

Appeal Decision

Site visit made on 9 September 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2024

Appeal Ref: APP/J3720/W/23/3328082

Land South of Kinton Road, Gaydon CV35 0FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Hayward Developments Ltd. against the decision of Stratford-on-Avon District Council.
 - The application Ref is 21/03858/FUL.
 - The development proposed is the erection of 23 (16 local need) No's 1, 2 and 3 bedroom dwelling houses and garages together with roads, sewers and associated external works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has stated that layout plan 18-058/02 Rev E was the version refused by planning committee on 24 February 2023. However, the Appellant asserts that Revision H was the version refused. Amended plans are only accepted at the discretion of a local planning authority. Therefore, despite the Appellant having submitted later versions of the layout plan, I have based my consideration of this appeal on the latest accepted plans, being version E.
3. Amended plans and new documents have been submitted in support of the appeal. These consist of a revised layout plan (18-058-02 Rev J) resulting in a revised housing mix, drainage plans, pond sectional drawings, revised house type A&C drawings, a revised viability assessment, desk-based heritage impact assessment, drainage strategy, hydraulic details and a Biodiversity Impact Assessment. The Appellant has also undertaken a consultation exercise with local residents informing them of these changes through direct correspondence and a press notice. These invite comments to be provided to a nominated solicitor to collect any views.
4. The Planning Inspectorate's procedural guidance explains that amended plans should not seek to evolve a scheme and there is no provision within the appeals Rules for amendments to be submitted. It advises that amendments should only be accepted by exception and that substantive changes should be the subject of a fresh application to the Local Planning Authority. The guidance states that it is important that what is considered by the Inspector

is essentially the same scheme that was considered by the Council and interested parties at the application stage.

5. In layout terms, as well as revised house types, the offered amended scheme includes a reconfigured parking area in front of plots 1-6, the addition of garages for plots 17-21, a reconfigured driveway for plot 21 and a remodelled balancing pond. Accordingly, the proposed amendments relate to both changes to the layout of the proposed development, the appearance of some dwellings, and a range of supporting documents. The Council has been clear that some of the new supporting documents would require expert advice from external consultees.
6. Although local residents were given the opportunity by the Appellant to comment on the proposed amendments, I am uncertain that the community were comfortable making representations directly to the Appellant's representatives. As such, this approach is not an adequate form of open and fair notification. Furthermore, the proposed amendments have not been subject to consultation during the Council's consideration of the planning application. Nonetheless, under the *Holborn Studios Ltd*¹ principles, I have considered whether the proposed development is so changed that to grant approval would deprive those who should have been consulted the opportunity of such consultation.
7. The proposed changes to the layout are relatively modest, but these small incremental amendments result in variations that would form a substantively different layout affecting both the housing mix, appearance and parking arrangements of the scheme. These changes, when taken together, would materially alter the nature of the scheme that was originally applied for, consulted upon and determined by the Council. Furthermore, the submitted documents, concerning matters of viability, heritage and drainage, are based on the revised scheme and these require re-consultation to enable a full understanding of the effects of the proposed changes. Accordingly, I cannot be satisfied that injustice and unfairness would not occur if I were to take the amended details into account. I have therefore disregarded them and for the avoidance of doubt dealt with the appeal on the basis of the details submitted and refused for application 21/03858/FUL.
8. The Council's draft Site Allocation Plan (SAP), subject to Regulation 18 stage, is at an early stage of adoption. The National planning Policy Framework (The Framework) explains, at paragraph 48, that weight can be afforded to emerging policies based, among other things, on the stage of preparation of the plan. The Council has identified that the site would be outside the defined settlement boundary of Gaydon by this plan on its Policies Map. Nonetheless, due to the early stage of the Plan's adoption I have afforded limited weight to this policy.
9. A signed and certified Legal agreement² has been submitted with regard to the delivery of the proposed affordable housing and local market units and in

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

² Unilateral Undertaking, by Raymond Charles Ellis and Beryl Mary Ellis and Hayward Development Limited dated 25 September 2024

connection with financial contributions towards open space, road safety, the public right of way, sustainable travel and the NHS Foundation Trust. This is provided as a Unilateral Undertaking. I note in correspondence that the content has been agreed by the Council.

