
Appeal Decision

Site visit made on 25 April 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 31 May 2017

Appeal Ref: APP/J0405/W/17/3167808

Land off Barley Close, Weston Turville HP22 5SF

- 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 Peter MacGregor, Thorne Barton Estates Ltd, against the decision of Aylesbury Vale District Council.
 - The application Ref 16/02032/AOP, dated 1 June 2016, was refused by notice dated 13 December 2016.
 - The development proposed is the erection of 8 no. detached two storey houses.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was made in outline with all matters reserved for future consideration. I have determined the appeal on the same basis and have treated the site plan, elevations and floor plans as indicative only.
3. I wrote to the parties inviting comments following the Supreme Court (SC) judgment¹ of 10 May 2017 concerning the interpretation of paragraph 49 of the National Planning Policy Framework (the Framework) and its relationship with paragraph 14 of the same. The appellant confirmed that he did not wish to comment and no response was received from the Council. Nevertheless, I have considered the implications of this judgement below.

Main Issues

4. The main issues are:
 - whether the proposed development preserves or enhances the character or appearance of the Western Turnville Conservation Area;
 - the effect of the proposed development on Public Rights of Way (PRoW's);
 - the effect of the proposed development on pedestrian safety;
 - the effect of the proposed development on ecology; and
 - whether the proposed development should make a financial contribution towards local recreational provision.

¹ Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)

Reasons

Character and appearance

5. The appeal site forms part of a rectangular shaped field, known as Barley close Field, located at the end of Barley Close. The site is located within the Weston Turville Conservation Area and forms part of a wider area of open land in the centre of the village that is surrounded by residential development.
6. The Council's officer report makes reference to the 2007 Conservation Area document which highlights Barley Close Field as a historically important area with a key relationship to the surrounding buildings. It is stated that the historic Glebe contains a block of three enclosed furlongs and strips and that the survival of which is significant and rare in Aylesbury Vale. They are therefore important features which add to the significance of the designated heritage asset.
7. The appeal proposal would result in the loss of a significant part of one of these furlongs and its distinctive elongated form. I acknowledge that matters relating to layout are reserved for future consideration, nevertheless, the indicative site plan does not demonstrate that the site is capable of accommodating eight detached dwellings whilst retaining the mature hedge which defines the furlong along its north eastern boundary. The proposal would therefore result in significant harm to an identified feature of historical importance to the Conservation Area.
8. The physical manifestation of eight dwellings within this part of the historic glebe, along with the associated domesticating features, would also fundamentally change its existing open and rural character which presently makes an important and positive contribution to the Conservation Area and to the setting of the village.
9. The development would prevent views through the site and would likely lead to the substantial loss of natural screening along its north eastern side. Although adjacent to the dwellings on Barley Close, the development would be viewed as an encroachment into a greenfield site, beyond the clear built up limits of the village, thereby resulting in significant and unacceptable harm to the existing landscape character. I have no illustrative options before me to demonstrate such harm is capable of being avoided and in my view it would not be materially alleviated by reducing the depth of the gardens for the four southernmost units, or by new tree and hedge planting.
10. For these reasons, the development would fail to preserve or enhance either the character or appearance of the Weston Turville Conservation Area, the desirability of which is fully anticipated by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and reflected in Saved Policy GP.53 of the Aylesbury Vale District Local Plan (AVDLP). Such an outcome would also conflict with the expectations of paragraph 132 of the Framework, which anticipates great weight being given to the conservation of designated heritage assets.
11. I would though quantify the extent of this harm as being less than substantial when considered in the context of paragraphs 133 and 134 of the Framework. Here it is anticipated that the harm so quantified, needs to be balanced against any public benefits the development might bring. I have considered this below.

12. The proposal would also be contrary to Saved AVDLP Policy GP.35 which states that development should respect and complement the characteristics of the site and its surroundings. It is also contrary to the core planning principles of the Framework which seek to encourage the effective use of land by re-using land that has been previously developed and that planning should contribute to conserving and enhancing the natural environment.
13. The appellant states that the Council cannot demonstrate a five-year supply of deliverable housing sites and makes reference to a Court of Appeal judgement² concerning the interpretation of "relevant policies for the supply of housing" set out in paragraph 49 of the Framework. Within this context it is the appellant's position that Policies GP.35 and GP.53 are not up-to-date as they affect the supply of housing land.
14. However, the SC judgement referred to above makes clear that the primary purpose of paragraph 49 of the Framework is to trigger the operation of the tilted balance in paragraph 14 where a Council cannot demonstrate a five year supply of deliverable housing sites. The important issue is not the categorisation of development plan policies as "policies for the supply of housing" but whether the application of these policies is achieving a five year supply of deliverable housing in accordance with the objectives of paragraph 47 of the Framework.
15. The SC considered that it was unnecessary to label policies as "out-of-date" to determine the weight to be attributed to them under paragraph 14, confirming that the weight to be given to relevant development plan policies is a matter of planning judgement for the decision-maker. In this regard I do not find Policies GP.35 and GP.53 to be policies relevant to the supply of housing. They are broadly consistent with the Framework, and in accordance with paragraph 215 of the same, I have given significant weight to them.

Public Right of Way

16. Two PRoW's (Footpaths 24 and 25) pass through the appeal site. It is clear from the representation received that the footpaths are a valued locally for recreation and to provide local connections to services and facilities in the village.
17. The Council's concern is that the proposal would result in the obstruction of Footpath 24 which runs down the length of the north eastern side of the site. Whilst the indicative site plan shows a new footpath running along the length of the south western side of the site, walkers would lose the direct access they currently enjoy to the footpaths connecting with The Glebe. Walkers would also experience a narrow, oppressive and potentially intimidating route being channelled between garden fences rather than through an open field.
18. It is the appellant's position that various options can be explored at reserved matters stage to divert the footpath. However, notwithstanding that this would be subject to procedures under separate legislation, it seems unlikely, on the basis of the evidence currently before me, that eight detached dwellings can be accommodated on the site without significantly compromising the amenity of

² Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East, SCLG [2016] EWCA Civ 168

the public footpath network. The appellant's suggestion of reducing the depth of the rear gardens of the four units on the south-eastern side of the site would only minimally increase openness and would not significantly mitigate the overall length that would remain channelled between boundary fences. It would allow for a connection back to the footpaths linking with The Glebe but this would be a much less direct and convenient route as walkers would have to walk around three sides of the site, rather than one.

19. I therefore conclude that the proposal would result in an obstruction of Footpath 24, thereby reducing the availability and attractiveness of walking options between the northern and southern parts of the village and reducing existing levels of natural surveillance. It would also deter walking as a means of transport and increase reliance on the use of private cars. This would be contrary to Saved AVDLP Policy GP.84, which states that in considering applications for development affecting a PRoW the Council will have regard to the convenience, amenity and public enjoyment of the route and the desirability of its retention or improvement for users. It would also be contrary to Saved AVDLP Policy GP.45, which states, amongst other matters, that the design and layout of all planning proposals should incorporate measures to assist crime prevention and to help reduce risks to personal safety.
20. It follows that the proposal would also be contrary to paragraphs 30, 32, 35, 58 and 75 of the Framework which aim to protect and enhance PRoW's, facilitate the use of sustainable modes of transport, and to create safe and accessible environments.
21. The Council's third reason for refusal also makes reference to conflict with SPG3: Safety Through Design but a copy of this document has not been submitted in evidence. Nevertheless, the above stated conflict with development plan policies and the Framework is sufficient to warrant withholding planning permission.

Pedestrian safety

22. The indicative site plan shows that the scheme is capable of providing footways within the site, which would connect to the existing footways along Barley Close up to School Lane. However, a section of School Lane between its junction with Barley Close and towards its junction with World's End Lane does not benefit from a footway or street lighting. Pedestrians are therefore forced into direct conflict with vehicles travelling in both directions. Here there are limited opportunities for pedestrian refuge, particularly on the northern side of the street, which is further obstructed by on-street parking.
23. The material increase in pedestrian movements associated with the development would therefore have the potential to increase the chance of conflict between all users of the highway, particularly as this is the main route from the appeal site towards local services and facilities in the centre of the village, including schools and shops. The safety of children walking this route would be of particular concern.
24. I appreciate that existing residents in the vicinity of the site are already faced with such highway safety issues, however, this does not justify the additional harm I have described.

25. I therefore conclude that the absence of a footway in this location would be harmful to the pedestrian safety of future occupants, contrary to the aims of the Buckinghamshire Local Transport Plan 3 and paragraph 32 of the Framework. These seek, amongst other matters, to ensure that new developments provide safe and suitable access.
26. The appellant has made reference to paragraph 32 of the Framework which also states that development should only be prevented or refused on transport grounds where residual cumulative impacts are severe. However, in my judgement this addresses matters of highway capacity and congestion, rather than highway safety considerations.
27. Notwithstanding the above, the appellant has subsequently stated a willingness to make provision for a footway between the appeal site and local amenities within the village. The Highway Authority has advised that there is scope to provide the required improvements and this is a matter which could be secured by way of a Grampian style condition. For the reasons I have explained, this would be necessary to make the development acceptable in planning terms and would pass the other tests for conditions set out in paragraph 206 of the Framework.

Ecology

28. The Council's Ecologist has objected to the proposal and recommended that a Preliminary Ecological Assessment (PEA) is carried out in order to establish the ecological value of the site and the sites potential to support European or nationally protected species. The Council's position is that had the above issues and associated reasons for refusal not applied, it would have sought a PEA to ensure the proposal would have an acceptable impact on ecology.
29. Specific concerns expressed include the potential for nesting birds to be present in existing structures and the effect on the established hedge and trees. Representation received also raises objection on the basis that the fields provide a route for wildlife and hunting areas for bats and birds.
30. On this issue, Circular 06/2005³, which complements the Framework, states that it is "*essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.*"
31. Accordingly, it would not be appropriate to defer this matter to reserved matters stage as suggested by the appellant. Therefore, on the basis of the information presently before me, it is not possible to determine the effect of the proposed development on the ecological features which may be present on site. This would be contrary to paragraph 109 of the Framework which seeks to minimise impacts on biodiversity.

Recreational provision

32. The Council's fifth reason for refusal is that it would be necessary for the appellant to enter into a Section 106 Agreement to secure the provision of a financial contribution towards local recreational provision. Whilst the appellant

³ Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System (paragraph 99).

has confirmed he is willing to do so, I have no such Agreement before me, despite the assertion that a final draft would be submitted within the appeal timetable.

33. In the absence of such a contribution the Council is not satisfied that the proposal would constitute sustainable development that fulfils a social, economic and environmental role. On this basis the Council considers that the proposal to be contrary to the requirements of Saved Policies GP86, GP88 and GP94 of the AVDLP and to its adopted Sport and Leisure Facilities Supplementary Planning Guidance, and the Framework. These state, amongst other matters, that in considering applications for residential development the Council will have regard to the need for the provision of community facilities arising from the proposal and that new housing proposals should include sufficient outdoor play space to meet the requirements associated with the development.
34. However, on the basis of the limited information before me, I cannot be certain that that the contribution towards local recreation provision would not be subject to the Community Infrastructure Levy Regulation 123 pooling restrictions and therefore lawfully constitute a reason for granting planning permission. However this matter does not need to be considered further in view of my conclusions on the other main issues.

Other matters

35. I acknowledge that the proposal would increase the supply and choice of housing in accordance with paragraph 47 of the Framework. The site also benefits from a sustainable location and the dwellings would not amount to isolated homes in the countryside. It is also likely that future occupiers of the scheme would enhance the vitality of this rural community. For a limited scheme of eight dwellings, these factors would attract moderate weight in favour of the appeal proposal.
36. Moreover, these matters can also be considered, in the context of paragraph 134 of the Framework, as public benefits. However, they would not outweigh the harm I have found to the significance of the designated heritage asset.
37. The Council's position is that it can demonstrate a five-year supply of deliverable housing sites. Whilst the appellant questions whether the Council's housing supply figures can be relied upon, I have no substantive evidence to specifically challenge the October 2016 interim position statement⁴. Consequently, on the basis of the evidence before me, it would not be appropriate to conclude that paragraph 49 of the Framework is invoked.
38. However, the Council acknowledge that it has no up-to-date housing supply policies in the AVDLP and that it still has to apply the planning balance in paragraph 14. Whilst the appellant considers this is not in dispute, the second strand of the fourth bullet point of paragraph 14 makes clear that the presumption in favour of sustainable development set out therein should not apply where specific policies of the Framework indicate development should be restricted. In this regard, Footnote 9 appended to this last statement makes specific reference to designated heritage assets, which are defined as including conservation areas. So, notwithstanding the absence of up-to-date housing

⁴ Aylesbury Vale District Council – Five year housing land supply interim position statement, October 2016.

supply policies, the last strand of bullet point four of paragraph 14 disappplies the presumption in favour of the development that might otherwise exist. In any case, even if the tilted planning balance of paragraph 14 was applicable, the benefits identified would be significantly and demonstrably outweighed by the harm I have explained above.

Conclusion

39. For these reasons, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR