



Appeal Decision

Site visit made on 24 January 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2023

Appeal Ref: APP/Q3115/W/22/3297026

Land adjacent to The Orchard, Benson, Oxfordshire OX10 6JB

- 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 Victoria Land against the decision of South Oxfordshire District Council.
 - The application Ref P21/S0882/O, dated 19 February 2021, was refused by notice dated 4 November 2021.
 - The development proposed is described as 'outline application for up to 19 dwellings (including 40% affordable housing), with all matters reserved with the exception of access on land adjacent to The Orchard, Benson'
-

Decision

1. The appeal is allowed and planning permission is granted for up to 19 dwellings (including 40% affordable housing), with all matters reserved with the exception of access at Land adjacent to The Orchard, Benson, Oxfordshire OX10 6JB in accordance with the terms of the application, Ref P21/S0882/O, dated 19 February 2021, subject to the conditions set out in the schedule below.

Application for Costs

2. An application for costs was made by Victoria Land against South Oxfordshire District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The proposal seeks outline permission, with all matters reserved except for access. I have considered the appeal on this basis and have treated any plans in relation to all other matters as illustrative.
4. An agreement under section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal (the S106), signed 10 November 2022. I have taken this into account in reaching my decision.
5. The absence of a section 106 agreement to secure affordable housing and infrastructure formed one of the Council's reasons for refusal. As a completed agreement has been submitted, and as the obligations it contains are not in dispute between the main parties, I have considered the planning obligations together near the end of my decision, rather than as a main issue.
6. During the course of the appeal, the Benson Parish Neighbourhood Plan Review has been 'made' by the Council (the 'BPNP Review'). This now forms part of the development plan and replaces the earlier 2018 version. The Council have also adopted a revised Community Infrastructure Levy (CIL) Charging Schedule and

associated 'Developer Contributions Supplementary Planning Document' (SPD) 2023. I have had regard to these documents in the determination of the appeal.

Main Issues

7. The main issues are:

- whether the site is suitably located for residential development, with particular regard to its accessibility to services and facilities, and;
- the effect of the proposal on the character and appearance of the area, with particular regard to the effects of the development on trees and hedgerows near the site.

Reasons

Accessibility

8. The appeal site comprises a paddock of grassland to the south-western side of Braze Lane and to the north-east of the settlement of Benson. Benson is a Larger Village as defined by the South Oxfordshire Local Plan 2020 (the LP) with a range of shops and facilities. The appeal site adjoins a larger development site to the south and west, where planning permission has been granted for up to 240 homes¹ and associated works including a relief road. Building works have commenced including the construction of housing close to the boundary with the appeal site. The roundabout and associated highways works to the south of the appeal site have been largely completed and are in use².
9. In the absence of a connection from the appeal site into the neighbouring development, future occupiers of the appeal site would need to travel along Braze Lane and the B4009 to access Benson and the facilities and services it contains. I note the previous Inspector considered that, in the absence of a pedestrian link, the appeal site would be isolated from Benson and there would consequently be a heavy reliance on vehicle use by future occupants³.
10. The appellant proposes a new pedestrian route along Braze Lane and the B4009 connecting to the new roundabout. In summary, this would include a new footpath with a minimum width of 1.2m, and associated works to the existing grass verge on Braze Lane, and final details would be agreed with the Highways Authority. While Braze Lane is narrow and unlit, the length of the footpath proposed on this road would be relatively short, and these features would be unlikely to deter future occupants from using it. The width of the path would, in part, fall short of the width recommended by the Oxfordshire Walking Design Standards and Manual for Streets. However, it would nonetheless, be of a width suitable to accommodate a wheelchair user or an adult with a child. Given the level of anticipated footfall, together with the proposed extension to the 30mph speed limit and noting the acceptability of this width to the Highway Authority, I find this to be acceptable.

