
Appeal Decision

Site visit made on 30 June 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 July 2016

Appeal Ref: APP/Y3940/W/16/3147797

Land off Rabley Wood View, Marlborough, Wiltshire SN8 1EP

- 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 Manton House Estate against the decision of Wiltshire Council.
 - The application Ref 15/01052/OUT, dated 4 February 2015, was refused by notice dated 8 October 2015.
 - The development proposed is described as residential development and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for residential development and associated works at land of Rabley Wood View, Marlborough, Wiltshire SN8 1EP in accordance with the terms of the application, Ref 15/01052/OUT, dated 4 February 2015, subject to the conditions in the Schedule below.

Procedural Matters

2. The proposal is in outline with all matters reserved, although it is clear that access is to be provided from the existing spur of Rabley Wood Road, which gives current users access to the play area and open space including for maintenance purposes. The illustrative site layout (Ref 1418-002f Rev F) shows 39 houses, a new enclosed play area and Multi Use Games Area (MUGA) on the site of the current public open space (POS), and a new casual area of POS on the lower flat area of existing rough pasture to the north-east of the existing hedge line.
3. The Council is no longer contesting its third refusal reason because the appellant has recently carried out an extensive archaeological field investigation, which has revealed no significant buried remains.

Main Issues

4. The main issues are the effect of the proposed development on the landscape and scenic beauty of this part of the North Wessex Downs Area of Outstanding Natural Beauty (AONB) and whether the replacement POS to be provided would be equivalent to that which exists on the site.
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Reasons

AONB Landscape

5. Located on the north-eastern edge Marlborough the site is 2.85Ha in size and comprises an existing area of POS created when the neighbouring housing was constructed in the 1980s and 1990s and an adjacent flat area of land on the valley floor of the River Og, although this latter area does not lie in Flood Zones 2 or 3. The existing POS slopes steeply down from the west to the valley floor in the east, dropping approximately 10m, a slope of 1 in 10. The River Og lies about 50m east of the site boundary and flows into the River Kennet about 1km to the south-east.
6. Great weight should be given to conserving landscape and scenic beauty in AONBs, which together with National Parks and the Broads have the highest status of protection in relation to these matters, as set out in paragraph 115 of the National Planning Policy Framework (NPPF).
7. The site and surrounding land lies within the AONB. The land rises up either side of the Og valley. At the highest point of the site is a belt of trees and this would be retained in the proposed scheme. To the east of the site, on the other side of the river is a public bridleway. Beyond this is the raised former railway line, now known as the Chiseldon and Marlborough Railway Path, used as a footpath and part of the national cycle route network.
8. The appellant submitted a Landscape and Visual Impact Assessment (LVIA) with the application and this employs the customary assessment methodology¹. The site lies within the Berkshire and Marlborough Downs National Character Area and the Kennet Valley Landscape Type.
9. The LVIA assesses landscape impact as 'minor neutral' rising to 'minor neutral/positive' as the planting, enhancement and management measures mature. At present the existing POS, apart from the western tree belt, is simply an area of open mown grassland with a hedge planted with evenly spaced trees bounding the land on the valley floor. Besides being open and green it contributes little to local landscape character and additional tree planting in this area is to be welcomed, as is the biodiversity enhancement envisaged in the area next to the proposed SUDS attenuation pond and the strengthening of tree planting within the existing hedge. For these reasons I agree with the LVIA's above conclusion on landscape impact.
10. LVIA Viewpoints (VP) 1-3 are views from the edges of the site itself and the proposed residential development would markedly alter these views, including constraining the views of residents in dwellings that adjoin the existing POS. But the site slopes steeply eastwards and the illustrative layout and sectional drawings indicate that the screening effect of the new homes would be less than if the site was flat and there will still be views through the site and over the proposed houses from existing surrounding houses. In any case, there is no right to a view for existing residents.
11. Medium distance visual impacts in this case are from views of the site by people using the bridleway (VPs 4, 5, 7 and 8 in the LVIA), Railway Path (VP7) and the footpath connecting the two (VP6). At this time of the year new leaf

¹ As set out in Guidelines for Landscape and Visual Impact Assessment, 3rd Edition – The Landscape Institute and Institute of Environmental Management and assessment (2013)

growth helps to mask these views or at least partially constrains them and I am conscious that views in winter would be more extensive. The view from VPs 6, 7 and 8 in particular would afford reasonably clear views of the new housing on the site, despite the Railway Path being generally well screened by mature vegetation.

12. But these views of the new homes would be seen in the context of the existing housing either side of them in this part of the town. There are no wider views from the AONB further to the east because the two ridges of high land in this direction block any such views from public vantage points. The site is shielded from views to the north and west including from the main A346 by the topography and surrounding residential development, which would also shield views from the south.
13. The Council argues that changing the use of the land on the valley floor from agricultural pasture to a casual POS and site of a SUDS attenuation pond would formalise a landscape that is currently informal by introducing fencing, goalposts and other paraphernalia. The appellants state that there are no plans to install any such features and point out that there are ways of designing attenuation ponds that obviate the need for such fencing. Even if this was to occur I noticed that there is a similar area of recreational flat land on the other side of the river which has two sets of goalposts and appears to be used as a football pitch. That area does not erode the openness of the river valley and neither would the proposed casual play area.
14. The Council also objects to the proposal in terms of the works to the existing hedge in terms of uplifting the crowns of the trees within it and forming two pathways through it to link the housing site to the casual open space beyond, as well as to the likelihood of residents of the nearest dwellings wishing to further prune the trees next to their gardens.
15. The crown thinning of the trees is a sensible practical expedient in order to increase inter-visibility between the housing and the new casual POS whilst at the same time retaining their screening element from the wider AONB to the east. The formation of two pathways as indicated would not result in any significant loss of this hedge screen, and the appellant has taken account of the trees' root protection areas in designing the illustrative layout.
16. Whilst I do not put much store by the additional tree planting proposed on the main body of the housing site in terms of masking the above views of the site, I agree for the above reasons with the LVIA's conclusion that visual impact would at worst be 'moderate negative', which would not be significantly harmful.
17. For the reasons set out above I conclude that the proposed residential development would not significantly harm the landscape and scenic beauty of this part of the AONB. It would comply with Core Policy 51 of the Wiltshire Core Strategy (CS), which requires development to not have a harmful effect on landscape character.

Public Open Space

18. CS Core Policy 52 states that development shall make provision for the retention and enhancement of Wiltshire's Green Infrastructure network including POS. It goes on to state that if damage or loss of such is

unavoidable, the creation of new or replacement green infrastructure equal to or above its current value and quality will be required. The Council argue that the loss of the current POS is avoidable because there is nothing wrong with it and housing can be provided elsewhere within the town.

19. The Council contends that the loss of POS resulting from the development would not be replaced by equivalent or better provision in terms of quantity and quality in a suitable location contrary to NPPF paragraph 74. Its basis for asserting this is that the new POS would not be overlooked by the windows of houses as the existing space is and would not therefore be safe for children to play. However, a new equipped play area for younger children would be located more or less in the same position as that existing and it would be directly overlooked from proposed houses, as would the new MUGA immediately behind it. The appellant states that the new casual POS would tend to be used by older children who would not need such looking after and I agree that there is no need for direct overlooking of that area for that reason.
20. The Council also objects on the grounds that the POS would be less accessible than that existing and less safe because reaching it for some residents would involve crossing the new road into the development. Whilst the new casual POS area would be further away from existing residents and on the valley floor it would be immediately adjacent to the existing POS and walking an additional few metres would be insignificant in this regard. The equipped play area would be in the same place as existing. A dedicated pedestrian crossing of the new estate road would enable safe access to the new POS.
21. I note that the Council acknowledges that the size of the proposed compensatory provision, when taken with the MUGA and play area, exceeds the size of the current open space and recreation area². The proposal would also deliver a MUGA and provide a new modern equipped play area for younger children, which would considerably enhance the range of facilities offered by the POS and which otherwise would be unlikely to be delivered. Whilst such facilities would clearly benefit the new residents of the development, they would also improve facilities for existing residents at the same location as the current play equipment.
22. The whole of the proposed POS will still have the same outlook onto the AONB landscape on the far side of the valley. The Council also considers that the access to the new POS will be 'urbanised' but I attribute little weight to this criticism of the scheme because most residents already have to negotiate some element of highway or footway in order to arrive at the existing POS and this would be no different in the proposed scheme.
23. In summary, I acknowledge that the new casual area of POS the other side of the hedge line would be less overlooked than the existing POS but for the above reasons this is not crucial to its success. It would be near enough to the current POS for it to be reasonably accessible to existing residents. Significantly, in my view, it would deliver improved facilities including a total area of POS larger than that currently existing.
24. For these reasons I conclude that the replacement POS to be provided would be equivalent to that which exists on the site. Whilst the loss of the current POS may be avoidable the proposal does not offend the principal requirement

² Council's appeal statement paragraph 5.13

of Core Policy 52 to provide green infrastructure equal to or above its current value and quality, which is exactly what the scheme would do.

25. The Council opines that the requirements of NPPF paragraph 74 are not met because the proposal must meet all three bullet points. This is not the case because of the word 'or' after the first two bullet points. For the same reasons as above the development would meet the second bullet point, and hence it satisfies this paragraph, which is in any case repeated by the wording of Core Policy 52.

Other Matters

26. Some residents have argued that the proposed new POS land would be completely unsuitable because it is flooded for many months of the year and they have provided photographs showing deep water on part of the site. The appellant has responded that this is a misrepresentation of the facts because the photos merely show deep water in some of the trenches created by Thames Water last winter when it was in the process of installing a new strategic water main running down the valley, and that negotiations are ongoing for the water company to properly restore the land to its former state. It also points out that its land drainage scheme for this area will ensure that it is suitable for year-round use as casual POS.
27. I have seen no evidence that this would not be the case. I agree that the deep areas of water shown on the objector's photos appear to be as a result of the trenching operations by Thames Water rather than a general deep inundation of the whole of that site and note that such trenches have now been filled in. More significantly I note that there has been no objection on flooding grounds from the Council's Land Drainage Engineer or Ecologist, nor from the Environment Agency or Thames Water. I am therefore satisfied that the new POS land would not be liable to flood and that it would be suitable as POS.
28. I have taken account of all other matters raised by residents but none of them are so significant to warrant refusal of the proposed development. In particular I note that the Council states that it has a housing land supply of well over five years. Whilst no counter evidence has been put forward to dispute that figure by the appellant I note that the site of the proposed housing currently lies within the settlement boundary of Marlborough, a sizeable town with a good range of facilities. Whilst the new area of casual POS does not, such land will remain open and essentially undeveloped and for the above reasons there is no objection to changing its use.

Conditions

29. I have reviewed the Council's list of 16 suggested conditions and agree that most of them are required although I have amended some of the wording slightly to ensure that they comply with Planning Practice Guidance.
30. However, suggested Condition 4 is unnecessary because landscaping is a reserved matter and can therefore be dealt with at that stage. Conditions 8, 9, 11, 12 and 14 relate to matters that are addressed by other statutory regimes, and/or are unnecessary because the dwellings could not be sold without providing foul drainage and water, or (in the case of suggested Condition 14) refer to the Code for Sustainable Homes, which is no longer in use.

31. For the avoidance of doubt there should be a condition listing the approved site plan. A condition is necessary specifying the minimum size of the replacement POS because the proposal would otherwise be unacceptable. A Construction Method Statement is necessary in order to minimise construction impact on neighbouring residents' living conditions. A condition to deal with possible contamination of the land is required given the site's proximity to a historic landfill site. Details of a surface water drainage scheme are necessary to prevent flooding. Ecological mitigation is necessary as set out in the submitted details to ensure that habitats are replaced and enhanced. Given that there is no S106 agreement or unilateral undertaking (as agreed is unnecessary by the Council) it is necessary to secure affordable housing by a condition requiring the details of such prior to commencement of development.

Conclusion

32. For the reasons given above I conclude that the appeal should be allowed subject to the conditions below.

Nick Fagan

INSPECTOR

Schedule of Conditions

- 1) Details of the access, 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 site is that shown on the approved 1:2500 location plan 1418-104d Rev E dated 15/8/15.
- 5) The layout details to be submitted under Condition 1 shall show replacement open space consisting of: (1) a play area of at least 0.237ha (to include both play equipment and a multi-use games area or MUGA) and (2) casual open space of at least 1.149ha, and no more than 39 dwellings. Before development commences, a landscape and open space works specification and management plan, including design objectives, management responsibilities and maintenance schedules for all landscaped and open space areas, including a timetable for the provision of the replacement open space (equipped play area, MUGA and compensatory casual open space), shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall thereafter be retained and used for no other purpose.

- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

- 8) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy shall demonstrate the surface water run-off generated up to and including the 100 year critical storm with an allowance for climate change. The scheme shall also include details of

maintenance and management after completion. The scheme shall be implemented in accordance with the approved details.

- 9) The development shall be constructed in accordance with the Ecology Mitigation and Enhancement Strategy produced by Malford Environmental Consulting on 20/07/15 for the site. Volumes and areas of habitat replacement and enhancement shall not be altered from those shown in the table in section 3.11 and on the plan at Appendix A, fig 1 of that document.
- 10) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no RSL involved;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

End of Schedule