



Appeal Decision

Site visit made on 28 April 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2023

Appeal Ref: APP/D1265/W/22/3309422

Land At Shorts Green Farm, The Street, Motcombe, Dorset

Grid Ref Easting: 384716, Grid Ref Northing: 125957

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Bailey against the decision of Dorset Council.
 - The application Ref 2/2018/0057/OUT, dated 12 January 2018, was refused by notice dated 5 May 2022.
 - The development proposed is demolish barn and develop land for residential purposes, modify vehicular access (Outline application to determine access).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Outline planning permission is sought but with access to be considered at this stage. I have therefore taken any indication of reserved matters shown on the submitted drawings, including the alternative plans submitted by the appellant with their appeal statement, to be illustrative, apart from details of the access.
3. In the banner heading above, I have taken the description of development from the Council's decision notice and the appellant's appeal form as this more accurately describes the appeal proposal. Furthermore, for clarity purposes, the address in the banner heading has been taken from the Council's decision notice and the appellant's appeal form.

Main Issues

4. There are 2 main issues. These are:
 - whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - whether the proposed development would provide a suitable location for housing, having regard to the development strategy for the area and the character and appearance of the area.

Reasons

Flooding

5. The Environment Agency (EA) Flood Map for Planning confirms that the appeal site is situated entirely within Flood Zone 1. However, relevant mapping of

surface water flooding demonstrates that much of the site is at risk, with significant flooding shown adjacent to the southern & western boundaries, the existing point of access to The Street (1:30yr & 1:100yr), and to a much wider extent during extreme rainfall events (1:1000yr). This is due to an ordinary watercourse which runs along the southern boundary of the site. The watercourse flows from east to west, before tracking north and along the western boundary of the appeal site and under The Street.

6. Both the Planning Practice Guidance (PPG) and the National Planning Policy Framework 2021 (the Framework) aims to steer development to areas with the lowest probability of flooding through a sequential test. The PPG confirms that areas at risk are those at risk of flooding from any source. Policy 3 of the North Dorset Local Plan Part 1 (Local Plan) (2016) also requires the avoidance of areas at risk of flooding from all sources. Consequently, planning applications, such as the appeal proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding.
7. The PPG states that for individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. I am satisfied that the area of search for the sequential test should be the whole of North Dorset given that I have not been presented with any evidence that the proposal would meet a local need to justify a smaller catchment area.
8. The appellant's sequential test is based upon the Council's latest Strategic Housing Land Availability Assessment (SHLAA). Very limited information has been submitted on why some of the sites have been discounted, simply stating 'too large, 'too small' and 'not available'. The appellant has also discounted sites which are too large on the basis that this would constitute an underuse of the land, contrary to the guidance in the Framework which requires applications 'to make efficient use of land'. However, the PPG states that 'reasonable available sites' could include a series of small sites and/or part of a larger site if these would be capable of accommodating the proposed development'. Furthermore, some of the constraints on the sites discounted, such as noise disturbance, powerlines, lack of access, archaeology and TPO's, are not insurmountable to their delivery. Therefore, the appellant's criteria for omitting some of the sites appears to be quite restrictive, particularly where they would be sequentially preferable in flood risk terms.
9. Consequently, the appellant has failed to demonstrate that there are no other sequentially preferable alternative sites for the proposed development. Therefore, the proposal does not pass the sequential test. As the sequential test has not been passed, it is not necessary for me to consider the exception test under paragraph 164 of the Framework.
10. The appellant maintains that the sequential test is 'automatically passed' because of the absence of a five year housing land supply. Reference has been made to an appeal decision¹, where the Inspector allegedly came to this conclusion. However, I have not been provided with full details of this particular case. Therefore, I cannot be certain that it would be directly

¹ APP/E1210/A/13/2204087

comparable to the proposal before me. This limits the weight which I can give to this other decision.

11. Whilst the Council's housing land supply shortfall is noted, it has not been demonstrated that any deficit cannot be addressed on sites in lower flood risk areas. The requirement for a sequential test in both the Framework and the PPG makes no reference to the housing land supply position. I deal with the implications of the housing land supply shortfall in the planning balance section.
12. The appellant argues that the Framework using words such as 'aim' and 'should' suggests that the weight of other material considerations can be considered against whether the sequential test is passed or not. The appellant draws my attention to another appeal decision², and in particular the Inspector's interpretation of the Framework intention to 'steer' new development to areas with the lowest risk of flooding, stating that 'this policy acknowledges that it might not be possible to do so in all circumstances'.
13. I do not have the full details of what was before this Inspector. However, from the relevant decision notice, I note that the Inspector specifically notes that the sequential test is met 'in the particular circumstances that apply in this case'. I have considered this appeal proposal on its own merits and concluded that the proposal, in the particular circumstances that apply in this case, would not pass the sequential test.
14. The findings of the Council's Flood Investigation Report of the 'Motcombe 20th/21st October Flood Event' are noted. However, the lack of any reported flooding on the appeal site under this particular flood event does not overcome the need for a sequential test.
15. For the above reasons, the proposal would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. The proposal would be contrary to Policies 1 and 3, and Objective 1 of the Local Plan. These policies, in combination, seek to reduce and/or prevent the risk of flooding to development from all sources.
16. In addition, it would also conflict with chapter 14 of the Framework, which sets out the approach to development proposals in areas at risk of flooding. Most notably, it would fail to accord with paragraph 162 of the Framework where it states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
17. The Council cite Policy 13 in the reason for refusal, which is in relation to Grey Infrastructure. Policy 13 states that the adequacy, availability, and provision of grey infrastructure, in relation to drainage and flood prevention, will be key considerations when planning applications are considered. My interpretation of this policy is that it would only be a factor when development is considered acceptable, in principle, in terms of risk from flooding. Given that I have found that the development would be unacceptable in terms of risk from flooding, any conflict with Policy 13 would not be determinative in these circumstances.

² APP/F0114/W/20/3244862

Suitable Location

18. The appeal site relates to a parcel of agricultural land, situated along The Street in Motcombe. The site is currently accessed from The Street along its frontage. To the northeast of the site lies an existing dilapidated agricultural barn, which would be demolished as part of the proposal. The site boundaries are formed of established trees and hedgerows, including a group of trees and 5 individual trees, all covered by a Tree Preservation Order³.
19. Shorts Green Lane runs to the south of the site, on the other side of the watercourse. The northern boundary adjoins open countryside, which extends beyond the appeal site. The western half of the site, adjacent to The Street, has more of a visual and functional relationship with the built up form of the settlement. However, whilst the relationship with the settlement boundary of Motcombe is acknowledged, the eastern half of the site due to its distance from other buildings, is more rural in character and contributes positively to the character and appearance of the rural setting around the village. Notably, it is an important gap between the built up form along The Street and Shorts Green Lane.
20. Matters relating to scale, layout, appearance, and landscaping have yet to be fixed. Whilst it is not mentioned in the description of development, the indicative layouts and the application form suggests the residential development would result in 37 or 38 dwellings spaced across the appeal site. The appellant's statement of case suggests it would be between 38 and 45.
21. Motcombe is listed as a 'larger village' under Policy 2 of the Local Plan. Larger villages have been 'identified as the focus for growth to meet the local needs outside of the four main towns'. Outside of the defined boundaries of the larger villages, the remainder of the district will be subject to countryside policies where development will be strictly controlled unless it is required to enable essential rural needs to be met. The appeal site is situated outside of Motcombe's settlement boundary and consequently is classified as open countryside.
22. It is not allocated for housing and the proposal would not fall within any of the exceptions set out by the development plan to enable new development in the open countryside. It would not be supported by any other policies. Notably, the proposal has not been advanced as a rural exception site, as supported by Policy 9 of the Local Plan.
23. The introduction of residential development on the appeal site would harm the character and appearance of the area, permanently eroding the positive contribution the site makes to the rural setting of the village. I am not satisfied that an acceptable scheme for between 37 and 45 dwellings would be capable of being accommodated on the site without harming the character and appearance of the area.
24. The section of The Street north of Shorts Green Lane has developed in a predominantly linear pattern. However, there are examples of several cul-de-sacs near the appeal site, which form part of the established character of the area. However, these are much smaller than the proposal would be, given the number of houses the appeal site is expected to deliver. The proposal would