¹ P17/S1964/O and P21/S0676/RM

² P21/S0105/FUL

³ APP/Q3115/W/18/3219295

11. Given the relatively short distances involved, and together with the circumstances created by the neighbouring development and highway works, the route from the appeal site into Benson would also be attractive to cyclists.
12. In addition to the information provided by the appellant, there has also been a notable change in circumstances since the earlier Inspector's decision, relating to the delivery of the new roundabout and associated works including an amendment to the speed limit on the nearest part of the B4009 and new housing around the roundabout, providing lighting and natural surveillance to part of the route to the appeal site. These features assist further in making the route more attractive to future occupants.
13. The appellant has confirmed the new path would make use of land forming the appeal site, existing highway and land adjacent to the roundabout intended to become adopted highway. I do not have substantive evidence to otherwise doubt the ownership of the land involved. It has also been evidenced that the Highways Authority agree the proposed routing to be acceptable.
14. Overall, I am satisfied that the proposed link from the appeal site to Benson is suitable and deliverable. While it is regrettable that more direct links from the appeal site to the neighbouring development have not been possible, the proposal would not prohibit the creation of such links being created in the future.
15. The S106 includes a mechanism to ensure that prior to commencement of the development, various steps are undertaken including details of the pedestrian link to be provided to the County Council and an associated Section 278 Agreement to be entered into. The S106 would ensure that the development would not be occupied until those agreed works had been undertaken. Given the appellant has demonstrated the works could reasonably be achieved, I am satisfied that the S106 would ensure delivery of the works.
16. In conclusion on this main issue, the site would be suitably located with regard to its accessibility to services and facilities, and future occupants would have reasonable alternatives to private car use. In turn the proposal would comply with policies TRANS2, TRANS4 and TRANS5 of the LP. Together these policies require, among other things, that development is designed to encourage walking and cycling to nearby facilities, provides safe and convenient routes for cyclists and pedestrians, and provides adequate accessibility by all modes of transport.

Character and Appearance

17. The section of Braze Lane which extends north of the B4009 is currently an unlit lane of rural character and bound by grass embankments and hedgerows to both sides, which create a sense of enclosure and give a distinctly rural character.
18. The proposed alterations would introduce more suburban features to the lane, including signage and a new footpath with associated ground works. Despite this, it is evident that the perceived eastern edge of the village of Benson has been extended by virtue of the adjoining development⁴ and this has entailed highways works reaching close to the junction of Braze Lane and the B4009. While the paraphernalia associated with the edge of the village would creep

⁴ 17/S1964/O

further into, and dilute the rural character of Braze Lane to some degree, due to the high enclosing hedgerows, the visual effects would be limited to views from Braze Lane itself. As the effects would be limited to only a short distance of the highway, and given the proximity of other paraphernalia to the highway nearby associated with the adjacent development, I do not find that these works would cause harm to the character or appearance of the area.

19. The works may entail the trimming of the young hedgerow to provide clearance for the footpath. The appellant has provided detailed sections of four locations along the lane which show that the greatest extent of pruning of the hedgerow would need to occur to the north. The evidence suggests the pruning would not need to occur as far into the hedge as the stems, and suggests the use of a 'soft' retaining system where ground works are proposed close to roots. Further to the south, the proposed footpath would move around the root protection zones of the retained trees and a no-dig method of construction could be used. In the absence of substantive evidence to the contrary, the appellant has satisfactorily demonstrated that a solution is available to make those works achievable, without compromising the trees and hedgerow. The final details would be secured via the S106, in agreement with the County Council.
20. The BPNP Review describes a landscape buffer, which has been secured on the allocated sites, and which would secure a green route around the edge of the village and provide a buffer between development and the wider landscape. While the proposal would effectively be on the wrong side of this buffer, the proposal has the ability to deliver open space and landscaping which would be respectful of its position beyond the buffer, particularly as the proposed quantum of housing is described as a maximum. Indeed the S106 would secure a landscaping scheme including buffer strip landscaping and recreational open space amounting to a minimum of 10% of the total site area, and the site could still reasonably contribute to the transition zone between the village and the countryside, and the setting of the village. On the basis of the evidence before me, the position of the appeal site beyond the landscaping buffer would not amount to visual harm, nor harm to the character or appearance of the area.
21. The appeal site is located on the edge of the Parish boundary. However, it would remain separated from the built forms of Rokemarsh by a series of open spaces, and by a notable change in character which is experienced when travelling northwards along Braze Lane. I note the conclusions of the Inspector on the earlier appeal⁵ and the BPNP Review Examiner⁶ that the site would not create coalescence between Benson and Rokemarsh, and I have no strong reason to reach a different conclusion here.
22. The Chilterns Area of Outstanding Natural Beauty (AONB), exists further to the east of the appeal site, and views towards Benson are possible from the edges of the AONB. The village and its rural surroundings form a part of its setting. However, in those views the development of the appeal site would be seen within the context of other residential developments near it, including the new homes behind and the existing houses which exist on Braze Lane. Details of scale (including building height), appearance and layout would be subject to consideration at a later stage as part of reserved matters and I am satisfied that a solution appropriate to the character of the area and the AONB setting

⁵ APP/Q3115/W/18/3219295

⁶ The Report of the Independent Examiner to South Oxfordshire District Council on the Benson Neighbourhood Plan Revision, dated 8th March 2023.

could reasonably be achieved. For these reasons together, the appeal scheme would be sensitively located and would avoid adverse impacts on the setting of the Chilterns AONB, as well as that of the North Wessex Downs to the east.

23. Similarly, any light emissions from the development would be seen in the context of the neighbouring developments, and solutions to minimise the effects, for example through building design and external lighting, could reasonably be addressed at a later stage.
24. For the reasons given, in respect of this main issue, the proposal would not cause harm to the character or appearance of the area, and would conserve and avoid adverse impacts on the nearby North Wessex Downs and the Chilterns AONBs. The proposal would comply with policies DES1 and ENV1 of the LP insofar as they require development to respect the existing landscape character and context, and require development affecting the setting of an AONB to conserve, and where possible enhance, its character and natural beauty.

Planning Obligations

25. Policy INF1 of the LP sets out that development must be served and supported by appropriate on-site and off-site infrastructure and services and that, where required as a consequence of development, these will be sought from developers and secured through planning obligations. I have considered the obligations contained in the S106 in light of the Community Infrastructure Levy (CIL) Regulations and paragraph 57 of the National Planning Policy Framework (the Framework).

Affordable Housing:

26. Policy H9 of the LP seeks an affordable housing contribution of 40% on all sites with a net gain of 10 or more dwellings. Based on the evidence I am satisfied that there is an identified need for such homes. The proposal includes such a contribution of 40%, plus a financial contribution to account for a fractional requirement which has been calculated in accordance with methodology set out in the Council's Viability Study⁷. This would comply with the requirements of Policy H9 of the LP. Based on the evidence, I am satisfied that those requirements meet the tests for an obligation.
27. The S106 includes an option for provision of 25% of affordable homes to be First Homes and the inclusion of this option has been agreed between the parties. Planning Practice Guidance (PPG) details transition periods for decision making in respect of First Homes. I do not have evidence before me to suggest that any of the circumstances where the First Homes policy would not apply⁸ are applicable here. As such, I find this provision to be necessary and compliant with the national policy requirement.

Transport Infrastructure:

28. Benson Relief Road Contribution: The S106 would secure £129,012 towards the design and construction of the relief road. The BPNP Review identifies that the relief road was the central piece of new transport infrastructure for Benson,

⁷ South Oxfordshire: 'Affordable Housing Viability Study: Addendum Report following introduction of 'Affordable Rent' tenure' 2011

⁸ PPG Paragraph: 020 Reference ID: 70-020-20210524

and the golden thread of the original Neighbourhood Plan. However, it goes on to report that all sections of the road are committed to, and fully funded by developers. On this basis, and as the BPNP Review does not include a policy which requires a contribution to the relief road from this site, I do not have evidence that this contribution is necessary to make the development acceptable in planning terms. As such I am not satisfied that this contribution meets the relevant tests for an obligation.

