



Appeal Decision

Site visit made on 6 March 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

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 (as amended) 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 is P21/S0882/O.
 - **The development proposed is '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'.**
 - This decision supersedes that issued on 14 April 2023. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline permission, with access to be considered at this stage and matters of appearance, landscaping, layout and scale reserved for later consideration. I have determined the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative only.
3. A costs application was originally submitted by Victoria Land against South Oxfordshire Council. Unlike the appeal decision, that costs decision was not quashed, and no costs application has been submitted in relation to this redetermination of the appeal.
4. The absence of a Section 106 agreement to secure affordable housing and **contributions to infrastructure formed one of the Council's reasons for refusal.** However a completed agreement has been submitted, and the obligations it contains are not in dispute between the main parties.
5. The previous decision on this appeal was quashed as it was agreed by both parties that the Inspector had misinterpreted policy NP1 of the Benson Parish Neighbourhood Plan (BPNP) Review. As such, a further main issue, in addition to the issues raised by the reasons for refusal of the planning application, relates to the assessment of the proposal against the BPNP Review.

Main Issues

6. The main issues are:
 - whether the site is suitably located for residential development, with particular regard to its accessibility to services and facilities;

- 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; and
- whether the proposal would accord with the policies of the BPNP review.

Reasons

Accessibility

7. The appeal site comprises an area of paddock to the south east of The Orchards, a detached dwelling, fronting Braze Lane. The adjoining land to the rear of the site is part of a larger site being developed for housing by David Wilson Homes (DWH), with many houses already completed. To the south east of the appeal site is an area of open space associated with the DWH development.
8. In order to connect the appeal site to the centre of Benson, and to the services and facilities therein, a pedestrian link would be necessary. A link from the south corner of the site to the public highway, which has been newly constructed as part of the DWH development, would necessarily pass through that housing development. I understand it is not possible at this time, to achieve access across this land. The development therefore proposes a pedestrian path to run from the front of the site, along Braze Lane and then along The Sands to connect to the newly constructed footway further along The Sands. The plans indicate that this pedestrian link would be wholly on land owned by the highways authority and the highways authority do not dispute this.
9. Braze Lane is fairly narrow and unlit with tall hedgerows on the verges to either side. There is currently no pavement. The proposed path here would be 1.2m in width, hard-surfaced and with kerbing to each side. It would necessitate a small excavation of the verge, which is slightly higher than the road, and hence also a small retaining structure. In addition, the hedge, which is currently on this verge, would need pruning back. At present the speed limit of this section of Braze Lane is 50mph and it is proposed that the speed limit here be reduced to 30mph. The section of the path on The Sands would be mostly set away from the road edge and would connect with, and replicate in appearance, the path around the new roundabout.
10. It would fall short of the width recommended in Manual for Streets and the Oxfordshire Walking Design Standards. Nonetheless, it would remain to be wide enough for wheelchairs or an adult alongside a child to use. Overall, Braze Lane is not a busy road, traffic speeds would be reduced, the section along Braze Lane would not be excessively long and the width of the path would be adequate. It is therefore considered that the path would provide a suitable link to the wider pedestrian network.
11. The services and facilities in Benson would be around a mile away. This is not much greater than the distance between the DWH development and the centre of Benson. The proposed pedestrian link would therefore allow reasonable access to those services and facilities.
12. I note the Inspector for a previous appeal¹ on the site considered that there was no certainty that pedestrian links could be achieved. However the evidence

¹ Ref APP/Q3115/W/18/3219295

submitted with this appeal and the realisation of the adjacent housing development and associated highway works, means the evidence before me is materially different to that before that Inspector. Indeed, the completed legal agreement includes an obligation to ensure the footpath link is provided before the occupation of the dwellings.

13. In summary, I am satisfied that the required pedestrian link could be achieved. It would provide suitable access to the services and facilities within Benson. The development would therefore accord with policies TRANS2, TRANS4 and TRANS5 of the South Oxfordshire Local Plan (SOLP) (adopted December 2020). 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

