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## Appeal Decision

Inquiry held on 6-8 September 2016

Site visit made on 7 September 2016

**by B.S.Rogers BA(Hons) DipTP MRTPI**

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

**Decision date: 04 November 2016**

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**Appeal Ref: APP/V3120/W/16/3153209**

**Land to the north of Lower Road, Chilton, Oxfordshire, OX11 0RR**

- 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 Summix (Chilton) Development LLP against the decision of Vale of White Horse District Council.
- The application Ref: P16/V0660/O, dated 11 March 2016, was refused by notice dated 13 June 2016.
- The development proposed is outline permission for up to 40 new dwellings including 16 affordable homes along with associated landscaping, open space and drainage infrastructure.

**Summary of Decision: The appeal is dismissed.**

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### Preliminary matters

1. The application is in outline, with all matters reserved, save for means of access. Although the application is described as being for “.. up to 40 new dwellings ..”, the appellants confirmed at the inquiry that the intention was to introduce only a limited amount of flexibility and that it was not intended that the number would fall significantly below 40. The appeal submission includes extensive illustrative material to indicate how 40 dwellings might be accommodated on the site.
2. Prior to the inquiry, the Council withdrew reason for refusal no.3, relating to flood risk and did not put forward a witness. The matter of flooding was pursued by local residents and is a matter I consider below.
3. At the inquiry a planning obligation dated 6 September 2016 under S.106 of the Town and Country Planning Act 1990 (as amended) was submitted. In short, this addresses the matter of affordable housing provision and other infrastructure requirements. The Council and Oxfordshire County Council have provided written confirmation that, in their view, the obligation meets the requirements of the Community Infrastructure Regulations 2010, and in particular Regulations 122 and 123. I have seen no reason to come to a different view. As a result of the obligation, the Council withdrew reason for refusal no.4.
4. In addition to my accompanied site visit on 7 September, I carried out a number of unaccompanied site visits before and during the inquiry, taking in the viewpoints identified by the parties in their representations.

## **Main Issues**

5. The main issues in this case are first, the impact of the proposal on the character and appearance of this part of the North Wessex Downs AONB; second, whether the proposed development is capable of being designed to harmonise with its local context; and third, whether the proposed development makes adequate provision to address flood risk.

## **Reasons**

### *Planning Policy Context*

6. The appeal site lies within the North Wessex Downs AONB. It measures some 2.49 ha and comprises a parcel of grazing land located adjacent to the western edge of the village of Chilton. It has a frontage to Lower Road, to the south. A short distance to the west, the A34 dual carriageway runs in a north-south direction in a cutting and, some distance beyond that, the Harwell Campus occupies the site of a former WWII airfield. A garden centre, Chilton Primary School and a new housing development, known as Chilton Fields, also lie to the west of the A34.
7. The development plan presently comprises the saved policies of the Vale of White Horse District Local Plan 2011 (LP2011). It is in the process of being replaced by the emerging Vale of White Horse Local Plan 2031 (LP2031), which was the subject of an Examination in Public earlier this year. Following this, the Inspector published his Interim Findings (June 2016). In turn, the Council has consulted on Proposed Modifications. The Council expects the Inspector's report to be published later this year and expects to adopt the plan early in 2017.
8. The LP2011 sets out a strategic approach to development in Policy GS1, which is to direct development to the 5 main settlements of the District, to a strategic site west of Didcot, and to allow small-scale development within the built up areas of villages, provided that important areas of open land and their rural character are protected. Policy GS2 would resist development in the open countryside. Policy H12 applies the above strategy explicitly to Chilton, which is defined as one of the 'smaller villages'. Here, new housing would be allowed within the built up area of the village, limited to sites for not more than 4 small dwellings (and subject to other provisos). It is not in dispute that the appeal site is outside the built up area of Chilton and should in policy terms be regarded as open countryside.
9. Despite providing for a major increase in housing provision, the emerging LP2031 maintains a broadly consistent strategic approach in relation to Chilton. It remains designated as a 'smaller village', where limited infill development may be appropriate within the existing built areas, or if there is an allocation in a future neighbourhood or local plan. To my mind, the strategic approach is consistent with that of the National Planning Policy Framework (the Framework) to direct development to sustainable locations. In my view the proposal is quite clearly at odds with the relevant policies of both the existing and emerging development plans and with the development plan as a whole.
10. However, given that the Council accepts that it can only demonstrate a 4.1 year supply of deliverable housing sites, and that the above LP2011 policies are relevant policies for the supply of housing, they should not be considered up-

to-date, as per para.49 of the Framework. That does not imply they are without weight, given their significant level of consistency with the Framework. I regard the emerging LP2031 policies as having substantial weight, given the advanced stage the plan has reached and the generally positive Interim Findings of the Inspector.

