

Appeal Decisions

Site visit made on 10 January 2017

by **Chris Forrett BSc(Hons) DipTP MRTPI**

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

Decision date: 01 March 2017

Appeal A Ref: APP/X0360/W/16/3154856

Coppid Hill House, Barkam Road, Barkham, Berkshire RG41 4TG

- 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 Atkinson (Charlesgate Homes Limited) against the decision of Wokingham Borough Council.
 - The application Ref 161412, dated 23 May 2016, was refused by notice dated 19 July 2016.
 - The development proposed is a phased outline application for 8 custom-build houses with associated garages and access off Edneys Hill.
-

Appeal B Ref: APP/X0360/W/16/3161362

Coppid Hill House, Barkam Road, Barkham, Berkshire RG41 4TG

- 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 Atkinson (Charlesgate Homes Limited) against the decision of Wokingham Borough Council.
 - The application Ref 162084, dated 23 July 2016, was refused by notice dated 7 October 2016.
 - The development proposed is a phased outline application for 5 custom-build houses with associated car ports and access off Edneys Hill.
-

Decisions

1. Appeal A is dismissed and Appeal B is dismissed.

Procedural Matters

2. As set out above, there are two appeals both of which relate to the development of residential properties at the site. Although the proposed developments are different there are many similarities between them. On this basis, whilst I have considered each proposal on its individual merits, to avoid duplication I have dealt with the two schemes together.
3. The applications are in outline form with access and layout being considered at the outline stage and I have dealt with the appeals on this basis.

Main Issues

4. The main issues are:
 - (i) the effect of each development on the character and appearance of the area;
-

- (ii) the effect of each development on ecology and the Thames Basin Heaths Special Protection Area;
- (iii) the provision of affordable housing; and
- (iv) in respect of Appeal A, whether the development would provide a suitable living environment for the future occupiers.

Reasons

Character and appearance

5. The appeal site is located on the south side of Barkham Road to the west of Edneys Hill. The site is generally open grassland with some trees and bushes around its perimeter. The topography of the land, and surrounding roads, falls away in broadly a south-easterly direction, with the lowest part of the site being the south-east corner. The site is in equestrian use with a stable block towards the south west corner of the site.
6. At the time of my site visit the site was highly visible from the adjoining roads as very few of the trees around the site are of an evergreen variety. However, I acknowledge that when all the trees are in leaf the site would not be as visible. Longer distance views were also possible from further down Edneys Hill. Surrounding the site I noted other residential development to the west of the site and on the opposite side of both Barkham Road and Edneys Hill. To the south is farmland with some residential accommodation.
7. From the evidence before me the appeal site lies outside of the defined development limits and therefore, in planning policy terms, is located in the countryside. Policy CC02 of the Managing Development Delivery Local Plan February 2014 (the MDD) does allow for some development on the edge of settlements providing that they respect the transition between the built up area and the countryside and landscape. However, this only applies when sites are located within the development limits which is not the case here.
8. Policy CP11 of the Wokingham Borough Core Strategy Development Plan Document 2010 (CS) deals with proposals outside of the development limits and seeks to protect the separate identity of settlements and maintain the quality of the environment. It states that proposals outside of these limits will not normally be permitted. Whilst this policy does allow for some exceptions to this, none of the specified exceptions apply in these cases.
9. In terms of the physical impact of the developments, the erection of new dwellings would erode the open character and quality of the area by extending the built development in an undesirable fashion. In this respect, both developments would give rise to significant harm to the rural character of the area. In coming to that conclusion I acknowledge that there would be areas of greenery remaining, albeit as part of large residential gardens.
10. Furthermore, the prevailing character of the existing development along the south side of Barkham Road consists of properties which have their front aspect facing the street. In contrast to this, the appeal proposals would either have their rear or side aspects onto Barkham Road, which would be at odds with the local pattern of development.
11. For the above reasons, the proposed developments would give rise to significant harm to the character and appearance of the area contrary to

Policies CP3 and CP11 of the CS and Policies CC02 and TB21 of the MDD which amongst other matters seek to seek to protect the character and appearance of the area.

