

## Appeal Decision

Site visit made on 11 October 2016

**by Emma Tinsley-Evans BSoc.Sc MA MRTPI**

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

**Decision date: 7 December 2016**

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**Appeal Ref: APP/J3720/W/16/3153698**

**Betty's Field, Orchard Close, Lower Brailes, Banbury OX15 5AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Howard Taylor against the decision of Stratford on Avon District Council.
  - The application Ref 14/03040/OUT, dated 3 November 2014, was refused by notice dated 20 June 2016.
  - The development proposed is erection of up to 25 dwellings, associated garages, public open space, alteration to flood relief channel, vehicular access off Orchard Close and pedestrian / cycle access off School Lane.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application is in outline with all matters reserved for future consideration except for the means of access. I have dealt with the appeal on that basis, treating the proposed site layout plan as indicative.
3. Subsequent to the determination of the planning application, the Council has (in July 2016) adopted the Stratford-on-Avon Core Strategy 2011 – 2031 (CS). In light of this, the Council has introduced an additional reason for refusal. The appellant has been made aware of this and has had the opportunity to comment. I am therefore satisfied that the appellant has not been prejudiced by this material change in circumstance and I have determined the appeal on the basis on the policies contained in CS which is part of the Development Plan for the district.

### Main Issues

4. The main issues are:
    - The effect of the proposed development on the character and appearance of the area having particular regard to:
      - the location of the site within the Cotswolds Area of Outstanding Natural Beauty; and
      - the Brailes Conservation Area.
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- Whether the proposed development would be acceptable having regard to the development strategy for the District and the principles of sustainable development.

## **Reasons**

### *Character and appearance*

5. The appeal site, like the rest of Brailes and the surrounding area, is located in the Cotswolds Area of Outstanding Natural Beauty (AONB). In such areas the National Planning Policy Framework (the Framework) gives the highest status of protection in relation to landscape and scenic beauty and great weight should be given to conserving these elements.
6. The appeal site is a relatively small, self-contained area of undeveloped open land located immediately adjacent to the settlement of Lower Brailes. It forms part of the gently undulating valley to the south of the village, focussed on the stream corridor. It is part of the characteristic landscape in this part of the Cotswolds AONB, which includes large hedged fields as distinctive features, with pockets of permanent pasture creating a strong sense of place and link with the past. Being located near the settlement where field sizes reduce and are pastoral, the appeal site can be described as such a 'pocket'.
7. I note that amongst other things, the restoration and conservation of medieval field patterns and the smaller enclosed pastoral fields are identified as opportunities in Natural England's National Character Area Profile for the Cotswolds. In addition, part of the management strategy for the Cotswold Fringe, as outlined in the Warwickshire Landscape Guidelines (1993), is to conserve all remaining areas of permanent pasture. Having regard to the aims of these documents, the provision of up to 25 dwellings on the appeal site would not be compatible, nor would it retain or conserve the identified characteristics of the AONB in this part of Lower Brailes.
8. The appeal site is identified within the Council's Landscape Sensitivity Assessment for Villages 2012 (LSAV), as being within a zone with a medium / high sensitivity to housing development. I recognise that the whole of Brailes is surrounded by land identified as having a high or medium / high sensitivity to housing development; nevertheless, the LSAV study concludes that the zone overall is an important part of the rural setting and hinterland of the settlement and its Conservation Area within the AONB.
9. Notwithstanding this, I also acknowledge that development in the Cotswolds AONB is not precluded. With regard to Brailes the LSAV states that there may be opportunities to accommodate housing in 'the single field' to the east of the new housing along Sutton Lane. I accept that the appeal site is a field to the east of Sutton Lane; however I am not certain as to which 'single field' the LSAV is referring to.
10. In considering this I have had regard to the more recent Upper and Lower Brailes Landscape Study (ULBLS) prepared by Warwickshire County Council Landscape Architects in March 2016 on behalf of the Brailes & Winderton Neighbourhood Development Plan Steering Group. This landscape assessment of potential development sites within the parish concentrates on individual fields included the zones previously covered by the Council's 2012 LSAV for Brailes. I note that the ULBLS does not identify the appeal site as the 'single

field' suggested in the Council's LSAV; it instead identifies a field immediately adjacent to the east of Sutton Lane as the opportunity to accommodate new housing.

11. I am also mindful that the appeal site was identified in Council's Strategic Housing Land Availability Assessment (SHLAA) 2012 as a broad location for development. However, whilst looking at the suitability for housing, the SHLAA did not consider the appropriateness of the site. I also note that the site itself is not specifically identified and it forms part of larger area of land as a broad location.
12. With regard to the visual impact of the proposed development, I have had regard to the appellant's Landscape and Visual Impact Assessment (LVIA) which considers the impact of the proposed development on the landscape from various locations.
13. It states that the most adverse landscape and visual impacts would be experienced from the more local views, limited to a small group of receptors (the people that would likely experience the visual impact) with medium sensitivity. The LVIA also states there would be minor adverse landscape and visual impacts from more long distance views from the public right of way around Brailes Hill. However, the LVIA recognises that the most sensitive of visual receptors may include users of outdoor recreational facilities, including public rights of way, whose attention or interest may be focused on the landscape.
14. Although Brailes Hill is around 1km away, due to its elevated position and the topography of the appeal site itself, I have seen that the site is clearly visible from the public footpath along Brailes Hill. I acknowledge that there is also a panoramic view of the wider landscape, including all of Lower Brailes and the proposed development would be seen in the context of the surrounding residential development.
15. Nevertheless, the appeal site is currently an undeveloped, open field that represents an area of transition between the village and the wider landscape. It contributes to the rural setting of Lower Brailes by providing a visual connection between this part of the settlement and the wider AONB. The proposal would be seen as built development encroaching into an open area beyond the built up edge of the settlement. Consequently, the character of the site would change from open and undeveloped to residential. Considering that the users of the public right of way would have their interest focussed on the landscape, the proposed development of up to 25 dwellings on the central and most visible part of the site would be visually intrusive and have a negative effect on the appreciation of the natural beauty of the area from this long distance view.
16. The site is also noticeable from Sutton Lane and the appellant's LVIA does not appear to have considered the visual impact from this location. The appeal site can be seen in the middle distance when looking north-eastwards on approach to the village from the south along Sutton Lane. I have seen that this rural lane is popular with recreational walkers who would be highly sensitive visual receptors with their attention focussed on the landscape.
17. Although partly screened by intervening trees and vegetation in the foreground, the site rises up from south-west to north-east and the agricultural

landscape appears to penetrate into the village which also contributes to the setting of this part of Lower Brailes. I therefore consider that the development would have adverse landscape and visual impacts when viewed from Sutton Lane on approach to the village.

18. The indicative masterplan identifies an open corridor running east-west through the spine of the site to mitigate the visual impact on the AONB and to maintain the transition from the urban form to the wider landscape. However, the presence of up to 25 dwellings on the middle part of the field would, to my mind, dominate the site, particularly from the School Lane end. Indeed, it is acknowledged in the appellants LVIA there would be a high proportion of the view occupied by the proposed development.
19. I also note that School Lane provides access to the public footpaths to the south of the village. The highly sensitive public rights of way users walking along School Lane to access these footpaths currently have some limited views over the appeal site to the wider AONB landscape as they pass the site. Whilst the appellant states that views out of the settlement from School Lane to the wider landscape and AONB beyond would still be glimpsed through the open corridor running through the centre of the site, the existing views would be altered as a result of the development of up to 25 dwellings on the site. Their presence would change the character of this part of the village as glimpses of countryside would be replaced with glimpses of houses. Whilst I accept that the proposal would provide public access to the site where there is currently none, the development of up to 25 houses would dominate the view of the landscape in this location and fail conserve the scenic beauty of the AONB.
20. Despite the proposed area of open space in the north east corner of the site and the absence of built development in the lower portion of the site, the central area would be dominated by housing. This would conflict with the pastoral qualities of the existing character of the site and would erode the area of transition between the settlement and the wider countryside beyond.
21. Notwithstanding this, I am mindful of the appellants LVIA which identifies that the appeal proposal's Zone of Visual Influence (the area from which a development is visible) is relatively small and I have seen that the site is not readily visible from much of the village, nor is it significantly perceptible from many locations in the wider area, other than from those identified above.
22. I also acknowledge that whilst the Cotswolds AONB Management Plan 2013 – 2018 states that development should protect and where possible enhance landscape and biodiversity, development is not precluded. Other policy objectives of the Management Plan include the need to create a more sustainable pattern of development, reduce dependence on the car, ensure the provision of affordable housing and maintain the current level of local services and access to those services to support sustainable communities. The fact that the appeal proposal would be in accordance with these wider policy objectives of the Management Plan is a material consideration to which I attach weight.
23. Nevertheless, despite mitigation there would be some adverse landscape and visual impacts from some of the more local views in the immediate vicinity, as well as from more medium and long distance views, particularly to the south west of the site. Whilst the impacts may be limited to a small group of receptors, these receptors have a medium to high degree of sensitivity.

24. Consequently, on balance, I consider that the proposed development would result in moderate harm to the landscape character and scenic beauty of the Cotswolds AONB in this location, and subsequent harm to the rural setting of the village. In reaching this conclusion I have had regard to the statutory purpose of AONBs which is to conserve and enhance the natural beauty of the area, and the great weight that should be given to conserving the landscape and scenic beauty.
25. Turning to the impact on the Brailes Conservation Area (BCA), the majority of the appeal site falls outside the BCA. Only a portion of the north eastern part of the site falls within it. Paragraph 132 of the Framework makes clear that great weight should be given to the conservation of a designated heritage asset, the significance of which can be harmed through, amongst other things, development within its setting. I have a statutory duty, under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
26. The appeal proposal would not result in any buildings on the part of the site which falls within the BCA. It would be retained as open space and whilst I acknowledge that the views out would change, the current gap between the existing properties would be maintained.
27. At present, glimpses of the wider countryside can be seen via the appeal site from School Lane. Whilst clear views of open countryside can be achieved from the edge of the Conservation Area within the appeal site, there is currently no public access to this part of the site and this view is essentially private. I acknowledge that setting does not depend on public rights or the ability to access it; however, as stated in Historic England's Good Practice Advice on The Setting of Heritage assets, the potential for appreciation of the asset's significance may increase once it is interpreted in some way. At present, only a small number of people have uninterrupted views over open countryside through the appeal site, so currently I do not consider that the view out of the Conservation Area in the vicinity of the appeal site is significant.
28. This is supported by the Brailes Conservation Area Appraisal which does not recognise the appeal site as an important landscape feature in the context of the Conservation Area and its setting. The appraisal does not identify any important views within the appeal site itself or in the immediate vicinity.
29. Nevertheless, the appeal proposal would change the character of the site from rural to residential. Whilst I consider that this would cause moderate harm to the landscape character and scenic beauty of the AONB in this location, I do not consider that it would harm the character or appearance of the Conservation Area or its setting, particularly given the proximity of the existing residential development at Orchard Close which also falls outside the Conservation Area.
30. Although the Council's own LSAV states that parts of the zone in which the appeal site is located contribute to the setting and character of the Conservation Area, particular reference is made to the fields within and adjacent to it to the north and east. The appeal site is located to the south west of the Conservation Area and is not therefore specifically identified as contributing to its setting or character.

31. This position is also supported by the more recent ULBLS which recognises that the majority of the appeal site is bounded by parts of the settlement outside the Conservation Area. As such, it is stated that the field does not make a significant contribution to the setting or character of the Conservation Area.
32. I consider that the proposed development would have no greater impact on the character or appearance of the Conservation Area than the existing residential development already surrounding it. Consequently, I do not consider that the appeal proposal would be harmful to the character or appearance of the Conservation Area or its setting.
33. Notwithstanding this, having particular regard to the location of the site within the Cotswolds AONB, I consider that that the proposed development would have a harmful effect on the character and appearance of the area. I find conflict with policy CS.5 of the CS which, amongst other things, states that proposals should have regard to the local distinctiveness and historic character of the District's diverse landscape character and avoid detrimental effects on features which make a significant contribution to the character, history and setting of a settlement. The proposal would not accord with Policy CS.11 of the CS which seeks to ensure that development proposals conserve and enhance the special landscape qualities and scenic beauty of the AONB.

*The development strategy and sustainable development*

34. Policy CS.16 of the CS identifies that provision will be made for at least 14,600 additional homes in Stratford-on-Avon District for the period 2011 – 2031. As outlined in Policy CS.15 the distribution of development will be based on a pattern of balanced dispersal. The CS makes provision for some new housing in villages across the district in Local Service Villages (LSVs) where approximately 2000 homes are to be provided.
35. In this case, the Council argue that there is no justification for the development as the overall provision of dwellings in LSVs that has already been achieved.
36. Brailes is identified as a Category 2 LSV. Policy CS.16 states that in such LSVs approximately 700 homes in total are to be provided, of which no more than around 12% should be provided in any individual settlement. This translates to around 84 dwellings.
37. From the evidence before me, I note that between April 2011 and 31 March 2016 15 dwellings have been built in Brailes and planning permission has been granted for an additional 27. This provides a total of 42 housing commitments to date within the plan period, some 42 short of what could be provided.
38. I acknowledge that Policy CS.16 does not require each Category 2 LSV to meet this number if the overall figure for LSVs has been satisfied. However, although over 2000 dwellings may have been committed or completed in LSVs, the policy identifies this as an approximate figure and in terms of the overall housing requirement for the District, Policy CS.16 states that provision will be made for at least 14,600 additional homes. This is not therefore a maximum figure.
39. The proposed development would not result in the approximate number of homes identified as being able to be accommodated in Brailes being exceeded. I am also mindful of the aims of the Framework to boost significantly the

supply of housing and the need not only to achieve a 5 year housing land supply, but to maintain it.

40. Nevertheless, Policy CS.15 states that development in LSVs will take place on sites identified in a Neighbourhood Plan and through small-scale schemes on unidentified but suitable sites within their built up area boundaries (BUAB) or otherwise within their physical confines.
41. Whilst a Neighbourhood Plan for Brailes and Winderton is being prepared, I understand that it has not reached an advanced stage and I therefore give it only limited weight.
42. With regard to the scale of the proposal, I agree with the Council that for the purposes of paragraph 116 of the Framework, the appeal proposal is not considered to be a 'major development' that would trigger an automatic refusal unless exceptional circumstances in the public interest could be demonstrated. However, in the local context, the Council does not consider that the development would be small-scale.
43. Having regard to the size of the settlement, the services and facilities available, the number of existing dwellings and the number of allocations that are identified as being able to be accommodated in Brailes over the plan period, I disagree with the Council. The proposal would represent around a 5.6% increase in the number of dwellings and in this context I consider that the development would be small-scale.
44. The appeal site is an unidentified site and Brailes does not have a defined BUAB. I therefore need to consider whether the appeal site is within the physical confines of the settlement. The appeal site clearly lies on the edge of the village and although it is bordered by existing development along its northern and eastern boundaries, to the west and particularly to the south, it is significantly less enclosed. The full site extends further south beyond the existing development along Jeffs Close, and much of its southern boundary is open.
45. When standing at the edge of the site near Orchard Close and School Lane there is a clear sense of being at the edge of the settlement. Moreover, where the site is visible from long and medium distance views, it does not appear to me to be within the physical confines of the settlement.
46. In this context, when considered in its entirety, I consider that the appeal site cannot be described as being within the physical confines of Brailes. The proposed development would therefore be contrary to Policy CS.15 of the CS.
47. Notwithstanding this, I am also mindful of paragraph 49 of the Framework which states that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 7 of the Framework identifies 3 dimensions to sustainable development: economic, social and environmental and the policies in the Framework as a whole constitute the Government's view of what sustainable development means in practice.
48. In terms of the environment, I acknowledge that the site is within walking distance of the local services and facilities in Brailes which includes a post office, shops, church, public house and school. I consider that the site is

- therefore in a sustainable location. I also note the potential for ecological and landscape enhancements, as well as the provision of public open space.
49. Economically, the proposal would result in the creation of jobs during the construction phase and the development itself would support local services and facilities, as well as securing payment of a New Homes Bonus.
  50. Socially, a children's play area would be provided and the proposed dwellings would contribute to the overall housing supply of the district as well as providing affordable housing in the village, for which there is an identified need. Cumulatively these benefits attract significant weight.
  51. Notwithstanding this, with regard to the harm to the landscape character and scenic beauty of the AONB that I have identified, the proposal would not fulfil important environmental objectives of the Framework.
  52. Whilst the proposal would not entirely conflict with Council's development strategy for the district in terms of the amount of housing that could be accommodated in Brailes, it would be located on a site that is not within the physical confines of the village. Moreover, having regard to the moderate harm to the landscape character and scenic beauty of the AONB that I have identified, I do not consider that appeal site would be a suitable site as required by Policy CS.15 of the CS.
  53. On balance, the proposed development would not be in accordance with the development plan and would conflict with paragraph 115 of the Framework. It cannot therefore be considered to constitute sustainable development.
  54. Consequently, having regard to the development strategy for the District and the principles of sustainable development, I conclude that the proposal would not be acceptable.
  55. I find conflict with Policy CS.15 of the CS which states that development in LSVs will take place on suitable sites within their physical confines. The proposal does not meet the requirements of Policy AS.10 of the CS which establishes when development outside the physical confines of the settlement would be appropriate.

### **Other Matters**

56. Whilst the appellant refers to other examples of green field development located outside the settlement boundary since 2011, I have not been provided with the specific details of these or the policy context in which they were permitted. However, from the evidence before me, the site off Sutton Lane where 18 houses are to be constructed is located to the rear of existing development. It does not extend the settlement any further to the south as the appeal site would.
57. Whilst the appellant has also suggested that a condition could be imposed to restrict the number of dwellings on the site, I am considering the proposal on the evidence before me. It is not for me to determine the amount of dwellings that may be acceptable. Moreover, in the interests of fairness, were I to suggest a restriction it would not have been subject to public consultation and on that basis interested parties would be unreasonably deprived of the opportunity to comment.

58. I also note that there have been considerable local objections to the proposal. Whilst flooding is a particular concern, I am mindful of the flood risk work undertaken by the appellant including the provision of additional information at the request of the Environment Agency. As such, there is no objection to the development from the Environment Agency, Warwickshire County Council as Lead Local Flood Authority or Warwickshire County Council as Fire and Rescue Service. Whilst I appreciate that flooding is a concern for local residents, in the absence of any substantive evidence to the contrary, I have no reason to take an alternative position to these statutory consultees.
59. Similarly, from the evidence before me, including updated ecological work undertaken by the appellant, I have no reason to disagree with the Council's ecologist who has no objections to the proposal.

### **Conclusion**

60. I have had regard to the benefits of the proposal and I consider that the scheme would be in accordance with many of the policy aims of the Cotswolds AONB Management Plan, including the provision of affordable housing and the need to reduce dependence on the car. I therefore give the benefits of the proposal significant weight.
61. I have also concluded that the proposal would not fail to preserve or enhance the character or appearance of the Brailes Conservation Area or its setting.
62. However, I have found the appeal proposal to be in conflict with Policy CS.15 of the Stratford CS in that it does not lie within the physical confines of the settlement. The Council can demonstrate a 5 year supply of housing land and its housing policies are therefore up to date. Moreover, whilst I do not consider that the proposal would result in substantial harm to the landscape character and scenic beauty Cotswolds AONB, there would nevertheless be moderate harm and consequent harm to the character and setting of this part of Lower Brailes.
63. In this finely balanced case, I do not consider that the benefits of the proposal and other material considerations are significant enough to outweigh the conflict with the development plan, together with the great weight that I must attach to conserving the landscape and scenic beauty of the AONB.
64. Therefore, for the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Emma Tinsley-Evans*

INSPECTOR