29. Public Transport Contribution: The County Council have described the existing level of services and identified areas where additional funds are required, and which are necessary to encourage use of public transport and sustainable means of travel. The contribution of £19,000 has been calculated having regard to the relevant costs and overall this obligation meets the required tests.
30. Section 278 works: This obligation is necessary to secure the pedestrian links from the appeal site to the village, with the associated highways works including signage, amendments to speed limits and street markings. In light of my assessment on this matter above, this obligation is necessary and meets the required tests.

Recycling and Street Naming Contributions:

31. The S106 secures contributions of £186 and £268 per dwelling towards provision of waste and recycling bins, and street naming and numbering respectively. The need for these contributions is described within the Developer Contributions SPD and falls under the provisions of Policy INF1. I am also satisfied that these obligations meet the required tests.

Open Space:

32. The agreement secures the provision of a landscaping scheme including ongoing maintenance, open space and a play area. The need for which is demonstrated by Policy CF5 of the LP and the Developer Contributions SPD. I am satisfied that these obligations are necessary and adhere to the relevant tests.

Monitoring Fees:

33. The obligations include monitoring fees payable to both the District and County Council, and include a First Homes monitoring fee. While I agree that, given the nature and extent of the contributions, a general monitoring fee may be appropriate, there is little detail relating to how those contributions have been calculated. As such I am unable to conclude that they are reasonably related in scale and kind to the development, and I am unable to have regard to these contributions in reaching my decision.
34. Taking the above matters into consideration, it has not been demonstrated that the obligations relating to the relief road and the monitoring fees meet the required tests and I am unable to take those into account in determining the appeal.

Other Matters

35. The BPNP Review 2023 no longer includes the appeal site as one allocated for housing and it now lies outside the defined settlement boundary. Policy NP1 of the BPNP Review states that new residential development will be focused in the

three housing allocations, and gives circumstances where other developments within and outside the settlement boundaries will be supported. It states that proposals for development outside the settlement boundaries will only be supported if they are consistent with the LP policies for management of the countryside, and other policies in that revised Plan.

36. For the reasons given above, I have not found conflict with Policy ENV1 of the LP, which relates to landscape and the countryside. No additional policies relating to the management of the countryside are before me and I do not have evidence relating to further conflict with policies relating to the management of the countryside. For these reasons the proposal would not be in conflict with the housing policy of the BPNP Review. Neither do I find conflict with the housing policy relating to Larger Villages in the LP, particularly given the site is identified as being outside the settlement boundary.
37. While I note the Examiner's other comments regarding the appeal site in the BPNP Review⁹, these are made in the context of the site being considered as an allocated site. My decision is based on the evidence before me, and the merits of the appeal scheme including the findings of my site visit.
38. There is not evidence to demonstrate that the residual cumulative impacts of the proposal on the road network would be severe, nor that there would be an unacceptable impact on highway safety, particularly given the evidence from the Highway Authority on these matters. As such, in line with paragraph 111 of the Framework, permission should not be prevented on this basis.
39. I note the significant local concerns relating to sewage and drainage pressures. In light of the consultation responses, a satisfactory solution could reasonably be achieved and there is not substantive evidence to show this could not be the case. In respect of additional pressure on nearby schools, the County Council have commented that school expansions are planned using CIL receipts. As such no mitigation is required. In light of the contributions discussed above, there is not strong evidence to suggest that additional pressure on other local infrastructure would otherwise be unacceptable as a result of this proposal.
40. I do not have detailed evidence relating to conflict with the neighbouring Berrick Salcome Neighbourhood Plan, and the site lies within the administrative boundary of the BPNP Review. I do not therefore ascribe weight to any alleged conflict with the neighbouring Neighbourhood Plan.
41. The Benson Conservation Area exists to the south west of the site. Due to the distance of the appeal site from that Conservation Area, and its separation by the adjacent housing development and highways, the proposal would not impact upon its setting. For the same reasons, given the distance and nature of the separation from the Grade II listed buildings of Horse and Harrow, Quakers Corner and Thatched Cottage, I do not consider the site forms a part of their setting.
42. A policy has been brought to my attention relating to safeguarding of minerals in the area. I note this did not form a part of the Council's reason for refusal and I have little information relating to this designation, its intentions, or the likelihood of minerals otherwise being extracted from the site. On the basis of the evidence before me, I do not find harm in this respect.

