
Appeal Decision

Site visit made on 17 November 2016

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 06 February 2017

Appeal Ref: APP/Y3940/W/16/3154507

Land off The Mews, Lydiard Millicent, Swindon SN5 3NR

- 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 Custom Land Limited against the decision of Wiltshire Council.
 - The application ref: 16/03969/OUT, dated 18 April 2016, was refused by notice dated 13 June 2016.
 - The development proposed is erection of up to 4 dwellings.
-

Decision

1. *The appeal is allowed and outline planning permission is granted for the erection of up to 4 dwellings on Land off The Mews, Lydiard Millicent, Swindon SN5 3NR, in accordance with the terms of the application, ref: 16/03969/OUT, dated 18 April 2016, subject to the conditions listed at the end of this decision.*

Preliminary Matters

2. The appeal application is made in outline, but includes means of access from The Mews. Scale, layout, appearance and landscaping are reserved matters for future consideration, such that no specific numbers or types of dwelling are proposed at this stage. Moreover, although the application includes three alternative layout plans¹, these are clearly labelled as 'options' and I have had regard to them as being for illustrative purposes only.
3. After the final comments stage of this appeal the Council made a further written submission in the light of the publication, in November 2016, of its 'Housing Land Supply Statement, Base Date: April 2016' (HLSS 2016) and also a recently issued appeal decision². Given the representations made in this appeal I have taken into account both that submission and the appellant's written responses to it.

Reasons

4. The **main issue** in this appeal is whether the site is an appropriate location for the proposed development, having regard to development plan policy, the *National Planning Policy Framework* and other planning considerations.

¹ Option A is a layout for three dwellings, whilst Options B and C are alternative layouts for four dwellings

² Appeal ref: APP/Y3940/W/16/3141391, decision dated 26 September 2016

Policy context and site location

5. The starting point in this respect is the development plan. In particular Core Policies 1 (Settlement Strategy) and 2 (Delivery Strategy) of the Wiltshire Core Strategy (CS) (2015) comprise the over-arching strategy for the location of new development in the county. In addition, CS Core Policy 19 relates to the Royal Wootton Bassett and Cricklade Community Area and it is in this policy that Lydiard Millicent is identified as a 'small' village.
6. Core Policy 1 sets out that development at 'small' villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities. The combined effects of Core Policies 1 and 2 are that development in small villages will be limited to 'infill within the existing built area' but, for such villages, there are no defined settlement boundaries. However 'infill' is specifically defined in the supporting text to Core Policy 2 as "the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling". A proposal constituting infill development should also satisfy the three further criteria set out in the policy itself.
7. The Council's case that the appeal proposal would not constitute an infill development appears to be based solely on the site's potential to accommodate four dwellings, presumably on the basis that is considered to be "more than a few". There is a tension between this phrase and "generally only one dwelling", but the "not more than a few" must on any common sense reading allow for more than one. Moreover I consider 'four' to be only a few. In the absence of any other guidance in the CS, and bearing in mind that the appeal application is in outline only and includes an illustrative layout for just three dwellings, I find no grounds to conclude on this basis that the appeal proposal would not be infill development.
8. Responses from the Parish Council and local residents also refer to the nature of infill development including, in one instance, reference to a High Court judgment³. However I am not aware of any unique or nationally applicable definition for this purpose and that is understandable, given that development plans are an opportunity to focus on the particular requirements of the areas to which they relate. Thus it is the CS definition which applies in this case, and none of the alternative definitions alter my findings on this aspect of defining infill development.
9. I find the more significant matter, which would normally be the first stage in any assessment, to be whether the appeal site can reasonably be considered to constitute "a small gap within the village". The small appeal site approximates to a square shape beyond a short driveway off the end of a cul-de-sac. Apart from the width of the driveway it is fully enclosed on three sides by existing residential properties. The fourth, south-east, side adjoins open land but more or less lines through with the south-east boundaries of adjoining properties to the north-east and south-west: it does not project out into the countryside. I therefore find it reasonable in this particular site context to conclude that the appeal site is a small gap in accordance with the CS definition of infill development. Doing so is consistent with the Council's reference to the site as being 'located within Lydiard Millicent'⁴.

³ Described in that letter as "a judgement in the High Court before Mr Justice Lindblom dated 31st July 2015": neither a court reference number nor the full text has been provided

⁴ At paragraph 7.1 of the Council's appeal statement

10. Turning to whether the proposal would meet housing needs of settlements, the wording of CS Core Policy 2 does not require a proposal to meet the needs of the particular settlement in which it would be located. Nonetheless the Parish Council refers to a 2013 Housing Survey which identified a need for bungalows and older peoples' accommodation and starter homes rather than large detached homes. Firstly however the Council would in this case be able to influence the number, size and type of dwellings at the reserved matters stage (albeit no specific requirements are included in its suggested conditions). Secondly two of the illustrative layouts include a pair of semi-detached dwellings and, in comparison with the footprint sizes of nearby houses and bungalows, none of the dwellings in the illustrative layouts appear especially large. I therefore find no conflict with Core Policy 2 in this respect.
11. A small but relatively spacious development infilling this gap amongst existing dwellings would respect the village's existing character and form without elongating it or extending into sensitive landscape areas. It would not project any further into the countryside separating the village from the built-up edge of Swindon than existing adjacent dwellings. Nor would it consolidate any loose-knit areas of development. The appeal proposal would therefore satisfy all three of Core Policy 2's criteria for infill development in small villages.
12. It follows from the preceding paragraphs that I conclude the appeal proposal would not conflict with or undermine the CS strategy which seeks to achieve a sustainable pattern of development. The appeal site would, in principle, be an appropriate location for the proposed development.

Other considerations, conclusions and conditions

13. The appellant's case relies in part on the housing land supply position because the Council was unable to demonstrate a five-year supply of deliverable housing sites in its North and West Housing Market Area (HMA) when the appeal was lodged. The updated HLSS 2016 indicates that position is unchanged but, as the Council notes, the shortfall (with 5% buffer) has reduced from 0.27 years previously to 0.12 years in 2016. That acknowledged shortfall is very small, but nonetheless it means paragraph 49 of the *Framework* is engaged, relevant policies for the supply of housing should not be considered up-to-date and there is a presumption in favour of sustainable development. Further to *Framework* paragraph 14, permission should be granted unless 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, unless material considerations indicate otherwise.
14. I note the various points made in the representations regarding whether CS Core Policies 1, 2 and 19 are relevant policies for the supply of housing and, if so, what weight they might be given. A conflict with those policies is the Council's only reason for rejecting the appeal proposal, but I have already concluded there would be no such conflict and thus no adverse impacts in this respect. Thus in these particular circumstances I see no need to assess matters relating to the relevance and weight of the CS policies.
15. In relation to the various other matters raised by the Parish Council and by local residents I note firstly that, due to its small size, the development's impacts on the form, character and infrastructure of the village would not be significant. On highway matters, even in this position at the head of a cul-de-sac, additional activity and vehicle movements associated with just three or four dwellings is unlikely to be significant. Having to place refuse/recycling

- bins for collection on the highway at the end of the cul-de-sac is negative feature, but that would occur for relatively short time periods and it would not be reasonable to reject the proposal on this basis.
16. There would be scope at the reserved matters stage to secure a layout with adequate parking and turning space within the site. A scheme for surface water drainage could also be required by condition, which would be an appropriate means of addressing any potential surface water flooding issue. Planning conditions could also ensure appropriate measures in relation to existing trees and biodiversity.
 17. I have found nothing to support a resident's view that the appeal site is in the Green Belt. As I understand it, a start has been made on a neighbourhood plan for the village but this is still at an early stage and there is no draft plan in the information before me. I have already noted that the development proposed in this appeal would not extend any further out into the countryside than adjoining properties. Allowing housing on this small site amongst existing dwellings would not set any precedent for developing land in the countryside beyond, which separates the village from Swindon. None of these matters, nor any other matter raised, constitutes a harmful or adverse impact that weighs against the proposal to any significant degree.
 18. Moreover the appeal proposal would be beneficial in adding a few dwellings to housing land supply in the North and West HMA, with some consequent social and economic benefits. Overall therefore I find firstly that the appeal proposal would accord with the development plan. Secondly, bearing in mind that the Council cannot currently demonstrate a five-year housing land supply, I have found no adverse impacts which would significantly and demonstrably outweigh the benefits of granting permission, when assessed against policies in the *Framework* taken as a whole. It follows therefore that I conclude the appeal should succeed and outline permission should be granted subject to conditions.
 19. A condition specifying the plans to which the permission relates is appropriate for the avoidance of doubt and in the interests of proper planning. A condition relating to protection of existing trees is justified in the interests of visual amenity (albeit in the absence of any reference elsewhere to a Tree Protection Order I have taken the Council's suggested condition referring to such an Order to be an error). Compliance with the recommendations of the submitted ecological appraisal is important to minimise impacts on habitats and any protected species and to promote biodiversity. As the site is close to existing dwellings, a construction method statement is reasonable and necessary in the interests of residential amenity at nearby dwellings.
 20. Further details of measures to deal with surface water drainage are necessary to ensure adequate provision for such drainage. However there is no need for a condition relating to foul drainage, given the intention to connect to a foul sewer that passes through the site. The conditions which follow reflect those suggested by the Council, with some variation in the light of the preceding comments and in the interests of precision and clarity.
 21. *Outline planning permission is granted subject to the following conditions:*
 - 1) This permission relates to the following plans: drawing nos. 177-P-003 (site location plan) and 100-21225 (site access layout).
 - 2) No development shall take place until details of appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") have been

submitted to and approved in writing by the local planning authority. The development shall be carried out as approved.

- 3) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 4) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 5) No site clearance, preparatory work or development shall take place until a plan indicating the positions of trees to be retained together with measures for their protection during the course of development has been submitted to and approved in writing by the local planning authority. The tree protection measures shall be implemented in accordance with the approved details. No tree identified for retention shall be cut down, uprooted or destroyed. Nor shall any retained tree be topped or lopped other than in accordance with details that have first been submitted to and approved in writing by the local planning authority.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time as specified in details that have first been submitted to and approved in writing by the local planning authority.

- 6) No development shall commence on site until a scheme for surface water drainage (including drainage from the access/driveway), incorporating sustainable drainage measures, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 7) Development shall be carried out at all times in accordance with the recommendations at Section 5 of the Preliminary Ecological Appraisal by Clear Environmental Consultants, dated 2 July 2016.
- 8) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall include details of hours of construction (including deliveries) together with provisions for: the parking of vehicles of site operatives and visitors; loading, unloading and storage of plant and materials; wheel washing facilities; measures to control emission of dust and dirt during construction; recycling/disposal of waste from construction works. Development shall be carried out at all times in accordance with the approved Statement.

Jane Miles

INSPECTOR