11. Turning to para.14 of the Framework, where relevant policies of the development plan are out-of-date, planning permission should be granted unless i). 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 ii). specific policies in the Framework indicate development should be restricted. Policies relating to an AONB would fall within the second criterion.

#### *Impact on the AONB*

12. Para.115 of the Framework points to the great weight that should be given to conserving landscape and scenic beauty in an AONB. Both Policy NE6 of the existing and CP44 of the emerging LP are consistent with this in giving high priority to the conservation and enhancement of the natural beauty of the landscape and resisting harmful development. Para.116 of the Framework indicates that planning permission should be refused for major developments in these designated areas, except in exceptional circumstances and where it can be demonstrated that they are in the public interest.
13. Therefore, I must first determine whether the proposal represents a 'major' development. It was agreed that this matter is not to be determined by reference to the definition of 'major development' for the purposes of the Town and Country Planning (Development Management Procedure)(England) Order 2015. Rather, case law indicates that there should be consideration of the factual size and scale of the development compared to that in its vicinity i.e. its local context. This approach is echoed in the advice of the National Planning Practice Guidance:- *"... it will be a matter for the relevant decision taker, taking into account the proposal in question and the local context"*.
14. The essential difference between the Council and local residents on the one hand and the appellants on the other was whether the local context should be limited to the village and its surroundings to the east of the A34, or whether it should be extended to include Harwell Campus and other development to the west of the A34. In my view, the former approach is by far the most compelling. The A34 appears as a major, intrusive physical barrier, despite being crossed by pedestrian/cycle routes in the form of an underpass and a footbridge. Whilst there may be a functional link, in that village children clearly cross under/over the road to the primary school, and it is plausible that some village residents are employed at the Campus, there are other visual and spatial factors that outweigh such considerations, in my view.
15. There is a significant rural gap comprising fields and other open space between the long-established western edge of the village and the A34 itself. Importantly, there are also substantial areas of tree planting within this rural gap. The combined effect of these trees, the extensive planting on the embankments on either side of the A34 cutting, and the variation in topography, is that there is virtually no inter-visibility between the village and the development to the west of the A34. Both landscape witnesses agreed that

the local context was limited to the village of Chilton. The same approach was also followed in the Design and Access Statement.

16. In this case, the Council calculated that the proposal would represent an increase in the population of Chilton of some 11%. This calculation was based on the population of the whole of the Parish but did not include that of the recently built Chilton Fields housing. The Council also calculated that development of the appeal site would increase the spatial extent of the built-up area of the main village by some 10%. In this context, the appeal proposal for up to 40 dwellings appears to me to represent a major development. Mr Flood, for the Council, provided an analysis of 6 appeal decisions in various AONBs where this issue has been considered. The cases included proposals for 29 and 39 dwellings, comprising population increases of 0.6% and 1.2% respectively, which were not considered 'major'. They also included proposals for 14, 31, 46 and 125 dwellings, comprising population increases of 4%, 4%, 5% and 12% respectively, which were considered to be 'major'. Whilst I recognise that the site-specific circumstances of each case must differ, my view appears consistent with these other examples.
17. Having concluded that the proposal represents a major development in the context of the village and its surrounds to the east of the A34, planning permission should be refused unless there are exceptional circumstances and the development would be in the public interest.
18. Given the acknowledged shortfall in the 5 year supply of housing land, and of affordable housing, there is clearly a need for additional housing. However, the present supply position of 4.1 years does not indicate to me an exceptional, or even an unduly harmful shortfall, given that the emerging LP2031 is at an advanced stage and provides for a 'step change' in housing provision. Although its timescale for adoption and its final content cannot be guaranteed, the timescale set out in para.7 above does not appear unrealistic, given the Inspector's generally positive Interim Findings. Although the Council's 'Ring Fence' approach to part of the District has not been formally resolved, this would not appear to give rise to a risk of a housing land shortfall. Therefore, it is my view that any current shortfall is likely to be short-lived.
19. Moreover, the new housing provision will have been made in accordance with the plan-led strategic approach set out in paras.8 & 9 above, which takes account of the aim to provide a concurrent and congruent supply of housing, jobs and infrastructure. Therefore it appears unlikely that the 40 proposed dwellings would significantly benefit, or conversely that their loss would be unduly harmful to, the local economy.
20. The fact that the Local Plan Inspector recommended the deletion of 2 large housing sites adjacent to Harwell Campus, totalling some 1400 dwellings, indicates some confidence that the planned housing provision will be more than adequate and that there is no exceptional requirement for significant housing to be provided in the AONB, close to the Campus. Indeed, the Local Plan Inspector commented in his interim findings that "*There is little to suggest that, if this housing (ie the 1400 dwellings) is needed ... alternative sites for it, outside the AONB but within Science Vale, could not be found.*" This reflects the substantial swathe of land in the District outside the AONB, but within the Science Vale, where it appears that an adequate supply of plan-led housing is