Ecology and the Special Protection Area

12. From the evidence before me the nearest part of the Thames Basin Heaths Special Protection Area (TBHSPA) lies just under 5km from the appeal site and thus within the 400m-5km zone of influence. Policy CP8 of the CS outlines that mitigation is required for new residential development within the 5km influence zone, which this site lies within. The need for mitigation is not disputed by the Appellant.
13. The Council have an adopted Community Infrastructure Levy (CIL) charging schedule. However, should the developments be custom/self-build schemes they would be exempt from CIL payment. Furthermore, it is unlikely that a Section 106 planning obligation could be used in this instance as Regulation 123(3) of the Community Infrastructure Levy Regulations (2010) (the CIL Regulations) restricts the use of pooled contributions towards items that may be funded via CIL. Therefore, a planning obligation (if completed) to secure payment towards a Suitable Alternative Natural Greenspace would constitute a reason for granting planning permission, which would be in breach of Regulation 123(2) of the CIL regulations.
14. I acknowledge that the Council consider that this payment could be secured via Section 111 of the Local Government Act (1972). However, I have not been provided with any evidence to demonstrate that suitable provision has been made in this respect in relation to these developments.
15. Additionally, the Council have identified that a Strategic Access Management and Monitoring (SAMM) contribution would also be required. This payment could be secured by means of an agreement under section 106 of the Act. However, I have not been provided with such a completed agreement.
16. In the absence of a suitable planning obligation to deliver the mitigation strategy (the SAMM) or details of any other bespoke mitigation scheme, the appeal schemes would (in combination with other development) be likely to have a significant adverse effect on the TBHSPA contrary to the EU Habitats Directive, Policy CP8 of the CS and Policy NRM6 of the South East Plan (2009).
17. In addition to the effect on the TBHSPA, the Council have raised concern over the possible impact to ecology on the site. The Appellant has stated that an extended phase 1 survey has been carried out, but this has not been supplied to either the Council or the Inspectorate. Given the lack of evidence either way in this respect I am unable to make a clear judgement. However, given the other issues I have identified with the proposed developments, this is not a determinative factor.

Affordable Housing

18. Policy CP5 of the CS indicates that a minimum of 40% of the total number of net dwellings should be provided as affordable housing. The need for affordable housing is set out in the Berkshire Strategic Housing Market Assessment, which identified a need for 441 dwellings per annum for the Borough of Wokingham.

19. Given the size of the proposed dwellings, and the number of units proposed, the Council have indicated that such affordable housing provision could be provided by means of a commuted sum payment rather than on site provision. For Appeal A this should amount to £474,304.90, and for Appeal B, £296,440.56.
20. However, following the Court of Appeal's judgement of 11 May 2016, wherein the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015¹ it follows that considerable weight should be given to the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014 and the updated Planning Practice Guidance (PPG) which indicates that planning obligations of this type should not be sought from development of this limited scale. In the light of this, the appellant considers that neither development needs to make provision for affordable housing.
21. In respect of Appeal B, a development of 5 residential units with a gross floor area of less than 1,000 square metres, this clearly falls within the scope of the WMS.
22. At the present time there is clearly a conflict between Policy CP5 and the national policy outlined in the WMS. The Council acknowledge that the WMS is a material consideration, but they consider that greater weight should be given to Policy CP5 in light of significant local need for affordable housing in the Borough.
23. I acknowledge that the Council have been successful in justifying affordable housing thresholds below previous minimum standards. Additionally, my attention has been drawn to other recent appeal decisions² where it was been considered that the affordable housing need in an area was sufficient to outweigh the WMS. Notwithstanding that, as a matter of principle, the need for affordable housing is not specific to Wokingham.
24. Whilst the starting point for the determination of planning applications should be the Development Plan (and that should be given significant weight), I consider that it does not outweigh the WMS and PPG which are the clearest and most up-to-date expressions of national planning policy.
25. Therefore, in respect of Appeal B, the WMS and the PPG should be given more weight than the identified conflict with Policy CP5 and I conclude that an affordable housing contribution should not be required from this development.
26. Turning to Appeal A, the appeal form indicates a proposed floor area of 1,200 square metres. As such the affordable housing exemptions from the WMS do not apply to this development.
27. Therefore, in accordance with the requirement of Policy CP5, provision for affordable housing should be made. However, the application does not provide a mechanism for delivering such homes on site or by means of a commuted sum payment as suggested by the Council.

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council

² APP/K3605/W/16/3146699 & APP/W0530/W/16/3142834

28. Consequently, the Appeal A development would fail to make adequate provision for affordable housing contrary to the requirements of Policy CP5 of the CS.

Living Conditions (Appeal A)

29. The Council considered that the future occupants of the two dwellings towards the south-west corner of the site (near to Coppid Hill House) would be subjected to an overbearing impact from the neighbouring new dwelling owing to their staggered siting. I note that no comments have been made by the Appellant in this respect.
30. The layout plan indicates that the second house along (from Coppid Hill House) is set significantly further back than the first house. Whilst the scale of the proposed houses are not known at this stage, given the juxtaposition between the two dwellings, the second dwelling would be likely to give rise to an unacceptable impact to the living conditions of the future occupants of the first house owing to the amount of set back at the rear of the property and its proximity to the boundary.
31. In respect of the impact of the third house on the future occupants of the second house, the extent of the potential impact is significantly less. Additionally, given the location of the driveway and garage on the second dwelling, the principal areas of ground floor habitable accommodation is likely to be away from the third dwelling. Consequently, I do not consider that the future occupants of the second dwelling would suffer from an overbearing impact as a result of the third dwelling.
32. For the above reasons, the future occupants of the new dwelling located adjacent to Coppid Hill House would suffer from poor living conditions as a result of the overbearing impact of the adjoining new dwelling. Therefore the proposal would conflict with Policy CP3 of the CS, the Borough Design Guide Supplementary Planning Document (2012) which amongst other things seek to protect the amenity of the occupiers of adjoining residential properties. The proposal would also be at odds with the National Planning Policy Framework (the 'Framework') which has similar underlying aims.

Planning balance

33. The Council consider that they have a five year supply of deliverable housing sites but this is contested by the Appellant. The Council consider that as at March 2016 they have a supply of 5.5 years based upon the objectively assessed need (OAN) from the 2016 Strategic Housing Market Assessment (SHMA). The Appellant's basis for challenging the Council's five year housing land supply is based upon an appeal decision at Stanbury House³.
34. However, from the limited evidence before me, it is unclear whether the Council does have a five year housing land supply. Notwithstanding that, even if there was not a five year housing land supply, the Framework indicates that permission should not be granted if the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

³ APP/X0360/W/15/3097721

35. I have found that the proposed developments would harm the character and appearance of the area, fail to provide adequate mitigation to the TBHSPA, and in respect of Appeal A would not make provision for affordable housing or provide suitable living conditions for the future occupiers of the proposed dwelling closest to Coppid Hill House, in conflict with the Framework, the CS and the MDD. These factors weigh heavily against allowing the proposed developments.
36. The developments have been put forward as custom/self-build schemes. However, in the absence of completed section 106 agreements to ensure that the development only comes forward as such, I give this very little weight.
37. Notwithstanding that, the development would give rise to some minor social benefits in that it would provide much need additional housing. The development would also bring some minor economic benefits through the construction process. These matters are in favour of the proposed development.
38. The provision of either five or eight dwellings would be unlikely to have any significant effect in reducing any deficit should there be one. Against this background, the harm identified significantly and demonstrably outweighs the minor benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

39. Taking all matters into consideration, I conclude that the appeals should be dismissed.

Chris Forrett

INSPECTOR