction of the dwellings as well as the longer term activity associated with future occupants, who may provide support to local businesses and services. The proposal also includes measures to secure biodiversity net gain and footpath connectivity. Nevertheless, the extent of these economic, social and environmental benefits derived from 11 dwellings would be somewhat limited and therefore, these factors attract a commensurate amount of weight in favour of the proposal.
31. Nevertheless, heritage assets are an irreplaceable resource. Overall, I do not consider the sum of wider public benefits sufficient to outweigh the great weight that the less than substantial harm caused to the designated heritage assets carries. Conflict therefore arises with the historic environment protection policies in the Framework.
32. Furthermore, the site is located within the AONB, the special qualities and scenic beauty of which includes expansive rolling chalk downs and a mosaic of woodlands, pasture, heath and historic settlements. The parties disagree as to

whether the proposal amounts to major development for the purposes of paragraph 177 of the Framework, which states that such development should be refused other than in exceptional circumstances. Footnote 60 of the Framework indicates that this is a question of judgement for the decision maker taking into account the nature, scale and setting of the development.

33. Even though the proposal would be a sizeable extension relative to Badbury, 11 dwellings would represent a reasonably moderate scale of domestic development and the size of the site is not extensive. Moreover, it would be set adjacent to the settlement. Overall, I judge that its nature and scale would avoid having a significant adverse effect on the wider AONB. It follows that it would not amount to major development in the AONB for the purposes of the Framework and therefore, the assessment criteria for such development in paragraph 177 would not be engaged. Nevertheless, this finding does not mean that the proposal would avoid harm to the AONB, nor that any harm arising from less than major development is unimportant.
34. The North Wessex Downs AONB Management Plan 2019-2024 identifies⁸ that poorly sited and designed new development that fails to reflect the historic form of settlements and building groups, their character and setting is a key issue for the historic environment. Therefore, for similar reasons to those already outlined that result in harm to the historic environment, the proposal would to an extent detract from the special qualities of the AONB. Having regard to the analysis in the landscape appraisal provided⁹ and my own observations, this would principally affect close and medium range views from the nearby highway and footpath network. Accordingly, there would be localised harm to the special qualities and scenic beauty of the AONB. Paragraph 176 of the Framework stipulates that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB's. Hence, this weighs against the proposal.
35. Therefore, I find that the proposal would be harmful to the rural character and appearance of the area. Moreover, it would fail to preserve or enhance the character and appearance of the setting of the CA, and by eroding the rural qualities of the settings of nearby listed buildings, it would be detrimental to their significance as designated heritage assets. Furthermore, it would result in localised harm to the special qualities and scenic beauty of the AONB. Consequently, the proposal would be contrary to policies DE1, EN5, EN10 and HA1 of the LP. In combination and amongst other matters, these policies require developments of a high standard of design that respects the character of the surrounding area, avoids adverse effects on elements that contribute positively to the significance of designated heritage assets, and accords with relevant criteria set out in the AONB Management Plan.

Planning Obligations

36. The completed s106 agreement dated 19 May 2022 contains measures to provide 4 units as affordable housing. This would exceed the 30% requirement set by policy HA2 of the LP. In addition, it is not a matter of dispute between the parties that the measures in the agreement to secure contributions towards the provision of off-site allotments and recreation facilities would be necessary to meet the provisions of policy EN3 of the LP. Moreover, it includes an

⁸ Chapter 5, Paragraph 5.26 g)

⁹ Prepared by Patrick Griffiths: Landscape Architect, October 2019

obligation to provide ecological mitigation and enhancement measures and maintain them in perpetuity to demonstrate biodiversity net gain which is a requirement of policy EN4 of the LP. On the evidence provided, I am satisfied that these obligations are necessary to make the development acceptable in planning terms, that they are directly related to the development and are fairly and reasonably related in scale and kind to the development. I shall take account of them in the overall planning balance.

Other matters

37. Natural England has recently updated its advice¹⁰ in relation to nutrient level pollution in a number of existing and new river basin catchments. The advice finds that an increasing number of waterbodies, in or linked with European Sites, are now deemed to have 'unfavourable' conservation status for the purposes of the Conservation of Habitats and Species Regulations 2017. This identifies the River Lambourn Special Area of Conservation (SAC) and catchment area as an additional habitat site in an unfavourable condition due to excessive nutrients (phosphorus) which requires a Habitats Regulations Assessment and where nutrient neutrality is a potential solution to enable development to proceed. However, given the substantive concerns I have already identified, I have not sought the views or further evidence from the parties on this issue as it would be unlikely to alter the ultimate outcome of my decision.

Planning balance and conclusion

38. The Council does not dispute that it cannot demonstrate a 5-year supply of deliverable housing sites and the evidence before me suggests the shortfall is significant. Paragraph 11 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up-to-date and the presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted balance).
39. Footnote 7 to paragraph 11 d)(i) indicates that the policies relating to designated heritage assets and Areas of Outstanding Natural Beauty are relevant to its application. For the reasons already outlined above, I have found, having undertaken the balancing exercise set out in paragraph 202 of the Framework, that the proposal would result in unjustified harm to the significance of several designated heritage assets. This alone provides a clear reason for refusing the proposal and consequently, the tilted balance in paragraph 11d)(ii) does not apply. As it would make no difference to my finding on this point, it is not necessary to further consider the impact of the harm to the AONB in relation to paragraph 11 d)(i).
40. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations

¹⁰ 16 March 2022

indicate otherwise¹¹. The benefits arising from the proposal include the provision of 11 dwellings to the overall housing supply and mix, of which 4 would be affordable homes. The information provided indicates that the homes are likely to be energy efficient. Given the significant shortfall in housing supply, these matters carry significant weight.

41. In addition, although unquantified, some economic benefits would be associated with the construction and the occupants of the additional dwellings. Moreover, the proposal would secure biodiversity net gain. In view of the relatively moderate scale of the proposal these benefits are likely to be limited in extent. Hence, they attract limited weight.
42. However, the proposal would conflict with policies in the development plan relating to the development strategy for rural and countryside locations, as well as those seeking to protect aspects of the historic and natural environment.
43. I have also found that the development would run counter to the desirability of preserving the setting of listed buildings referred to in statute, as well as historic and natural environment policies within the Framework. These matters attract great weight against allowing the proposals.
44. Accordingly, material considerations would not indicate that the proposal in this case should be determined other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.