³ TPO 592-2018

- have a much greater impact, harming the established character and appearance of the area.
25. It is noted that the land to the north of the site has been redeveloped for residential development and that these form part of the sites setting and immediate character. However, from what I saw on site, this is a much smaller cul-de-sac and forms a closer relationship with The Street than the appeal proposal would do.
26. It is also acknowledged that the site is in a fairly sustainable location, where access to a range of services and facilities would be achievable by means other than the private car. However, despite the sustainability credentials of the site, it remains classed as open countryside.
27. The indicative plans illustrate that the landscaping could be retained to the southern and eastern boundaries, that materials could reflect the character of the village and that the scale of the dwellings could be 2 storey, with potential key buildings being 2 ½ or 3 storey. I am also satisfied that any matters regarding accommodating the trees covered by the TPO could be reasonably addressed as part of any reserved matters. Any alleged inaccuracies with the Technical Housing Standards could also be resolved at the later stage. However, as these matters are reserved for later determination, what is before me now is purely illustrative, so I can only afford them limited weight.
28. Therefore, by virtue of its location outside of any defined settlement boundary, the appeal site would not be a suitable location for the proposal, having regard to the development strategy for the area and the character and appearance of the area. Consequently, it would conflict with Policies 2, 6, and 20, and Objective 5 of the Local Plan. These policies, in combination, seek to direct development, including housing growth, to the most sustainable and accessible locations in the district, strictly controlling development outside of the defined settlement boundaries, only permitting it in exceptional circumstances.
29. It would also conflict with Policies MOT 9 and 10 of the Motcombe Neighbourhood Plan (NP) (2019) which, in combination, sets out the locational criteria for new development in order to meet the area's housing needs. It would be contrary to the site assessment criteria set out in table 4 which requires development to strengthen the village character and reinforce the compact form of the village. It would also conflict with paragraph 124 of the Framework which requires development to take into account, amongst others, the desirability of maintaining an area's prevailing character and setting.
30. Policy 9 of the Local Plan and Policy 14 of the NP are cited in the reason for refusal and are both rural exception affordable housing policies. However, it is noted that the proposal has not been advanced as a rural exception site. Therefore, any conflict with these policies would not be determinative.

Other Matters

31. Both a draft Section 106 Agreement (S106), which has been signed by the appellant but not the Council, and a Unilateral Undertaking (UU) have been submitted by the appellant to secure the required level of on-site affordable housing. The Council have had the opportunity to comment and have raised a number of concerns regarding both the UU and S106. I note that the appellant

has sought to address a number of these. However, given my conclusions on the main issues, I do not need to consider the matter any further.

32. The appellant has also drawn my attention to paragraph 69 of the Framework which recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. However, paragraph 69 also states that in order to achieve this mix, great weight should be given to the use of suitable sites within existing settlements for homes. Given my reasoning above, the proposal would not be in a suitable location for delivering a small or medium sized site. Therefore, I can only attach limited weight to this benefit.

Planning Balance

33. The Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 11 of the Framework states that where the development plan is out of date, permission should be granted unless 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, or there are specific policies in the Framework which indicate that development should be restricted.
34. However, it has not been demonstrated that the proposed development is in an appropriate location having regard to flood risk policies. Therefore, whilst the proposal would make a contribution towards the provision of both market and affordable housing and would also provide social and economic benefits, this is a situation in terms of paragraph 11 (d) (i) of the Framework, where the presumption in favour of sustainable development is not engaged because the application of the policies in the Framework that protect areas at risk of flooding provides a clear reason for refusing the development proposed.
35. The appellant has suggested that Policy MOT 9 of the NP should be considered to be out of date given that it was adopted more than 2 years before the date on which the decision is made, in light of the requirements of paragraph 14 of the Framework. However, the criteria set out in paragraph 14 of the Framework is only applicable when the presumption in favour of sustainable development is engaged. Given that I have found the presumption at paragraph 11 (d) is not engaged, paragraph 14 of the Framework would not be applicable. I therefore still afford this policy a reasonably significant amount of weight in these circumstances.

Conclusion

36. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Laura Cuthbert

INSPECTOR