14. The aforementioned tall hedging along both sides of Braze Lane near the site, combined with the open fields behind, contribute a rural characteristic to the character and appearance of the area. The works to create the pedestrian link, as previously described, would introduce a more urban element. However, the works would be at a low level, being no higher than the ground level of the adjacent land, and would only be seen when travelling along this section of Braze Lane. Also the retaining wall would be a vegetated wall system which would allow it to be planted with grass or other plants hence creating a replacement vegetated feature.
15. Moreover, the footpath would connect into the larger scale highway works, including the roundabout, associated with the DWH development, and so would be seen as part of that wider scheme of highway works. Similarly, any net increase in signage would be seen in the context of existing signage at The Sands/Braze Lane junction. As such the works themselves would have no unacceptable effect on the character and appearance of the immediate area.
16. The works would necessitate the pruning of the hedgerow atop the verge, with the greatest degree of pruning being needed nearest the appeal site. However the drawings suggest that the hedge, even those parts nearest the site, would retain much of its width such that it would remain to be a valuable landscape feature contributing to this rural character. The sections on The Sands would be beyond the root protection zones of the trees there and would not affect the newly planted hedge. As such the works would have no unacceptably harmful effect on vegetation.
17. With respect to the whole proposal, it would clearly involve a change of the character of the site from paddock to built form. However 10% of the appeal site area would be open space, excluding private gardens and any attenuation pond. The site would be at a fairly low density commensurate with its position between the higher density development to the west and the open countryside and scattered dwellings to the east and north. Moreover, though development would be contiguous with The Orchard and Port Hill House, there is a substantial undeveloped gap between Port Hill House and the more focussed cluster of houses that make up the core of Rokemarsh, notwithstanding the 'Rokemarsh' sign adjacent to the appeal site. This would ensure that development at the site would remain detached from the majority of the hamlet of Rokemarsh so would not result in the coalescence of the two

settlements. My view on this is consistent with the Inspector for the previous appeal on the site.

18. To the east of the site is the Chilterns National Landscape² (NL). Views of Benson and its rural surroundings are visible from the NL and so contribute to its setting. However, at this distance, the development of the site would appear in the context of the large DWH development and the other scattered dwellings along Braze Lane. Subject to details of scale and appearance, the development would avoid adverse impacts to the setting of the NL.
19. External lighting details could be secured by a planning condition to ensure there would be no adverse effects in this regard.
20. Overall, the development would not unacceptably harm the character and appearance of the area. It would therefore accord with SOLP policies DES1 and ENV1 which both seek to protect the landscape character of the District.

BPNP Review

21. During the processing of this appeal, the BPNP was revised, examined, and made. This Revised Plan differs from the previous version of the BPNP insofar as the appeal site has been removed from a housing allocation and a settlement boundary has been established which excludes the appeal site from Benson. Consequently the part of policy NP1 of the BPNP Revision relating to land outside the settlement boundary is now relevant. This says that proposals for development outside the settlement boundaries will only be supported if they are consistent with policies in the SOLP for management of the countryside, and with other policies in the SOLP, and other policies in the BPNP Review.
22. One such policy in the SOLP is H1. This, in part 3, identifies that development on unallocated sites will only be permitted in a number of specific circumstances; one of which is the development within the existing built-up areas of towns and Larger Villages. Benson is identified as a Larger Village. The appellant accepts that the site is beyond the settlement boundary but suggests a more contextual approach could be adopted to identifying the built-up area, citing examples from a neighbouring authority. The site is undoubtedly close to the large scale DWH development which is within the settlement boundary. However, the plans for that scheme show there would be a wide landscaped buffer along the common boundary, and the land to the south east of the appeal site would remain to be undeveloped. At the time of my site visit, this buffer was becoming apparent as houses were starting to be built alongside it. The lack of a viable pedestrian link between the two development sites, would also indicate separation. The appeal development would therefore appear as being detached from the housing within the settlement boundary. My view is supported by the examiner into the BPNP Review who, in agreeing with the location of the settlement boundary, considered the site was an outlier to Benson.
23. Policy H1 also identifies that development on unallocated sites will be permitted if there are other specific exceptions/circumstances defined in a Neighbourhood Development Plan. Although the appellant argues policy NP1 is such a circumstance, I consider this is a general policy insofar as it relates to

² Formerly known as Chilterns Area of Outstanding Natural Beauty

development beyond the settlement boundary. Overall, therefore, I find conflict with policy H1.