⁹ The Report of the Independent Examiner to South Oxfordshire District Council on the Benson Neighbourhood Plan Revision, dated 8th March 2023.

43. The appellant has drawn my attention to a recent appeal decision¹⁰ which found the Council do not have a 5 year housing land supply. The Inspector found the Council to have approximately 4.74 years of supply, and this has not been disputed by the Council. As such, the provisions of paragraph 11d) of the Framework apply. For the reasons given above, I have not found that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, nor have I found any adverse impacts of granting planning permission, when assessed against the policies in the Framework as a whole. As such, the appeal scheme also benefits from the presumption in favour of sustainable development given in the Framework.

Conditions

44. The Council has provided a list of suggested conditions and I have considered these in light of the PPG. For clarity and to ensure compliance with the PPG, I have amended some of the Council's wording, and amalgamated some without altering their purpose.
45. A condition is necessary to secure matters of appearance, landscaping, layout and scale, with the standard conditions specifying when the reserved matters applications must be submitted and when the development must be commenced by. A condition listing the approved drawings in relation to access is also necessary to provide clarity.
46. More detailed drawings of the access itself are necessary to safeguard highway and pedestrian safety. As pedestrian access to the adjoining development is not proposed under this appeal I have removed this requirement. Given the characteristics of Braze Lane and proximity of neighbouring buildings, details of construction management should be provided in the interests of highway safety and to protect the living conditions of nearby occupants.
47. To ensure satisfactory drainage and foul drainage solutions are achieved, details should be submitted for approval. These should be addressed before the development commences to ensure they are integral to the development and considered at an early stage. I have simplified the wording and removed elements that would overlap with other requirements. As those conditions require works to be carried out in accordance with the approved details, I do not find the submission of further post-construction details to be necessary.
48. To ensure delivery of appropriate biodiversity enhancements, details are also conditioned and I have simplified the wording to make it less prescriptive. For environmental reasons, details of measures to reduce carbon emissions, to provide cycle storage and appropriate broadband connectivity across the site should also be provided. Similarly, I do not find post-construction verification reports to be necessary. To ensure satisfactory living conditions for future occupants, noise mitigation should be installed to protect against noise disturbance.
49. The appellant has provided a desk study which identifies the potential for archaeological remains on the site, undertaken in accordance with an earlier written scheme of investigation. As such a further written study is not

¹⁰ APP/Q3115/W/22/3296061

necessary. However, to ensure appropriate investigation, evaluation and mitigation, a further programme of works is conditioned.

50. As details of appearance and scale are reserved for consideration under a later submission, it is not necessary to condition details of materials, ground levels or building heights, for which the reasons given relate to visual appearance. Similarly, details of the landscaping and planting would fall under the landscaping required as part of the reserved matters condition. In addition, the S106 includes a requirement for a management plan of the public open space and area of play and there is not evidence to suggest this needs to be supplemented by a condition.
51. There is little evidence relating to the existing trees on the site, nor is there information relating to the quality of those on the northern site boundary. On this basis I do not find it necessary to condition details of tree protection measures on the site itself. Other trees and hedges relating to the works to the highway lie outside the area of the appeal site and details of the extent of those works would instead be secured by the S106. In the absence of a planning reason for the condition, electric vehicle charging points are not conditioned, and now fall under building regulations.
52. There is not evidence relating to the specific need for a Green Travel Plan. In light of my assessment above and the link to the village, together with a condition relating to cycle parking and a contribution to public transport, it would not be necessary. As I observed the works at nearby junctions, and the roundabout to the south, have been undertaken, conditions in this regard are also unnecessary.

Conclusion

53. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans only insofar as they relate to access: 3227.101, 8200788/6102.

- 5) No development shall commence until details of a sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include but not be limited to:
- Consideration of the SuDS hierarchy for discharging surface water drainage, demonstrated with design plans, details and calculations;
 - Design calculations for the proposed SuDS features, for all relevant return periods demonstrating the critical duration used for design;
 - Permeability tests to BRE 365 to determine the soakage potential for SuDS;
 - Details that the proposed infiltration SuDS feature is not located in contaminated land and that a 1m freeboard is provided between the groundwater level and the base on the infiltration SuDS feature, or for open SuDS features, a freeboard of 300mm above the maximum water level for the critical storm event of 1 in 100 year + 40%.
 - Maintenance and management details;
 - Details of overland flood flow paths and their maintenance, including an exceedance flow route plan for the site with levels;
 - Measures to mitigate the risk of surface water run-off polluting waters.

The development shall be carried out in accordance with the approved details and the development shall not be occupied until the drainage works to serve that part of the development have been carried out in full.

- 6) No development shall commence until details of a foul drainage scheme for the site has been submitted to and approved in writing by the local planning authority. This shall have regard to the Glanville Technical Note ref 006_8200788_LM_Technical Note dated 16 August 2021 and supporting drawing 8200788-100 P1. The development shall be carried out in accordance with the approved details and it shall not be occupied until the foul drainage works to serve that part of the development have been carried out in full.
- 7) Prior to the commencement of any development, a construction management plan shall be submitted to and approved in writing by the local planning authority. This shall include but not be limited to details of:
- access during construction;
 - areas for parking of vehicles, loading and unloading and storage of materials;
 - wheel washing facilities and measures to control the emission of dust and dirt, and;
 - hours of construction including deliveries.

The approved plan shall be adhered to throughout the construction process.

- 8) Prior to the commencement of development on the site, except for works necessary for any archaeological investigation, a programme of archaeological investigation, evaluation and mitigation shall be submitted to and approved in writing by the local planning authority. This shall include details of processing, research and analysis to produce an accessible and useable archive together with a full report which shall be

submitted to the local planning authority within two years of the completion of archaeological field work. The development shall be carried out in accordance with the approved details.

- 9) Prior to the commencement of development, a Biodiversity Enhancement Plan shall be submitted to, and approved in writing by, the local planning authority. This shall have regard to the recommendations of the Preliminary Ecological Appraisal by Ecoconsult Ltd dated 16 February 2021. The development shall be carried out in accordance with the approved details and all enhancements shall be delivered prior to the final occupation of the development and shall be retained thereafter.
- 10) Prior to the commencement of development, an Energy Statement for the development as a whole shall be submitted to, and approved in writing by the local planning authority. This shall demonstrate how the development would achieve a reduction in carbon emissions of at least 40% or from 2026 at least 50% compared with code 2013 Building Regulations. The development shall be carried out in accordance with the approved details.
- 11) Prior to the occupation of each new dwelling, noise mitigation measures to each home shall be installed in accordance with the recommendations contained in the Acoustic Assessment ref 23993/06-18/6042-REV-A dated January 2021, relating to glazing and window design. Those measures shall be maintained at all times.
- 12) Prior to the occupation of any new dwelling, the access onto Braze Lane shall be constructed in full accordance with details first submitted to, and approved in writing by, the local planning authority. This shall include both vehicular and pedestrian access.
- 13) Prior to occupation, each new dwelling shall have the ability to be served by superfast broadband connectivity, in accordance with details first submitted to and approved in writing by the local planning authority. The potential for connectivity shall remain available at all times.
- 14) Cycle storage facilities for each new dwelling shall be installed prior to the first occupation of each home, in accordance with details which have first been submitted to and approved in writing by the local planning authority. The cycle storage facilities shall be maintained and be available for use at all times.

End of Schedule