
Appeal Decision

Hearing held on 27 July 2017

Site visit made on 27 July 2017

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 24th August 2017.

Appeal Ref: APP/Y3940/W/17/3173509

Land North of Hilltop Way, Salisbury, Wiltshire, SP1 3QX

- 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 D Pearce against the decision of Wiltshire Council.
 - The application Ref 16/04126/OUT, dated 29 April 2016, was refused by notice dated 7 November 2016.
 - The development proposed is for the erection of 10 semi-detached bungalows, new footpath link and creation of public open space, incorporating 20 off-street parking spaces and 5x laybys to Hilltop Way.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 10 semi-detached bungalows, new footpath link and creation of public open space, incorporating 20 off-street parking spaces and 5x laybys to Hilltop Way at land North of Hilltop Way, Salisbury, Wiltshire, SP1 3QX in accordance with the terms of the application Ref 16/04126/OUT, dated 29 April 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. All matters of detail except access and layout have been reserved for future approval. In addition to plans showing site location, access and layout, an illustrative layout of internal spaces was submitted. In addition, there is an illustrative masterplan included in the Design and Access Statement. These plans give a likely indication of the character of the proposed development and its relationship to the surrounding area.

Application for costs

3. At the Hearing an application for costs was made by Mr D Pearce against Wiltshire Council. This application will be the subject of a separate Decision.

Main Issues

4. The main issues are:
 - (1) Whether the development of the appeal site for housing is appropriate in principle, and particularly in relation to (i) the location of the site outside the defined settlement limits as established in the Wiltshire Core Strategy; (ii) whether the proposed development for affordable housing in this location would be contrary to the sustainable development

principles set out in the Core Strategy; (iii) whether the Council can demonstrate a 5 year housing land supply; and (iv) whether the proposal is premature in relation to the site allocation process in the emerging Local Plan.

- (2) Whether the appeal site currently makes a contribution to the character of the Paul's Dene Estate, which marks a degree of transition between the urban and rural landscapes on the periphery of the city of Salisbury, and whether the closing of the open area through the proposed development would materially detract from the character of the estate and reduce the attraction of the adjoining bridleway for users.

Reasons

5. The two main issues form the basis of the Council's reasons for refusal as expressed in its Decision Notice dated 7 November 2016. However, the Council has made significant progress in taking forward the emerging Wiltshire Housing Sites Allocations Plan since the date of that decision. The emerging plan includes the appeal site as a potential housing site. This plan can only be afforded limited weight, as it has just started its public consultation on 14 July 2017. The basis for the appeal site's inclusion as a potentially suitable housing site, however, can be found in the detailed assessment in the Council's Community Area Topic Paper, which is part of the evidence base for the emerging plan.
6. This Topic Paper, which was presented to the Council's Cabinet on 20 June 2017, states that the appeal site is in an accessible and sustainable location, capable of being served by existing highways infrastructure. It also states that the site is not of a size that (development) will significantly add to the pressures on local infrastructure, services and facilities, and that access can be provided from this site to the adjacent Hampton Park Country Park, thereby providing potential health benefits to future residents, by which I take to be future residents both of the scheme and the wider area.
7. The Paper considers that any potential minor adverse impacts associated with the development would be capable of being satisfactorily addressed by straightforward mitigation measures. The Paper also considers that, given the minor nature of the effects allied to the limited benefits in terms of the scale of residential development and scope for affordable housing, there would be minor sustainability benefits resulting from the development. This conclusion is supported by the sustainability appraisal.
8. I also note that the ecological advice to the Council has consistently been that the proposed development could be approved without consulting Natural England, even though the Habitats Regulation Assessment screening assessment for Salisbury, including the proposed development, has identified potential impacts on the River Avon Special Area of Conservation (SAC), in particular relating to impacts arising from abstraction. The ecological advice is that this issue could be addressed through, amongst other things, ensuring that water efficiency measures are fitted in all dwellings to reduce water consumption down to 110 litres per person per day. This can be addressed by a suitable condition.
9. It is clear to me that the detailed level of site analysis that the Council has now undertaken in relation to the site changes the planning context totally from

when the proposed development application was refused in November 2016, to the extent that it is now understandable and reasonable for the Council to withdraw its two reasons for refusal.