24. The other policies in the SOLP, referred to by both main parties on this point, **are STRAT1 and STRAT2. STRAT2 sets out the Council's** housing requirement and states that the locations for that housing are set out in policy H1. As the development, on an unallocated site, would not be in accordance with the locations in policy H1, it therefore conflicts with policy STRAT2 too.
25. STRAT1 supports the role of Benson as a Larger Village and seeks to protect the countryside. Despite being beyond the settlement boundary, the proximity of the site to Benson means it would provide some support to the village. In addition, as set out above, the development would protect the character of the countryside. There would therefore be no conflict with this policy.
26. The Council also refer to SOLP policy H4 which, in its accompanying table, shows that the housing targets in the Core Strategy for Benson have been exceeded through existing commitments. Though I recognise the housing figures are minimums, there is no outstanding housing requirement for Benson and no new allocations were set out in the BPNP Review. Indeed, the examiner of the BPNP Review explains this justifies the reduction in the amount of land allocated for housing; including the appeal site.
27. In summary, the development would conflict with SOLP policies H1, H4 and STRAT2, which together seek to focus development within settlement boundaries or allocated sites. There would however be no conflict with STRAT1, ENV1 or DES1 insofar as the proposal would not harm the character or appearance of the area, nor with the transport policies referred to earlier. Nonetheless, overall, the development of the site beyond the settlement boundary would not be consistent with the policies of the SOLP. It therefore would conflict with BPNP Review policy NP1. I give the conflict with this policy considerable weight, particularly because of how recently the BPNP Review was made and the surety this should give in a plan led planning system.

Other Matters

Planning obligations

28. The parties have completed a Section 106 agreement which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters.
29. SOLP Policy H9 requires that on schemes of ten or more units, 40% of the units should be affordable. On this scheme, 40% would equate to 7.6 units. The obligation secures seven of the 19 unit to be affordable including two (25% of the affordable units) First Homes. A financial contribution to off-site affordable housing, equivalent to the remaining 0.6 of a unit, has also been included in the obligation. I consider the obligation for affordable housing would accord with local and national policy. Moreover I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.
30. Contributions are also included in relation to the provision of recycling bins and **street naming. The need for these are set out in the Council's Section 106**

Planning Obligations Supplementary Planning Document (the 'SPD'), and are supported by SOLP policy INF1 which requires developments to be served by appropriate infrastructure. The obligation also includes provision for 10% of the appeal site to be public open space, including a local area for play, in accordance with a landscaping scheme to be submitted, and for its long term management. This would also accord with the requirements set out in the SPD, and SOLP policy CF5. I consider that these obligations would be fairly and reasonably related to the development proposed and would pass the statutory tests.

31. The County Council have identified that contributions to encourage the use of public transport services and sustainable modes of transport are required. The fee in the obligation accords with this requirement and seems reasonable in scale and kind.
32. There is also an obligation relating to the works to provide the pedestrian link along Braze Lane to connect with the local pedestrian network. As discussed above, the pedestrian link is necessary to secure a suitable connection to the wider community.
33. A contribution would be secured for the Benson Relief Road. As I saw at my site visit, the Benson Relief Road is substantially complete. Indeed the BPNP Review identifies that all the sections of the road, and the three roundabouts that are required to link it up, are committed and fully funded by the developers. The BPNP Review examiner agreed that no further funding is required. I have no other evidence before me to suggest otherwise and hence this obligation is not necessary.
34. The agreement also seeks to secure monitoring fees for the County Council and District Council. The SPD sets out that the costs of monitoring Section 106 agreements will be borne by the developer, and further information provided by the Council sets out how these fees are calculated. The values identified in the agreement are in line with this. I consider therefore that the fees sought are necessary, and reasonably related in scale and kind to the development.
35. Overall, with the exception of the obligation securing contributions to the Benson Relief Road, all the other obligations meet the tests in Regulation 122. I have therefore taken those obligations into account.

Housing land supply

36. The Council advise that they have commenced a Regulation 18 consultation on their Joint³ Local Plan. Paragraph 226 of the National Planning Policy Framework (**the 'Framework'**) states that in such circumstances the Council should demonstrate a 4 year supply of housing land. The Council states that their Housing Land Supply Statement dated September 2023 identifies a 4.2 years supply. However they also provide a copy of an appeal decision⁴ from November 2023 in which the Inspector noted that figure, but considered 3.49 years was more accurate. I have no more recent information before me to suggest a different figure.

³ Joint with White Horse District Council

⁴ APP/Q3115/W/23/3323268

Planning balance

37. As the evidence suggests the Council cannot demonstrate a sufficient supply of housing land, albeit the shortfall is very modest, paragraph 11d) of the Framework is applicable.
38. The Framework in paragraph 60, seeks to significantly boost the supply of housing. The appeal proposal would accord with this and the provision of 19 units, with reasonable access by sustainable modes of transport to the services within the centre of Benson, at a time when the Council cannot demonstrate a sufficient housing land supply, would be a benefit of substantial weight. In addition the provision of affordable units on site in a variety of tenures, and a contribution to off-site affordable housing would be supported by paragraph 63. This benefit also carries substantial weight.
39. The lack of harm the development would cause to the character and appearance of the area would align with the aims of paragraph 108. But a lack of harm should not count positively for the proposal. Also, the other obligations would all seek to serve the development or mitigate impacts of it, so are not positive effects of the development.
40. Paragraph 14 sets out that where a neighbourhood plan is less than five years old and contains policies and allocations to meet its identified requirement, the adverse impacts of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits. The BPNP Review was made just over a year ago and, as set out above, its allocations far exceed the Core Strategy target set out in SOLP policy H4.
41. The development would conflict with BPNP Review policy NP1 to which I have given considerable weight. The adverse impact of allowing the appeal would significantly and demonstrably outweigh the substantial benefits when considered against the Framework as a whole.

Conclusion

42. Although there would be no conflict with policies STRAT1, ENV1 and DES1 as well as policies TRANS2, TRANS4 and TRANS5, there would be conflict with policies STRAT2, H1, H4 and BPNP Review policy NP1. I consider that the proposal would conflict with the development plan taken as a whole. There are no other considerations, including the provisions of the Framework, that indicate a decision other than in accordance with the development plan. As such the appeal is dismissed.

A Owen

INSPECTOR



Costs 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

Costs application in relation to Appeal Ref: APP/Q31115/W/22/3297026
Land adjacent to The Orchard, Benson, Oxfordshire OX10 6JB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Victoria Land for a full award of costs against South Oxfordshire District Council.
- The appeal was against the refusal of planning permission for development 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 application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The appellant considers that **the Council's behaviour was unreasonable** in two main respects, which I consider in turn below.

Lack of co-operation

3. The appellant considers that the Council could have worked more proactively to ensure that a pedestrian connection was achieved between the appeal site and the neighbouring housing development. The Council are described as seeming reluctant to engage with the neighbouring developer to achieve those links. The neighbouring development was at its reserved matters stage and this would have been an opportune time to secure a link with the appeal site.
4. The Council report that it did attempt to enter into discussions with the adjacent developer. The evidence suggests such discussion occurred in a meeting and that developer sought to have discussions directly with the appellant, rather than through the Council. This was communicated with the appellant by email.
5. There is an adopted development plan policy which seeks the integration of such development sites¹ and the unproductive discussions with the neighbouring developer would have been frustrating for the appellant. However, I am not satisfied that it was the role of the Council to persist on these discussions or to ensure that the appeal scheme was policy compliant in that regard. **The Council's response to the costs application** adequately

¹ Policy DES1 of the South Oxfordshire Local Plan 2020.

demonstrates the rationale for not requiring a pedestrian link as part of the neighbouring reserved matters approval. In addition there is not substantive evidence that the use of a compulsory purchase order by the Council would have been a reasonable alternative here.

6. Based on the evidence before me I am satisfied that the Council acted appropriately to try and assist in addressing the matter. While its actions did not have the outcome desired by the appellant, I do not find that unreasonable behaviour occurred.

Preventing or delaying development which should clearly have been permitted

7. The appellant considers that the first reason for refusal, relating to footway connectivity, was unreasonable given the proposed footway on Braze Lane was found to be acceptable to the Highway Authority. The second reason for refusal, relating to trees and hedgerows on third party land, was similarly not informed by objections from forestry or landscape officers.
8. While this may be the case, the absence of objections from consultees would not necessarily **dictate the Council's decision on the planning application. The Council's officer report** summarises responses from consultees and goes on to discuss where the concerns lay, based on the information that was available at that time.
9. **While I have disagreed with the Council's conclusions on these matters, I am** satisfied that the Council adequately substantiated their reasons for refusal within its officer report and appeal statement, and those reasons were informed by relevant development plan policies and material considerations. Given the relative complexities of delivering the proposed footway, I do not consider this to be a case which should clearly have been permitted. I do not find the **Council's** determination of the application in this regard to have been unreasonable.
10. **While it may have been possible to address some of the Council's concerns** during the application process, this matter **relates to the Council's internal** processes. Based on the information before me this does not in itself amount to unreasonable behaviour.

Conclusion

11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has not been demonstrated. Therefore the application for costs is refused.

C Shearing

INSPECTOR