- proposed. I see little justification for the proposition that the proposed 40 dwellings could not be provided at suitable locations outside the AONB.
21. The primary purpose of the AONB designation is to conserve and enhance the natural beauty of the area. The application was accompanied by a Landscape and Visual Impact Assessment, whose methodology was not in dispute. However, the landscape witnesses differed as to the value of the appeal site as part of the AONB and the predicted effect of the development.
  22. The AONB Integrated Landscape Character Assessment locates Chilton within the Downs Plain and Scarp landscape character type, characterised by a large scale, open arable landscape. Neither Chilton nor the appeal site appears to contribute greatly to this character type. Chilton has a readily identifiable wooded setting when viewed in the wider landscape, for example in elevated views from the Ridgeway, to the south. The proposed development would have a negligible impact in such long distance views.
  23. More locally, Chilton is within the Hendred Plain character area and the appeal site shares some of its identified characteristics of undulating landscape, shelter belt planting and equestrian activity. The appeal site abuts Chilton, which, in the Vale of White Horse Design Guide, is located within the Rolling Farmland Villages character zone. The visual impact of the proposed development would be largely experienced in its local context (see paras. 14 & 15 above).
  24. However, that does not imply that the site is unimportant to the AONB. The site is an attractive, open area that forms part of the immediate setting of the western edge of Chilton and enhances its local character. This is a view shared by the NW Downs AONB Body. From a range of viewpoints to the south and west of the site, I agree with the Council that the predicted effect of development would range from moderate adverse to major adverse. There is also a high degree of inter-visibility with the village immediately to the east.
  25. There would be an immediate adverse impact of removing a mature tree and some 28m of hedgerow, on an embankment, to form the vehicular access from Lower Road. Furthermore, the proposed dwellings would themselves be visually prominent. Although new landscaping would mitigate the impact to some degree, this would take many years to become established. To my mind, the result would be an out of keeping extension to the built form of the village into an area of land which contributes positively to the landscape character and setting of Chilton and, in turn, of the AONB.
  26. In conclusion, I have taken account of the matters set out in para.116 of the Framework. However, I have found no exceptional circumstances to justify this proposal and no compelling reason to conclude that the development of this site would be in the public interest, so as to rebut the presumption against major development in the AONB. The proposal conflicts with the development plan and its emerging replacement. In the light of the undue harm to the character and appearance of the AONB, planning permission should not be granted for what amounts to a major development in this local context.

#### *Design and local context*

27. Although all matters apart from access are reserved for later consideration, the Council's 2<sup>nd</sup> reason for refusal indicates that there was insufficient information

submitted with the application to demonstrate that the development would be of a high quality design appropriate to its local context and to the amenities of neighbouring residents. In response, the appellants submitted much illustrative material to indicate one form the development could take. I am far from convinced that the submitted illustrative scheme represents a form of development compatible with the general character of the village. To my mind it conveys an urban feel. However, Mr Flood, on behalf of the Council, conceded that appropriate detailed design is capable of addressing this reason for refusal and I have seen no reason to disagree with that view.

28. It is clear that the site is large enough for issues of overlooking and daylight between the proposed dwellings and neighbouring dwellings in Main Street to be suitably addressed. Accordingly, I see no reason to conclude that a development could not be designed to harmonise with its local context.

#### *Flood risk*

29. The appeal site is within Flood Zone 1, outside any fluvial floodplain areas. The application was accompanied by a Flood Risk Assessment, given that the size of the site exceeds 1ha. Policies DC13 & DC14 of LP2011 and Policy CP42 of LP2031 are broadly consistent with the Framework in requiring a developer to demonstrate that the proposal would be drained in a sustainable manner and would not increase flooding elsewhere.
30. It is not in dispute that, because of the valley landform and the underlying geology, there has been groundwater flooding from the appeal site which has contributed to localised flooding, affecting neighbouring properties in Main Street. Prior to the inquiry, the appellants produced a further flood risk assessment and accompanying drawings which included the incorporation of an allowance for a 40% increase in rainfall due to climate change, took detailed account of localised flooding in the village, and of flows within the site in the event of a 'non-infiltration' scenario. The scheme includes a substantial attenuation pond. Oxfordshire County Council, the Lead Local Flood Authority, is now satisfied that a sustainable drainage system can be incorporated into the development which would result in no additional flood risk to the site itself or to surrounding property. Indeed the aim of the detailed design would be to decrease the flood risk to neighbouring dwellings.
31. Accompanying the localised groundwater flooding have been incidents of the foul sewer flooding. The relevant authority, Thames Water, has agreed that off-site improvements to the system could cater adequately for the development.
32. I am content that suitably worded planning conditions requiring prior approval of on- and off-site foul and surface water systems, and a timescale for their implementation, would ensure that the issues of flood risk and sewage disposal were satisfactorily addressed.

#### *Other matters*

33. The proposed access would join Lower Road at a point where it is narrow and has no footways. Lower Road is used by pedestrians, including children attending Chilton Primary School, cyclists and horse riders. I observed for myself the pedestrian/vehicular conflict that can arise in such a situation. The new junction can be provided with acceptable visibility in both directions, albeit

at the expense of the loss of a significant length of established hedgerow, as referred to above. However, to my mind, the additional traffic which would be generated along this constricted length of Lower Road would exacerbate an already unsatisfactory situation. Nevertheless, the illustrative masterplan indicates that it would be possible to provide within the site a foot/cycle path parallel to Lower Road, capable of providing a 'by-pass' to the constricted part of the road. Accordingly, in my view, the issue of highway safety is capable of being satisfactorily addressed.

34. The adverse impact of development on biodiversity appears capable of being addressed at reserved matters stage by the introduction of suitable landscaping and other features to enhance existing or to create new habitats.
35. I have taken account of all other matters raised but have found none to be of such significance as to alter my decision.

*Overall conclusion*

36. The appellants have satisfactorily addressed 3 of the Council's 4 original reasons for refusal. However, of much greater significance is my view that the proposal fails to comply with the provisions of either the existing or the emerging development plan, taken as a whole. There are no material considerations which have been drawn to my attention which would warrant a decision other than in accordance with the development plan. Furthermore, the proposal does not comply with the Framework's policy approach to major development in an AONB. The harm which I have identified to the setting of the village, and to the AONB landscape in which it lies, is of significant weight. My overall conclusion is that the appeal must fail.

**Formal Decision**

37. The appeal is dismissed.

*B.S. Rogers*

Inspector

## **Appearances**

### *For the appellants:*

Mr A.Crean QC - instructed by Mr P.Frampton

### *He called:*

Mr N.Bagley BSc(Hons), MSc(Eng) - RPS

Mr J.Peachey BSc(Hons), M.LD, CMLI - Pegasus Group

Mr P.Frampton BSc(Hons), TP, MRICS, MRTPI - Framptons

### *For the Council:*

Mr T.Cosgrove of Counsel - instructed by Solicitor VWHDC

### *He called:*

Mr P.Radmall MA, BPhil, CMLI - independent practitioner

Mrs C.Roberts BA(Hons), PGDIP - VWHDC

Mr M.Flood BA(Hons), DipTP, MRTPI - Insight Town Planning

### *Interested Persons*

Mr C.Broad - Chair, Chilton P.C.

Mr F.Dumbleton - local resident

Mr M.Edwards - local resident

Mr K.Woods - local resident

Mr P.Hillier - local resident

Mr A.Smith - local resident

## **Documents**

1. Attendance lists
2. Letter of notification and list of persons notified
3. Statement of Common Ground (General Matters)
4. Statement of Common Ground (Housing Land)
5. Statement of Common Ground (Landscape & Visual Matters)
6. Statement of Common Ground (Flood Risk)
7. Planning Obligation, dated 6 September 2016
8. CIL Compliance Statement, VWHDC
9. Oxfordshire CC Infrastructure Requirements, dated 30 August 2016

10. Oxfordshire CC Regulation 123 CIL compliance statement
11. Plan of Chilton Parish
12. Draft list of planning conditions, produced by VWHDC
13. Appeal decision APP/Y3940?W/16/3147797, Marlborough
14. Note on definition of Major Development, submitted by Mr Flood
15. Refusal notice P15/V2199/O, land off Hagbourne Hill, Chilton.
16. Agreed note on legal background, produced by Mr Cosgrove
17. 2 letters of interest from prospective developers.