10. A Statement of Common Ground (SCG) was drawn up, and this identified two further areas of disagreement between the main parties, which require consideration and comment. The first disagreement concerns the issue of whether a sufficient housing land supply can be demonstrated, based on the conclusions of table 3 in the SCG, which stated that using the 'Sedgefield' method, the Council could only demonstrate 4.75 years' housing land supply.
11. Although both parties signed the SCG, it became clear during the Hearing that there were errors in the agreed housing land supply calculations, and a revised table 3 was submitted, following a short adjournment. The revised table 3 was agreed by both main parties. This revised table shows that the Council has a 5.15 years supply of housing using the 'Sedgefield' method, which only just exceeds the requirement. (Using the 'Liverpool' method increased the supply to 5.69 years.) However, with the application of a 5% buffer, based on the 'Sedgefield' method, which appears to be the Government's preference according to the PPG, would point to a requirement of 5.25 years, and against this, the revised table 3 still shows a slight shortfall.
12. However, in the light of the conclusions from the above-mentioned Topic Paper, the site's sustainability attributes support the inclusion of the appeal site for housing in the emerging Plan. From considering the evidence including my own observations of the site and its context, whilst it is true that the proposed development would close off an open area, the scenery is pleasant rather than distinctive and it is not protected by any formal landscape designation. I agree with the recent landscape assessment that the site forms part of an open, rolling landscape, and that the site itself has limited character. There are no important views from the appeal site and I agree with the assessment that there is scope to mitigate the effects of the proposed development through appropriate hedgerow and tree planting, whilst the visual impact on the adjacent bridleway would be minimal.
13. The second area of disagreement identified in the SCG relates to affordable housing (AH) provision, with the Council expressing concern that the proposal is for 100% AH, given that the original proposals were for 40% AH. When questioned at the Hearing about the reasons why the Council disagreed with the provision of 100% AH on the appeal site, no sound planning reasons were given for this stance, and local opposition to such a high proportion of AH was the only comment made. From considering the evidence and from my questions at the Hearing, I cannot find any planning arguments, given the need for AH within the Council Area, why a small AH scheme of 10 units would be inappropriate in what is accepted by both parties to be a sustainable location and where it would meet an identified housing need.
14. I therefore conclude, having considered the SCG and the points of disagreement between the main parties, that it contains no sound planning reasons for dismissing the appeal.
15. Turning to other matters raised by third parties, firstly a view was expressed that allowing the appeal would be premature, as it would firstly, permit housing development on a site which would breach the settlement limit as designated in the adopted Core Strategy, and secondly that the public are currently being

invited to comment on the suitability or otherwise of the appeal site for housing development, so that the process of democracy would be pre-empted if the appeal were to be allowed.

16. I have some sympathy with these views. However, the fact that the Council cannot demonstrate a 5 year housing land supply, when allowing for a 5% buffer would render the adopted plan out of date for the purpose of housing land supply, as paragraph 49 of *the Framework*¹ states – in which case a balancing act would be required. Paragraph 14 of *the Framework* makes it clear that where the development plan is out of date, planning permission should be granted unless (applying the balancing act) 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. I am satisfied, from the evidence before me that any adverse effects would be minor and would not outweigh the benefits of allowing the proposed development.
17. Concern was also expressed regarding potential highway safety, and in particular that the free flow of traffic would be restricted by the number of parked vehicles and access difficulties for emergency service vehicles. Wiltshire Highways Department commented that, having taken into consideration local residents' views and the Appellant's Transport Statement, it considers that the likely vehicular movements associated with the proposed development would not be detrimental to highway safety, and that Hilltop Way and the roads connecting it to the highways network are of sufficient width to allow two vehicles to pass, or a vehicle to pass a parked car, whilst the on-street parking that occurs is typical of a residential street. I have no evidence to point me to a different conclusion.

Conditions

18. I have considered the list of conditions suggested by the Council, and which are endorsed in the SCG, in the light of the discussion at the Hearing and paragraph 206 of *the Framework*. This has resulted in a few changes to the suggested wording of some of the conditions and the deletion of two conditions; no persuasive arguments were put to me that the withdrawal of permitted development rights were appropriate in relation to the appeal scheme, and the required level of energy performance can be achieved through the Building Regulations.
19. Conditions (1)-(3) are standard in relation to outline applications and comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004). Condition (4) is to ensure that affordable housing is provided on the site, to meet demonstrable need and to ensure that the affordable housing remains as such in perpetuity. Condition (5) is for the avoidance of doubt and in the interests of proper planning. Conditions (6) - (10) are to safeguard the character and appearance of the area. Condition (11) is in the interests of highway safety. Condition (12) is in the interests of amenity and to secure appropriate access to the proposed Country Park. Conditions (13) - (15) are to safeguard the natural habitat with particular reference to reptile conservation, in the context of an extension to the proposed Country Park.

¹ DCLG: National Planning Policy Framework (*the Framework*); March 2012.

20. Condition (16) is in the interests of safeguarding the character of the River Avon SAC. Conditions (17) – (18) are to prevent increased flood risk and safeguard public health. Conditions (19) – (20) are in the interests of safeguarding the living conditions of existing neighbouring occupiers. Condition (21) is in the interests of public safety and amenity.

Conclusion

21. The two main issues stem from the Council's two reasons for refusal. Although the Council withdrew these reasons for refusal before the start of the Hearing, it was necessary for me to consider whether the proposed development would be acceptable in relation to these main issues, i.e. in principle and whether it would have an adverse effect on the character and appearance of the area and the attraction of the adjacent bridleway. I have found from the evidence and from my site visit that the proposal would be acceptable on both counts.
22. It was also necessary to consider whether issues arising from the two areas of disagreement identified in the SCG weighed against allowing the appeal, and if so whether this would be conclusive. Although during discussion at the Hearing errors were identified in the subsequently agreed table 3 in the SCG, covering housing land supply, the increased figure of 5.15 years (using the 'Sedgefield' method) is still insufficient to cover the 5 year housing requirements for the plan area, including the application of the 5% buffer, whilst the Council was unable to point to sound planning reasons why the provision of 100% affordable housing was inappropriate. Neither of the issues arising from these areas of disagreement, therefore, outweighed the arguments that persuaded me to allow the appeal.
23. Taking the above considerations into account and having regard to all the other matters raised by third parties and subject to the conditions discussed above, I conclude that the appeal should be allowed.

Mike Fox

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall take place not later than 3 years from the date of the approval of the last of the reserved matters to be approved.
- 2) Details of the appearance, landscaping, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 4) No development shall begin above ground level until a scheme for the provision of 100% affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it.

The scheme shall include:

- (i) The delivery of 100% on-site affordable housing provision to be delivered at nil subsidy. The sizes shall consist of 4 x one bed units, 4 x two bed units and 2 x three bed units. All of the affordable housing units are to be delivered as affordable rented tenure.
- (ii) The affordable housing units to be built to Building regulations Part M4 (Category 2) (as are current at the date of design and construction of the Adapted Units) so as to be wheelchair accessible and adaptable as defined in Part M of the Building Regulations and to be provided with a level access shower suitable for wheelchair users.
- (iii) The arrangements for the transfer of affordable housing to a transferee, which means the Registered Provider, the Council, in its capacity in its capacity as local housing authority (at the Council's absolute discretion) and/or a third party which meets the requirements of the Council to own and manage Affordable Housing Units.
- (iv) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing.
- (v) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria should be enforced, which means the Council's policy for allocating Affordable Housing Units for all tenures (for the avoidance of doubt including Shared Ownership Housing) in the administrative area of Wiltshire (as amended from time to time).

- 5) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (i) Design and Access Statement, Savills, November 2015;
 - (ii) Site Plan Ref L001 Rev B, dated May 2016;
 - (iii) Illustrative Layout Ref. UD003, dated 12/04/2016;
 - (iv) Parking Laybys on Masterplan Ref. 4279-SK-005B;
 - (v) Ecological Appraisal & Reptile Mitigation Strategy by ECS, November 2015 (final report)
 - (vi) Waste Statement, Savills, November 2015;
 - (vii) Tree Survey and Constraints Assessment by Mark Hinsley Arboricultural Consultants Ltd, dated 4 August 2015;
 - (viii) Archaeological Desk based Assessment by CGMS Consulting, April 2015;
 - (ix) Transport Statement by WSP Parsons Brinckerhoff, April 2016.
- 6) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 7) No railings, fences, gates, walls, bollards or other means of enclosure shall be erected in connection with the development hereby permitted until details of their design, external appearance and decorative finish have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the development being occupied.
- 8) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 9) All planting, seeding or turfing included in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) The development hereby approved shall be single storey in height, with no accommodation or windows in the roof.
- 11) No development shall commence until further details for the proposed footway, its connection with the existing footway and details of the lay-bys have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details before there is any occupation of the dwellings.
- 12) Details of the new right of way between the existing and proposed bungalows are to be submitted to and approved in writing by the local planning authority, and the scheme is to be completed and surfaced in

accordance with the approved details before there is any occupation of the dwellings.

- 13) No development can commence until a scheme for the provision and management of compensatory habitat creation (as an extension to the proposed Hampton Park Country Park to provide a receptor site for existing reptiles) has been submitted to and approved in writing by the local planning authority. The scheme shall include the 0.22 ha of land in the Appellant's ownership to the south-east of the development (shown in green as 'Country Park' on the plan on page 11 of the Design and Access Statement). The scheme shall be completed in accordance with the approved details, before development is first occupied, or in accordance with the approved timetable in the approved scheme. The receptor site shall be retained for that purpose in perpetuity.
- 14) Before works commence, a mitigation scheme for the translocation of reptiles and enhancement of the reptile receptor site shall be submitted to and approved in writing by the local planning authority. The scheme will identify the receptor site, specify how it will be prepared and confirm elements of the scheme which will be undertaken and/or overseen by an ecologist. The works will be completed in accordance with the approved scheme.
- 15) At no time before, during or after the construction of the development, will land to be made available for the Hampton Park Country Park shown on the illustrative masterplan (Savills, Job. No. WIPL350874 Drawing L002) be used for temporary or construction works.
- 16) No development shall commence above ground level on site until a scheme of water efficiency measures (to include the water consumption of the development to no more than 110 litres per person per day) has been submitted to and approved in writing by the local planning authority. Before any of the dwellings are occupied, the approved measures shall be implemented in accordance with the approved scheme and thereafter retained.
- 17) No development shall commence on site until a scheme for the discharge of foul water from the site has been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.
- 18) No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, together with permeability test results to BRE365 has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until surface water drainage has been constructed in accordance with the approved scheme.
- 19) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall include details of

the measures that will be taken to reduce and manage the emission of noise, vibration and dust during the construction of the development. It shall include details of:

- (i) the movement of construction vehicles;
- (ii) the cutting or other processing of building materials on site;
- (iii) wheel washing facilities;
- (iv) the transportation and storage of plant, waste and building materials;
- (v) the recycling of waste materials (if any);
- (vi) the loading and unloading of equipment and materials;
- (vii) the location and use of generators and temporary site accommodation; pile driving;
- (viii) the parking of vehicles of site operatives and visitors;
- (ix) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 20) Demolition or construction works shall take place only between 07:00 and 18:00 hours on Mondays to Fridays and between 08:00 and 13:00 hours on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 21) No development shall commence until the Appellant has completed an assessment of ground gas at the site. Any remediation measures to the proposed development identified as a consequence of the investigation shall be approved in writing by the local planning authority and implemented in accordance with the agreed measures.

APPEARANCES

FOR THE APPELLANT:

Mr Scott Stemp
Mr Jon Gateley

Counsel
Savills

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Becky Jones
Mr Chris Roe

Wiltshire Council
Wiltshire Council

INTERESTED PERSONS:

Cllr Mary Douglas
Mr Keith Leslie

Wiltshire Council
Resident

DOCUMENTS

1. Extract from Landscape Assessment Paper by The Environmental Partnership; July 2017, showing the detailed analysis of the Appeal Site.
2. Letter from Head of Planning Service, Wiltshire Council, dated 30 June 2017, entitled 'Land at Hilltop Way, Salisbury – Appeal Reference APP/Y3940/W/17/3173509'.
3. Bloor Homes High Court Decision Ref [2014] EWHC 754 (Admin); dated 19 March 2014.
4. Attendance List.
5. Revised Table 3 from SCG, showing corrected 5 year housing land supply for Wiltshire.