

Appeal Decision

Site visit made on 30 May 2017

by K Taylor BSc (Hons) PGDip MRTPI

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

Decision date: 30th June 2017

Appeal Ref: APP/Q3115/W/17/3169079

Mulberry House, Old Bix Road, Bix, Henley-on-Thames RG9 6BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Spratley against the decision of South Oxfordshire District Council.
 - The application Ref P16/S4010/FUL, dated 2 December 2016, was refused by notice dated 31 January 2017.
 - The development proposed is to construct a new dwelling.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Following the submission of the appeal the Supreme Court issued a judgment¹ concerning the interpretation of paragraph 49 of the National Planning Policy Framework (the Framework) and its relationship with paragraph 14. The Council and the appellant were invited to make submissions in the light of that judgment and I have taken account of the response received.

Main Issues

3. The main issues are:
 - the effect of the development on the character and appearance of the area and the need to conserve the landscape and scenic beauty of the Chilterns Area of Outstanding Natural Beauty (the AONB);
 - whether the development would amount to 'infill' and whether it would be located in the 'countryside';
 - the implications of the Council's inability to demonstrate a five-year supply of deliverable housing sites and the Framework's policies in respect of ANOBs; and
 - whether, having regard to all the relevant considerations, the development should be permitted.

Reasons

Character and appearance

4. The appeal site is located within the AONB, in the village of Bix, which has a residential, but distinctly rural, character. Close to the appeal site many of the

¹ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37

houses are located within generous plots. Some properties are set some distance back from Old Bix Road, but even so they are sited and orientated so that they appear as a consistent part of the loosely linear development along that road.

5. Although in places the gardens extend significantly to the rear, development behind the dwellings, closer to the A4130, is limited especially so moving east where the separation between Old Bix Road and the main road to the south increases. Some buildings do exist in these rearward locations, but these tend to be small ancillary or equestrian related buildings and they are inconspicuous in the landscape. The loose linear pattern of development, with the limited development to the rear, significantly contributes to the rural character and appearance of the area.
6. The appeal dwelling would be set behind Mulberry House thereby creating a tandem form of development. It would be apparent from glimpses from the A4130 and adjacent houses and their gardens. When seen from these viewpoints the tandem nature of the development would be appreciably at odds with the pattern of development, and so it would constitute an incongruous element that detracted unacceptably from the rural character and appearance of the area.
7. The dwelling would be single storey, have a relatively modest foot print, from some views it would be seen to the backdrop of Mulberry House, and it would sit only a little to the front of the southern extent of the neighbouring dwelling to the east. These factors would not minimise the harm that would result from the tandem nature of the development, which would be at odds with the loose linear pattern of development. The development would also result in a house encroaching further to the south than any of the existing adjacent dwellings. While this may be relatively slight it would nonetheless be noticeable.
8. Planning permission has been granted for a stable building which would have a similar position and size to the proposed dwelling and with similar access arrangements. There are also similarities between the external materials and general design, although the fenestration on the dwelling would be much more domestic in appearance. Even though the main garden area would be to the rear of the appeal dwelling and on land currently used as garden, it would have a noticeably separate curtilage accentuating the tandem nature of the development. Inevitably there would be some domestic trappings around the building, and it would have a residential character as a result of comings and goings and general daily domestic use.
9. Overall the use of the building as a dwelling would result in a notably domestic appearance. Planning conditions could not reasonably be put in place to fully mitigate the above and this leads me to conclude that the impact of the appeal dwelling would be harmfully different to that which would arise if the stable scheme were implemented.
10. For these reasons, the dwelling would harm the character and appearance of the area. Moreover, because of this, it would also fail to conserve the landscape and scenic beauty of the AONB. It is contrary to Policies CSEN1, CSQ3, and CSR1 of the South Oxfordshire Core Strategy, December 2012 (the CS) and D1, G2, and C4 of the South Oxfordshire Local Plan, 2011 (the LP). These policies seek to ensure that development respects the character and appearance of the area and conserves the AONB.

Infill and countryside

11. Policy CSR1 of the CS allows for development in villages. Bix is an 'other village' in the terms of this policy where infill, on sites of up to 0.1ha, is supported. Infill development is defined in the supporting text as the filling of a small gap in an otherwise built-up frontage or on other sites within settlements where the site is closely surrounded by buildings.
12. The appeal dwelling would be located to the rear of Mulberry house, set well back from Old Bix Road and the A4130. It would not fill a small gap in a built up frontage. An existing dwelling sits to the east of the site, with Mulberry House to its rear. There are no buildings to the immediate west or front of the site. There are stable buildings on the adjacent site, to the front of where the appeal dwelling would be located, but these are a significant distance away. Taking these factors into account I conclude the site is not closely surrounded by buildings. The proposal does not, therefore, amount to infill in the meaning of Policy CSR1. Notwithstanding my finding here, this Policy also requires that all development should conserve and enhance the natural beauty of the AONB. For the reasons I have set out above, this proposal would not do so.
13. Within the refusal reason, the Council has cited conflict with Policy G4 of the LP. This policy deals with development in the countryside and on the edge of settlements. There is no defined boundary for the village of Bix, however the appeal site lies close to the rear of the dwellings that front onto Old Bix Road, and near to their curtilages. This leads me to conclude that the site is within the settlement rather than on its edge. I do not therefore find any conflict with Policy G4 of the LP. This does not however affect the conflict with the policies I have identified above or minimise the harm.

Land supply and AONB policies

14. There is no dispute that the Council is unable to demonstrate a five-year supply of deliverable housing sites. As such the relevant policies for the supply of housing should not be considered up-to-date. In these circumstances, having regard to paragraph 14 of the Framework, this means that planning 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 (often referred to as 'the tilted balance'); or

specific policies in the Framework indicate development should be restricted.
15. In relation to the latter of these requirements footnote 9 provides examples of these policies which include those relating to AONBs and they are contained in paragraphs 115 and 116.
16. Dealing first with paragraph 116, this is clear that, other than in exceptional circumstances, planning permission should be refused for major development in AONBs. This is without doubt a policy that indicates that development should be restricted. I note the appellant has argued that the proposal is not major development.
17. Paragraph 115 states that great weight should be given to conserving the landscape and scenic beauty in AONBs and that these have the highest status of protection in terms of landscape and scenic beauty.

18. The final subsection in Framework paragraph 14 uses the word 'restricted', which is not synonymous with the word 'refused'. The great weight and high status of protection that is to be afforded to the landscape and scenic beauty of ANOBs leads me to conclude that, where this is not conserved, development should be restricted.
19. For the reasons given in the first main issue, the development would fail to conserve the landscape and scenic beauty of the AONB. Therefore a specific policy in the Framework, and the related policies in the development plan, indicates that this development should be restricted. The tilted balance and the presumption in favour of sustainable development within the Framework do not therefore apply. Having reached this conclusion it is not necessary that I make a finding as to whether the scheme amounts to major development.

Other considerations

20. Although the tilted balance in paragraph 14 of the Framework does not apply, paragraph 49 still applies and the housing land supply situation remains a material consideration. The only evidence I have been provided with in respect of the degree of shortfall is an appeal decision² from March 2017. This concludes that there was a supply of 3.9 years at that time. In the absence of any other evidence I have no alternative other than to assume that the supply remains at this level, which is a significant shortfall. The evidence submitted by the appellant, and undisputed by the Council, suggests that progress in preparing the new Local Plan, which should rectify the land supply situation has fallen behind schedule. I therefore give significant weight to this shortfall.
21. Policy CSR1 of the CS is a policy for the supply of housing in that it limits this to infill development. It should not therefore be considered up-to-date. I am mindful that the overarching aim of this Policy is to ensure that the landscape and scenic beauty of AONBs is conserved which is consistent with the aims of the Framework. I therefore give moderate weight to the conflict with this policy that arises from the development not amounting to infill.
22. The AONB and other designations affect a good portion of the district. The rigid enforcement of the related policies may prevent the Council from meeting its requirement to provide a five-year supply of deliverable housing sites and the objectives of the Framework, to boost significantly the supply of housing, may be frustrated.
23. Policy CSEN1 of the LP is consistent with the aims of the Framework to conserve the landscape and scenic beauty of AONBs, as is the overarching aims of Policy CSR1. These are specific development plan policies to which footnote 9 of the Framework refers. In view of the shortfall in the supply of deliverable housing sites I do not give full weight to these policies. However they are still relevant, and in light of the high status of protection the Framework gives to AONBs and the statutory duty that applies in such areas I still give these policies significant weight. Policy CSQ3 of the CS and Policies D1, G2, and C4 of the LP are of more general application seeking to protect the character and appearance of the area. In view of the weight I will give to the AONB policies attributing specific weight to these remaining policies would make no appreciable difference in the overall consideration of this appeal.

² Appeal ref: APP/Q3115/W/16/3153639

24. Social and economic benefits would arise from the addition of a dwelling to the housing stock and it would assist in meeting the housing need. I acknowledge that small sites and small housebuilders have an important role to play in meeting this need which would help to avoid an overreliance on larger sites. However, the benefit would only be moderate, as only a single dwelling would be added to the housing stock. I nevertheless acknowledge that cumulatively small sites would make a more significant contribution to the housing land supply.
25. I note that the appellant has criticised the Council for taking the degree to which the proposal would help to meet the housing shortfall into account in its own planning balance, making reference to the case of *Suffolk Coastal DC v SSCLG* [2016] EWCA Civ 168³.
26. The context of the relevant comments in that judgement relate to a list of matters that might be appropriate to take account of in determining how much weight should be given to out-of-date policies. That is different to this situation where I am reaching a view on how much weight to give to a material consideration. However it is worth noting that the Judgement does not give a closed list of factors to be taken into account and expressly uses the term 'for example'. I am satisfied that it is entirely appropriate for me to take account of the degree to which a proposal would help to meet the housing shortfall.
27. The dwelling may go some way to enhancing or maintaining the vitality of the local rural community in Bix and other nearby villages providing both social and economic benefits. There is also some opportunity to reach these villages and other settlements by public transport so the occupiers of the dwelling need not be wholly reliant on private vehicles to make such journeys. However I have no substantive evidence that there is a significant need to support the services in these villages to maintain community vitality. Nor am I convinced that housing, which would conserve the scenic and landscape beauty of the AONB, could not be provided within these villages. Therefore I give this matter only limited weight.
28. Even if I were to take the view that the site is located on previously developed land, the provision of a single dwelling within the site would have very modest benefits in terms of making effective use of land. I also give this factor only limited weight.
29. No harm would arise to the living conditions of neighbouring residents and adequate access arrangements could be provided. I note that the immediate adjoining neighbours have supported the proposal and those objecting would not have a direct view of the appeal scheme. I am also aware that the appellant sought to address previous concerns through submitting a new application with an amended scheme. However I must reach my own view on the acceptability of the proposal and I do not give these matters any significant weight.

Conclusion

30. Given the national and local policies that restrict development in an AONB I give very significant weight to the harm that would arise to the character and appearance of the area and the landscape and scenic beauty of the AONB.

³ *Suffolk Coastal v Hopkins Homes Limited, Richborough Estates Partnership LLP v Cheshire East Borough Council*, with the Secretary of State appearing in both appeals, [2016] EWCA Civ 168.

31. Although I give significant weight to the housing land supply shortfall, even taking account of potential cumulative benefits from other small sites, the benefits that would arise from this scheme would only be moderate. While I do not give full weight to the relevant development plan policies, when set against the weighty requirement to conserve the landscape and scenic beauty of the AONB, the benefits that would arise from an additional dwelling, including in respect of the enhancement to the vitality of the rural community and the use of previously developed land, would not outweigh the harm I have identified.
32. The adverse effects of the development are sufficient to mean that the proposal would conflict with the development plan and the Framework when taken as a whole. The harm to the character and appearance of the area and the failure to conserve the landscape and scenic beauty of the AONB is such that the environmental role of sustainability, as set out in Policy CSR1 of the CS, would not be met.
33. For the reasons given above, I conclude that the appeal should be dismissed.

K Taylor
INSPECTOR