Main Issues

10. The main issues are;

- Whether the proposed development would be in a suitable location taking into consideration local and national policy and local housing needs,
- The effect of the proposal on the character and appearance of the area including the setting of The Leys, a grade II listed building,
- The effect of the proposal on highway safety with particular regard to visibility splays and visitor parking, and
- The effect of the proposed development on flood risk and surface water drainage.

Reasons

Suitability of location

11. The development plan for the district includes the Stratford-on-Avon Core Strategy [2016] (CS). CS policies CS.15 and AS.10 establish the Council's spatial development policies, requiring housing to be developed in the most sustainable settlements in the district.
12. CS policy CS.15 identifies that the distribution of new development will be based on a pattern of balanced dispersal, favouring sustainable locations for most development. This means that development is first directed towards Stratford-upon-Avon and the 'Main Rural Centres' and then to 'Local Services Villages' and finally to 'All other settlements'. For this final category, including the village of Gaydon, development is restricted to small-scale community-led schemes which meet a need identified by the local community. The supporting text for this policy acknowledges that it is important that provision is made for new housing in villages across the district. It states that the approach taken, to support a proportionate scale of expansion, seeks to minimise the impact of new development on a village's character while helping to sustain its future.
13. CS policy AS.10, for development in the Countryside and Villages, states that the policy applies to all development in the district outside the defined Built-Up Area Boundaries (BUAB), Main Rural Centres and other defined development sites. To maintain the vitality of rural communities and a strong rural economy the policy explains that provision will be made for a range of activities and development in rural areas. Section (b) of policy AS.10, with respect to residential development, explains that small-scale housing schemes should be within a settlement's BUAB, where defined, or otherwise be within its physical confines.
14. Gaydon is classed by the Council as a category 4 settlement. It is a small village with a limited range of goods and services, only accommodating a church, public house and petrol station. The village is not subject to a defined

BUAB, but its settlement pattern is generally 'nucleated' with development focussed along Kineton Road and the Warwick Road (B4100). Numerous subsidiary roads, including Church Road, connect onto these roads with limited outlier residential plots away from the main settlement. As a result, the difference between the built-up limits of the village and the surrounding open countryside is well defined. The southern part of the village has seen the recent addition of Edgehill View, an estate of about thirteen units, consisting of houses and bungalows.

15. The appeal site would connect onto Edgehill View with a form of development that would include a former compound site and the northwest section of a large field. Although being adjacent to the settlement, the site would project into the countryside beyond the rearmost edge of existing development. It would therefore encroach into the open countryside, extending substantially beyond the built form of housing of both Edgehill View and Church Lane. As such, the proposal would be beyond the settlement's physical confines in conflict with CS policy AS.10(b).

Local Needs

16. CS policies AS.10(a) and CS.15G support the principle of local needs schemes, forming exclusion policies that set aside the Council's normal requirements for the location of new housing. Policy AS.10(a) states that Community projects, including small-scale schemes for housing that would meet a need identified by a local community, would be supported on land within or adjacent to a village. Policy CS.15G supports local needs schemes within or adjacent to settlements which are community-led. The scheme proposes sixteen houses targeted to meet local needs and seven open market dwellings.
17. The Development Requirements SPD (2018) has been produced in support of the Council's policies, although not policy itself this provides useful guidance on matters of local needs as a material planning consideration. Part S2.2 of the SPD identifies that Local Needs Schemes must have community support, respond to identified need, be available to local people and be small-scale. This also identifies that such schemes can consist of a combination of affordable housing, as defined by the Framework, and local market housing ring fenced to local people. Small-scale development is not defined by the SPD or the core strategy and is therefore a matter of planning judgement. The provision of twenty-three dwellings would represent a small proportional increase to the quantum of dwellings within the village. Consequently, it would not be a disproportionate addition and, in this context, would be small-scale.
18. The Parish Council commissioned a housing needs assessment in 2020. This was undertaken by WRCC Housing and found a need for seven rental properties, five shared ownership and four owner occupied dwellings, thereby finding a need for sixteen properties. This identified requirement is relatively recent, was independently commissioned and provides a useful insight as to the general local needs for housing in the parish. I understand that no housing has since been provided in the parish to address this need.
19. The proposed community housing is slightly divergent to this identified need, in some small areas. For example, for rental units the Local Needs

Assessment found a need for 5 one bed, 1 two bed and 1 three bed units and instead the scheme proposes 6 two bed and 1 three bed unit. Nonetheless, the offered provision would largely address the type and quantity of demand found in size and tenure of housing. Also, the Council has stated that Midland Rural (Warwickshire Rural Housing Association) has in the past provided its support for local needs housing on the site. Further, the Parish Council has provided its support for the provision of local needs housing on site during the consideration of the planning application. This support was nonetheless slightly measured as residents raised concerns as to the effect of the scheme on highway and heritage matters.

20. I am satisfied that, despite the slight variance in provision, the housing offered to meet local needs, would generally comply with the requirements of the local needs survey. Although noting that Midland Rural, as registered provider has stated that it no longer seeks to pursue the site, other registered providers exist, and this alone does not present a compelling reason to resist the scheme. As such, the proposed sixteen dwellings would comply with the identified policy for community led housing. These would be suitably secured through the submitted S106 Legal Agreement.
21. The Framework explains that when considering rural housing, decisions should support housing development that reflect local needs. Paragraph 82, of the Framework, states that local planning authorities should support opportunities to bring forward rural exception sites that provide affordable housing and consider whether allowing some market housing on these sites would facilitate this. Aside from the seven open market dwellings, the proposal would include sixteen units to meet local needs. Twelve of these would be subsidised by the four offered for local market sale, restricted to local residents in accordance with the Council's policies. As such, the proposed sixteen units would include four local market houses that would provide some cross-subsidy. As the open market units would not be policy compliant, the scheme as a whole would fail to meet the local needs housing exception policies.
22. Consequently, the proposal would include the delivery of open market dwellings that would not serve the local community and would be located beyond the physical confines of the village. Accordingly, the proposed development would conflict with CS policies CS.15 and AS.10 and the Development Requirements [2018] SPD. These seek, among other matters, to direct most new development to sustainable locations and to only support community led housing schemes within or adjacent to a village or small-scale housing within its physical confines.

Character and appearance

23. The village includes a variety of styles and sizes of dwellings. It includes a historic core focussed around the church. Beyond this, housing stock is more varied in age and scale. The appeal site would connect to the linear modern housing of Edgehill View, which currently provides access to two public rights of way that connect to St Mark's Close to the northwest and the countryside to the southeast.
24. The site consists of a former construction compound and part of a field, currently used for crops. The site is partly bound by boundary tree and hedge

planting, especially to its northwest and southwest boundaries. The compound includes several earth mounds, and a combination of self-seeded plants, scrub and gravel patches. The site's southeast boundary does not align with the existing field boundary. Beyond the site the land gradually falls away revealing distant views of the countryside with wooded horizons. The site assembles two different land types and segregates a field with a new boundary, it therefore does not have a unified character. Nonetheless, it is undeveloped land and forms part of the countryside that surrounds the village making a positive contribution to the character and appearance of the surrounding open countryside.

25. The proposed scheme would extend the village envelope. It would not complement the existing settlement pattern and, whilst being adjacent to the existing village, the site would create artificial boundaries through the adjacent field and surrounding agricultural land. Nonetheless, the need for a new boundary, and its details, could be suitably required by an imposed condition. This feature could complement its sensitive location adjacent to the open countryside, even if some installed landscaping were to fail over time. However, landscaping would not form an effective screen or suitably mitigate the harmful effects of the proposal's scale and overall visual impact on the local landscape.
26. The design of dwellings would generally follow the established character of housing within Edgehill View. Individual houses would therefore complement local housing, with a freeform layout that matches the evolution of several pockets of housing within the village.
27. Nonetheless, the entrance to the proposed estate consists of a cluster of five houses that stand behind two shared car parking areas. Although landscaping is proposed to visually disaggregate views of the car parking, this area would remain prominent in the street. The parking areas would erode the appearance of the frontage of plots 1-6 and create a poor landmark feature at the entrance to the estate. Furthermore, other areas of parking such as those serving plots 7 and 23 are set away from, and would poorly relate to, their associated dwellings. These components would be features of poor design and would diminish the quality of the overall layout.

Heritage asset

28. The Leys is a grade II listed building, built between the late C17 and early C18. This two-storey thatched cottage, with whitewashed stone walls and brick end stacks, stands within a relatively large plot. The plot is L-shaped, with formal gardens extending out to the west and southeast of the dwelling and these are adjacent to the field that forms part of the appeal site. The gardens are landscaped with ornamental tree and hedge planting found both within the site, close to the building, and along the site's perimeters. The significance of the listed building derives from its age and traditional form of architecture, set within a rural setting.
29. The setting of the listed building encompasses its surrounding built form and its gardens. Also, the building has a relationship with the field to its immediate south, which provides distant views of the open countryside through gaps in the low boundary fence and boundary planting.

30. The proposed scheme would include a parcel of open space along its eastern boundary. This provides a gap between the built form of the proposal and the listed building itself. Furthermore, the closest proposed dwellings would be single storey. These design features would reduce the overall effect of the proposal on the setting of the listed building. Notwithstanding the separation, the proposed development would result in the adjacent agricultural land no longer contributing to the setting of the LB, thus diminishing that countryside relationship as an aspect of its setting. This effect would result in less than substantial harm in accordance with the findings of the Appellant's Heritage Assessment³.
31. In finding less than substantial harm it is necessary to decide whether this harm would be outweighed by the public benefits of the proposal. The proposal would include the delivery of twelve affordable houses and four local market dwellings. The provision of affordable housing, and in meeting a local need for such housing, is an important material consideration. However, it has not been adequately demonstrated that the combined scheme would be required to meet the local identified need. Therefore, this benefit would be moderate and would not outweigh the less than substantial harm found.

Summary of character and appearance

32. The proposed development would not conform to the established pattern of development, adding an extension to the village in a manner that harmfully intrudes into the open countryside. The proposal would also result in less than substantial harm to The Leys, failing to preserve its significance, and the layout would include design features that would be poor quality, eroding the quality of the scheme.
33. Accordingly, the proposed development would conflict with CS policies CS.5, CS.8, CS.9, AS.10 and the Development Requirements SPD [2018]. These seek, among other matters, for development to protect the landscape character of the district's diverse landscapes, priority given to protecting heritage assets and for development to be of high-quality design.

Highway issues

34. The village is relatively small and provides limited access to public transport. In such locations it is necessary to provide parking provision that would be commensurate with the site's rural location.
35. The Highway Authority has identified that intervisibility, between vehicle and pedestrian visibility, should be shown for all access points in accordance with the Highway Authority's design guide. This requires pedestrian visibility splays to be 2.4 metres by 2.4 metres and taken to the rear of the footway from either side of the vehicle access. However, the plotted visibility splays have been taken from the midpoint of each driveway (layout plan version E) in conflict with the guidance. Nonetheless, the driveways appear to show sufficient space around them to comply with this requirement without the need for such splays to cross third party land. As a result, a condition could be imposed on the grant of any permission, to ensure that correctly drawn splays are shown and are maintained in perpetuity.

³ Heritage Impact Assessment, Haywood Developments, 7 February 2023

36. The proposed layout includes two parking spaces per dwelling, in accordance with the Council's parking standards established within the Development Requirements SPD. Part O of the SPD relates to Parking and Travel, this section states that non-allocated parking, intended to provide scope for visitors, can be provided on plot or on-street if the design of the road is appropriate. The Highway Authority seeks two visitor spaces to be provided within the proposed estate.
37. The Framework explains that maximum parking requirements should only be set where there is clear and compelling justification that they are necessary to manage the local road network. The required non-allocated parking, for two visitor spaces, is a reasonable requirement given the context of the site and the small size of the village.
38. The layout contains a roadway that includes a footway both sides and provides sufficient width for two cars to pass. However, this is relatively narrow. Combined with its curved nature and extent of driveway access points, the road would offer limited locations where visitors could safely park on the highway. On-street parking should be accommodated in widened street spaces where cars can park without causing obstruction. Furthermore, the Council has raised concerns that the roadway is tight for the movement of collection vehicles with some intrusion over kerb edges shown on the tracking plan. Therefore, the narrow nature of the road and the absence of suitable on street visitor parking would be likely to cause hazard and obstruction in the highway creating highway safety concerns and would prevent the layout from functioning well.
39. As a result, the proposal would conflict with CS policy CS.26 and paragraph 135a of the Framework. These require, among other matters, for development to provide sufficient parking to avoid unacceptable impacts on highway safety and for development to function well and add to the overall quality of an area.

Drainage issues

40. The Framework requires development proposals to use the opportunity provided by new development to reduce the causes and impacts of flooding, making the most possible use of natural flood management techniques as part of an integrated approach to flood risk management. The proposal includes surface water catchment in the form of a balancing pond to reduce off-site flooding.
41. The Lead Local Flood Authority (LLFA) objected⁴, in December 2022, to the application submission on the basis that the Appellant's hydraulic modelling did not consider the impact of the site post development where water levels would be subject to change and once the attenuation basin had been incorporated. Also, a number of outstanding points were not addressed in relation to the condition of the watercourse, details of how the pond would remain operational at times of flooding, measures to prevent ground water entering the pond and suitable network level calculations.

⁴ Lead Local Flood Authority, by Sophie Lynes, 22 December 2022

42. The Appellant asserts that information submitted 31 January 2023 to the Council provided adequate information to satisfy surface water drainage issues. However, this was not accepted by the Council and was not the subject of consultation with the LLFA prior to the Council making its decision in February 2023.
43. Without a consultation response from the LLFA I cannot be satisfied that the scheme would operate successfully from a surface water attenuation perspective. In taking a precautionary approach, it is important to ensure that flood risk is not increased elsewhere, an objective also sought by paragraph 173 of the Framework. Consequently, the evidence does not demonstrate to a suitable extent that the proposed development would operate without causing flood risk in other areas.
44. Accordingly, the proposal would conflict with CS policy CS.4 and the Framework. These require, inter alia, for development proposals to take into account the predicted impact of development on climate change, minimising flood risk and to not increase the rate of surface water runoff from the site as a result of development.

Other Matters

Viability

45. The Appellant asserts that the local needs housing can only be delivered if cross subsidised by seven open market dwellings. Conversely, the Council's assessment of the viability of the scheme found that the scheme could be delivered without the open market dwellings. The Appellant's new viability report aims to demonstrate that the market dwellings of the amended scheme are necessary to cross subsidise the twelve 'affordable' discounted units. Nonetheless, I have reflected on the comments made by both main parties in connection with the original viability report in respective evidence.
46. The originally submitted viability details, in support of the refused scheme, included a budget costing exercise, viability letter and viability appendices. The budget costing exercise considered the viability of the project as at the second quarter of 2022 and is therefore rather dated, but remains useful, nonetheless. The Appellant's original viability report concluded that the residual land value generated by the sixteen community homes would provide a return lower than the stated benchmark land value (BLV) and would therefore not be viable.
47. Avison Young undertook its own viability appraisal⁵ on behalf of the Council. It adopted the Appellant's affordable housing values and found the sales values to be achievable given comparable values realised at Lighthorne Heath. However, it also found that the proposed bungalows could probably achieve a higher value than calculated by the Appellant. It adopted a lower Quartile figure for build costs as opposed to the Appellant's median figure and added 5% to allow for inflation. Some external works cost inputs were higher than would be expected and were reduced accordingly. Furthermore, the sales fee seemed high for a largely affordable housing scheme and was reduced from 3% to 2%. The CIL calculation was deemed to be overstated

⁵ Avison Young Viability Assessment Report October 2022

and should exclude the affordable units. However, the profit level of 20% was accepted.

48. The benchmark land value (BLV) was also reduced to reflect the cost of arable land. Using the residual method of valuation the appraisal of Avison Young found that a residual current day value of the land, of the refused scheme, would exceed the BLV. As such, this demonstrated that the seven open market dwellings were not required to create a viable scheme. Furthermore, it has demonstrated that even if the predicted sales values of the bungalows were optimistic (in Avison Young's model), there is no clear reason why all seven open market dwellings would be necessary to subsidise the scheme.
49. The Appellant's Statement of Case concurs with Avison Young that the BLV should be £400,000. However, while the appellant now asserts that the residual land value would not exceed the BLV, that is based upon the revised scheme. Therefore, although the Appellant has attempted to address the Council's viability concerns, these comments are associated with the proposed revised scheme. Furthermore, whilst it is reasonable for the Appellant to update costs and values during a period of inflation, such assessment is conflated with the emended scheme and the revised mix of housing. As such, I am unable to rely upon the revised financial appraisal with respect to the refused scheme. Accordingly, it has not been shown that the scheme refused by the Council, and now before me, requires seven open market dwellings to deliver the community housing scheme.

Other considerations

50. The Council can demonstrate it has a 5-year housing land supply, at around 14.55 years. Nonetheless, this does not place a cap on housing and does not prevent future housing being found to be acceptable on suitable sites. As such, the provision of housing makes a modest contribution in favour of the proposal.
51. The Council explains it has a good track record of delivering housing schemes that meet local needs, that are cross subsidised by open market housing ring-fenced for local residents. This illustrates that such schemes, in some cases, can be viable without the need for open market dwellings.
52. Letters of support were submitted during the application process, identifying a range of benefits from new housing to occupiers of the village. These comment that few small houses are available for purchase in the village and a more diverse spectrum of housing would be welcomed. Support was also given for the required rental properties in the village, the mix of both houses and bungalows and the relatively low-density nature of the scheme. This support weights in favour of the proposal.

Conclusion

53. The Framework seeks to boost the supply of housing. The proposal would deliver 23 new dwellings making a modest contribution to the housing needs of the district. These could be delivered relatively quickly, making a rapid positive contribution to the local supply of housing in the area. The proposal

would make efficient use of land in accordance with the Framework with a scheme of medium density.

54. There would be some economic benefits during construction and upon occupation. During construction the development would provide jobs and opportunities for local companies and once occupied future residents would support services, albeit limited, in Gaydon and the surrounding area. These benefits therefore attract moderate to limited weight in favour of the proposal.
55. The scheme includes the delivery of affordable housing and homes for the local market, which weighs moderately in favour of the scheme. Nonetheless, it has not been demonstrated through an assessment of viability, that the proposed seven open market dwellings are necessary to deliver the community housing.
56. Weighed against the benefits of the proposal is my finding that the appeal scheme would not comply with the Council's policies that relate to spatial housing, character and appearance, heritage assets, highway safety and drainage demonstrating it would not accord with the development plan as a whole. Accordingly, despite ascribing moderate weight to the provision of affordable housing and moderate to limited weight to other benefits, the material considerations do not provide a compelling reason to deviate from the development plan.
57. Therefore, for the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR