
Appeal Decision

Site visit made on 10 January 2017

by David Richards B Soc Sci DipTP MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/D3125/W/16/3150862

Linden House, Kilkenny Lane, Carterton, Oxfordshire, OX18 3NU

- 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 and Mrs R P & C Howse against the decision of West Oxfordshire District Council.
 - The application Ref 16/00385/OUT, dated 29 January 2016, was refused by notice dated 19 April 2016.
 - The development proposed is residential development of up to 28 dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the character and appearance of the surroundings with particular regard to effects on the landscape, and whether the scheme makes satisfactory provision in respect of affordable housing and infrastructure arising in connection with residential development.

Planning Policy

3. The development plan currently comprises the West Oxfordshire Local Plan 2011 (LP), adopted in 2006. Certain of its policies have been saved but it is not disputed that policies which are relevant to the supply of housing cannot be considered up to date for the purposes of paragraph 49 of the Framework. The Council also accepts that it cannot demonstrate a five year supply of available housing sites, and accordingly that the presumption in favour of sustainable development described in paragraph 14 of the Framework is therefore engaged.
4. The emerging local plan for the area is the West Oxfordshire Local Plan 2031. The examination into the plan was suspended in January 2016, and the Council has subsequently consulted on proposed modifications to the plan. At the present time, with the plan still subject to further examination, I can only attach limited weight to its policies and proposals.

Reasons

5. BE2, BE4, H2, H7, NE2 and NE13 of the adopted plan. OS1, OS2, OS4, H2, H3, EH3 and Car 3 of the emerging plan. NPPF W Oxon landscape assessment

6. BE1 and H11 of the adopted plan. Appellant does not dispute that full weight can be given to H7, BE1, BE2 and NE13 but notes the pres in fav and the applicability of the planning balance. H11 clearly out of date, Little weight to emerging H3. H7 out of date but LPA considers that weight can be given to requirement that new housing should form a logical complement to the pattern for new housing development.
7. The appeal site comprises a large detached house on the northern outskirts of Carterton. It stands in a large plot, extending to some 1.4 hectares, that also includes a strip of land to the east that has the general character of a paddock. The site is some 62 m wide on the northern road frontage. The shorter western edge is some 145 m deep and the longer western edge, adjacent to the country park some 275 m deep.
8. The site is bounded to the north by Kilkenny Lane, with open fields beyond. Kilkenny Country Park lies to the east, with a large well-used and well equipped children's play area close to the site, and to the west the site adjoins an area of allotments. The angled southern boundary adjoins an open site to the south of the allotments and west of the appeal site where the Council resolved to grant planning permission for up to 66 dwellings in the past. To the south of the site there is open amenity land associated with the country park and then housing at the northern edges of Carterton, including a site where housing is currently under construction by Bellway Homes. Access to the appeal site would be from this site, which has accesses onto both Shilton Park and Swinbrook Road.
9. The indicative layout plan shows 27 dwellings arranged in a sinuous cul-de-sac accessed via the Bellway Homes site currently under construction. The 28th dwelling would be in a single curtilage in the northern part of the site, using the existing Kilkenny Lane access point. Landscape is a reserved matter but the layout appears to indicate that the majority of the tall evergreen trees on the site boundaries would be removed.

Character and appearance

10. LP Policy BE2 lists criteria that amongst other things seek development that respects the existing scale and pattern and character of the surrounding area and that does not adversely affect the landscape surrounding and providing a setting for existing towns and villages. Policy BE4 states that a proposal for development adjoining a built up area should not result in the loss or erosion of an open area which makes an important contribution to the distinctiveness of a settlement and/or the visual amenity or character of the locality. Policy H2 states that proposals for additional dwellings should not erode the character and appearance of the surrounding area, including public and private open space. Policy NE1 seeks to safeguard the countryside from development that would detract from its beauty, local character and distinctiveness, and NE2 restricts development in the countryside around Carterton to buildings for agriculture and forestry, recreational and community uses and other categories of minor development. Policy NE3 states that development will not be permitted if it would harm the local landscape character of the District and that proposals should respect the intrinsic character, quality and distinctive features of the individual landscape character types. Significant weight can be accorded to these policies insofar as they are concerned with the design and appearance of development at the edge of settlements, as the effect of development proposals on the interface between settlements and the countryside is always

an important planning consideration. However, where housing supply policies are accepted as being out of date, these are matters to be weighed against other important considerations in the accordance with the advice in the Framework.

11. The appeal site is part of an area classified as rural fringe land in the West Oxfordshire Landscape Assessment that includes the allotments and the Football Club, together with other land to the south, much of which is being or has been developed for housing since the Landscape Assessment was undertaken. This area of rural fringe land lies within the Shilton Downs landscape character area and is bounded by the main built-up part of Carterton, with the setting described as open limestone wolds.
12. The Council's principal concern with regard to landscape impacts is that the removal of the cupressus trees, which currently provide a very effective and dense screen around much of the site, would make the site almost entirely open. It is considered that this would result in the open land on the southern side of Kilkenny Lane being breached by a narrow finger of built development that would be highly visible from the east west and north, harmful to the sense of semi-rural open land alongside the lane that is exemplified by the country park, but also the open land of the allotments and the football club. Even when landscaping was established after 10 years, the Council considers that the new housing would remain a dominant feature in these views.
13. The Appellant undertook a Landscape and Visual Impact Analysis (LVIA) in support of the application. The Council considers that the Appellant's approach is flawed in a number of respects. However, while I accept that landscape evaluation is in some respects subjective, and open to differing conclusions, the Appellant's study is an honest attempt to evaluate impacts which is proportionate to the context and the scale of development proposed.
14. I acknowledge that the land to the north of Kilkenny Lane retains an attractive unspoilt rural appearance, which makes an important contribution to the setting of the town. The Kilkenny Country Park has also been landscaped and laid out attractively and provides an appropriate open edge to the extensive urban development of Carterton to the south. The allotments remain predominantly open, though allotments can often typically be a feature of urban development as well as countryside locations. The footpath routes which intersect near Kilkenny Lane are well used, and users may be regarded as sensitive receptors when considering visual impacts.
15. The Council has accepted the principle of development on the southern part of the site and there is an extant planning permission for 10 dwellings. The current proposal would involve the demolition of the existing dwelling and the extension of residential development to occupy the whole of the site. While the character of the site would undoubtedly change, I am not persuaded that the impact of development on the landscape would be as harmful as the Council suggests, or that the current pattern of land use to the northern side of Carterton is such that the proposal would amount to an unacceptable incursion of development in the countryside. The existing regimented lines of evergreens make a strong landscape intervention, but are not characteristic of the open Cotswold landscape to the north of the Kilkenny Lane.
16. It is not the case that the northern part of the site is currently undeveloped. It is occupied by Linden House itself which is a very substantial building, with

planning permission for a further large two-storey extension at the rear. Hence the additional development now proposed would not affect a hitherto entirely open part of the site.

17. Although the removal of these established trees would in the short term increase the impact of development on the appeal site, there is already established planting on the western side of the Country Park which, together with a landscape scheme which could be required by condition as part of any permission, would soften the impact of development when viewed from outside the site. Such planting would inevitably take time to mature, but I consider that it would assist in effectively mitigating the visual impact of the development. I also subscribe to the view that housing at this relatively low density in the context of a well-designed landscaping scheme using native species has the potential to create an attractive albeit different aspect which, in comparison with the existing dense screening, would not detract materially from the urban interface between development and the countryside on the northern outskirts of Carterton.
18. Although the site to the west for 66 dwellings is currently undeveloped (and planning permission has expired), it is proposed as a site for 70 dwellings in the recently published Main Modifications to the Local Plan. While it cannot be assumed from this that the site will inevitably be developed, there is a clear indication that its status is likely to change, and that the local planning authority considers it to be a potential development site.
19. The Council does not seek to argue that the appeal site is part of a valued landscape. The Council has accepted elsewhere that Policy BE4 was not up to date in view of the lack of a five year supply. While the principle of protecting open land which makes an important contribution to the distinctiveness of a settlement is a legitimate aim of policy, I do not consider that the Council has demonstrated that this should apply in this case. The site, though currently open in part has an extant planning permission for 10 dwellings on the southern part of the site, and a substantial dwelling on the northern part. There is no suggestion that the allotments or the Country Park are threatened with development (albeit I notice that in the LP Modifications the Council has canvassed the relocation of the allotments to allow for further residential development land). Allowing the appeal would not set any precedent for development north of Kilkenny Lane.
20. Accordingly I conclude that the proposed development would not result in material harm to the character and appearance of the surroundings or the countryside setting of Carterton. It would not result in material conflict with the saved policies of the development plan insofar as they seek to address the impacts of development at the edge of settlements.

Infrastructure contributions

21. Saved Policy BE1 of the LP states that development will not be permitted unless appropriate supporting transport, service and community infrastructure is available or will be provided and appropriate provision has been made to safeguard the local environment. Saved Policy H11 seeks a contribution of up to 50% affordable housing on unallocated sites. In this case, the Council considers that this should equate to 35% of the additional units now proposed in the appeal scheme, or some 9.45 units, and depending on how the contribution already paid for the 10 dwellings is treated.

22. Paragraph 173 of the Framework advises that 'to ensure viability, the costs of any requirements likely to be applied to development identified in the plan should not be subject to such a scale of obligations, such as requirement for affordable housing, standards, infrastructure contributions, or other requirements should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable'. This part of the Framework is concerned with plan making, but the principle applies to the consideration of planning applications.

Affordable housing

23. The Council's assessment of the affordable housing requirement for sites in Carterton is informed by work carried out in connection with the emerging local plan. While I only attach limited weight to Policy H3 of emerging plan, as it remains subject to Examination, the evidence base for it includes the February 2015 Local Plan and CIL Update Viability Study, produced by Aspinall Verdi property regeneration consultants. This document is the economic viability assessment for development across the District and has been prepared to support the statutory requirements of the emerging plan and Draft Charging Schedule for CIL. It recommends that, on sites for 11 or more dwellings, on-site affordable housing provision of 35% is justified in areas of lower value, of which Carterton is considered one. It has been prepared having regard to best practice and has taken into account stakeholder representations and as such I accord it significant weight.
24. The Appellant submitted a viability assessment with the appeal. In summary, the conclusion of the assessment is that, taking account of a sum of £100,000 paid towards affordable housing in relation to the 10 dwelling scheme already permitted in the southern part of the site, the residual value of the proposal available for contributions is only £50,000. However, the Appellant has subsequently submitted a unilateral undertaking which includes a further £100,000 towards affordable housing, and £100,000 to other infrastructure/services. As the Council points out, on the basis of the Appellant's viability calculation, this would result in the scheme not being viable by some £150,000.
25. Appendix 7c to the Council's statement sets out the Council's assessment of viability, updated to take account of BCIS median Construction Rates for Housebuilding, with provision of 35% affordable housing across the entire scheme, using a 35% reduction in sales value for affordable housing; 8% professional fees, and 5% stamp duty. Using these assumptions, the Council calculates the total costs, including developer's return at 20% to be £7,151,229. Total Revenue is calculated of £9,682,000. This figure includes sales of the affordable housing element (35%) at a discount of 35% to a registered provider. The Residual Value (RV) would therefore amount to £2,530,771. The Threshold Value (TV) is agreed as £1,500,000. Subtracting TV from RV would, the Council calculates, leave a sum of £1,030,771 available for contributions towards infrastructure. The total of other infrastructure contributions requested (excluding affordable housing), is £316,075 leaving a supernormal profit of £714, 696.
26. The Council questioned the conclusions of the Appellant's viability study on the following matters: Stamp Duty, Marketing and Disposal Fees, Professional

Fees, Build Costs. As a general point however, I do not consider that there are any particular complexities associated with the development which would justify a level of fees towards the higher end of the accepted range. However by far the most significant area of dispute relates to build costs, and accordingly I will focus my consideration on these.

Build costs

27. The Council regard the figures relied on by the Appellant (1,350 per m² for all types of houses) as excessive and unjustifiable. The Council prefers to use BCIS figures published at September 2016 which uses national data rebased to West Oxfordshire. These indicate a figure of £1,055 per m² as an overall figure for general construction costs, with a range of £1,032 per m² for 2 storey terrace properties, £1,044 per m² for semi-detached 2 –storey and £1,169 per m² for detached dwellings. Using the different build costs for different house types (recognising the high proportion of detached dwellings in the scheme) gives rise to a 'super normal' profit of some £870,000 on the Council's calculation. Assuming what it considers to be a fully realistic reduction factor of 35% on the value at which Housing Associations typically expect to acquire affordable units from developers, the proposal would still generate a super normal profit of some £167,000. The Council considers this to be a minimum figure. Using a reduction factor of 30% which could be appropriate would yield a super normal profit of some £804,000.
28. Taking account of the suggested adjustments, the Council's assessment produces a reduction in overall costs of £1,652,474 compared with the Appellant's assessment. This would be considerably greater than the maximum estimated cost of providing 9 units of affordable housing on the site, and the £316,000 total figure for other contributions requested by the County and District Councils.
29. The Appellant has stated that the Council's assessment of build costs appears to be based on mistaken figures for BCIS build costs, and has produced revised figures from BCIS¹, arguing that the actual build costs are closer to those used in the viability assessment.
30. I am not able to reconcile the different figures for build costs given by the parties, both of which are said to be obtained from BCIS. One clear difference is that the Appellant applies a mean rate for build costs across the whole development, whilst the Council has taken an approach based on the mix of dwellings proposed. While the application is in outline, the mix of development is specified in the application form as 6 x two bed dwellings, 13 x 3 bed dwellings and 9 x 4 bed dwellings, and it is reasonable to take this into account in considering the viability assessment. The Appellant's global figure of £1,350 per m² appears generous for the development as a whole, as it relates to 'estate housing detached' and does not take into account the different size and format of dwellings proposed in the mix.
31. Given the Appellant's change in position during the appeal, and additional contributions included within the Undertaking dated 20 October 2016, I can only conclude that contributions at these levels (including the £100,000 already committed in respect of the 10 dwelling scheme) would not undermine the viability of the scheme.

¹ Appendix 3, Appellant's final comments.

32. However, the contribution of £100,000 already paid is specifically related to the implementation of the scheme with planning permission. I note that the undertaking submitted in connection with this appeal dated 20 October 2016 contains the following provision at Clause 8: 'For the avoidance of doubt the Owners hereby declare that the Affordable Housing Contribution is additional to the contribution already paid as defined in a planning obligation deed made 1 June 2015 between the Owners and the Council relating to the site under planning application number 14/1339/P/OP for the development as therein more particularly described and not in substitution for the same.' Whatever the Appellant's current intention in this regard, it is by no means clear to me that the original contribution would be payable in the event that the permission for 10 was never implemented. (If, as the appellant suggests it has already been paid, it would be recoverable by the Appellant if the permission is not implemented). In the circumstances, the only contribution to affordable housing would be the £100,000 in the undertaking specific to this scheme.
33. The contribution offered in any event falls far short of the provision of 35% on-site affordable housing provision which the Verdi Aspinall report has shown to be justified in Carterton. I do not consider that the Appellant's viability evidence demonstrates conclusively that the development would not be viable at this level of provision.

Other contributions sought

34. The Council also sets out a number of other requests for infrastructure contributions including substantial contributions to transport infrastructure, primary education, early years education, Carterton Library, Sports and Recreation, Administration and Public Arts, Play Facilities and Monitoring considers the following requests to be justified. The Appellant accepts in part the legitimacy of the requirement to contribute towards the provision of primary education and has submitted an Undertaking to contribute £100,000 in this regard. However the contribution falls short of the £140,444 sought by the County Council, and makes no provision in respect of nursery education, for which a further £14,288 was sought. The County Council sets out full justification for these requirements which appear to me to be directly related to the development, fairly and reasonably related in scale and kind to the development, and necessary to make the development acceptable. With respect to the other requests, the Appellant does not consider they have been properly justified as CIL compliant and in any event considers that contributions in excess of those offered would affect the viability of the scheme.
35. I have dealt with viability considerations above and am not persuaded that the development could not make a significantly higher contribution than that offered. As a general principle developments are expected to make proportionate contributions to support infrastructure where deficiencies are identified, and for which the development would generate additional demand, subject to viability considerations. The contributions sought fall within these categories and there is no reason in principle why the scheme should not make a proportionate contribution to these elements of infrastructure. In view of the lack of conclusive evidence on viability it has not been demonstrated that the scheme would be unable to make proportionate contributions to these other important elements of infrastructure.

Planning Balance

36. The Council acknowledges that it cannot demonstrate a five-year supply of housing land, and that as a result development plan policies relevant to the supply of housing are out-of-date. Accordingly permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
37. I have concluded above that the impact on landscape and character and appearance would be acceptable for the reasons set out above. While the site is outside the established development boundary, I accord this limited weight in view of the lack of a five year supply and the acceptance that some development will need to occur on the edge of settlements to meet identified need.
38. I attach considerable weight to the contribution to housing supply, which would be a net increase of 18 dwellings over and above what already has permission. The development would make a contribution to social well-being through the delivery of housing, and there would be economic benefits from construction activity, and the increased spend in the local economy from new residents.
39. Nevertheless the Framework lays great emphasis on the creation of sustainable, inclusive and mixed communities. Where authorities have identified that affordable housing is needed, they should set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.
40. In this instance the authority considers a contribution of 35% provision of affordable housing to be appropriate. This would normally be in the form of on-site provision, unless there is a robust justification for off-site provision or a financial contribution of broadly equivalent value. I have reviewed the viability evidence put forward by the Appellant and found that it does not conclusively demonstrate that such an approach would not be viable on this site. While the Appellant has offered a financial contribution to affordable housing through a unilateral undertaking there is no robust justification for not providing the affordable housing on-site. Furthermore, I do not consider that the financial contribution to affordable housing which has been offered (£200,000 in total) would be secured through the unilateral undertaking, in view of the fact that half the amount relates to a different planning permission.
41. The Appellant's viability assessment was that the development could not viably support an affordable housing contribution higher than the original £100,000 contribution made with the 10 unit scheme. Nevertheless further significant contributions have been included within the submitted undertaking including a further £100,000 for affordable housing and £100,000 towards the provision of primary education. It is argued that the fact that the appellant has chosen to make contributions where perhaps none should be made, is reflective of the Appellant's wish to make a contribution to society 'despite this taking some of the legitimate uplift from the land value'.

42. The Appellant's change in position in the course of the appeal does not give me confidence in the conclusions of the original viability assessment. On the evidence presented to me I am not convinced that the development would not be able to support the higher contribution to affordable housing sought by the local planning authority and other proportionate contributions to libraries, open space and transport infrastructure contributions. I therefore conclude that the scheme would fail to meet the Framework objective of securing mixed and balanced communities, and that this consideration clearly and decisively outweighs the benefits of the scheme. Accordingly, I dismiss the appeal.

David Richards

INSPECTOR