The Planning Inspectorate

Appeal Decision

Hearing Held on 8 August 2017

Site visit made on 8 August 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 11 September 2017

Appeal Ref: APP/J0405/W/17/3169400
Land east of the Courtyard, Liscombe Park Estate, Soulbury LU7 0JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr David Harris of Thameside Homes Ltd against Aylesbury Vale District Council.
- The application Ref 16/02303/APP, is dated 21 June 2016.
- The development proposed is provision of 3 no. residential units and 2 no. live work units with associated parking, servicing, landscaping and utilities.

Decision

1. The appeal is allowed and planning permission is granted for provision of 3 no. residential units and 2 no. live work units with associated parking, servicing, landscaping and utilities at Land east of the Courtyard, Liscombe Park Estate, Soulbury LU7 0JL in accordance with the terms of the application, Ref 16/02303/APP, dated 21 June 2016, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. In light of recent appeal decisions, the appellant accepts that the Council is able to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 47 of the National Planning Policy Framework (the Framework). This matter was not contested at the hearing.

3. In advance of the hearing the appellant submitted revised plans showing a minor adjustment to the design of the proposed dwellings. The Council confirmed that this would achieve an acceptable separation distance with South Cottages and overcome its concerns regarding overlooking and loss of privacy. No party would be prejudiced by my determining the appeal on the basis of the amended plans and I have proceeded accordingly.

Background and Main Issues

4. The relevant housing supply policies contained within the Aylesbury Vale District Local Plan (2004) (AVDLP) were not saved by a Direction of the Secretary of State and therefore they no longer form part of the statutory development plan. Paragraph 14 of the Framework explains that in such circumstances, where the development plan is silent, 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; or specific policies in the Framework indicate development should be restricted.

5. The outcome of the above test (commonly referred to as the *tilted balance*) dictates whether the proposal would constitute sustainable development, for which the Framework provides a presumption in favour. The parties are in agreement that the first limb of the test is the relevant one to apply.

6. Accordingly, I consider that the main issues in this case are:

   a) whether occupants of the proposed development would have acceptable access to shops and services;

   b) the effect of the proposal on the character and appearance of the area; and

   c) whether any adverse impacts would significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework taken as a whole.

Reasons

Access to shops and services

7. The appeal site forms part of the Liscombe Park Estate which lies within open countryside roughly midway between the settlements of Wing and Soulbury. Historically, I understand that this complex of buildings was once associated with Liscombe House, but they have since been adapted to a mix of uses which include a private fitness club, equestrian centre and a range of offices and business units. Several of the buildings, including the former farmhouse and stable courtyard, have been converted to residential use. The parties at the hearing were unsure on the precise number but the planning history suggests that it is somewhere in the order of 21 dwellings.

8. Paragraph 55 of the Framework advises local planning authorities to avoid new isolated homes in the countryside unless there are special circumstances. The proposed development would be closely associated with the existing buildings of Liscombe Park Estate and therefore in my opinion it would be difficult to describe them as isolated in any physical sense.

9. The Council's principal concern is that occupants of the proposed development would be remote from services and facilities. There is no public transport and the journey on foot to Wing or Soulbury would involve a lengthy walk along an unlit country lane without pavements. Cycling is an option but this would only be suitable for a small proportion of local trips. Leighton Buzzard railway station is within cycle range but in my opinion this would only be attractive to dedicated cyclists. I therefore consider that future residents would be heavily dependent upon the private car for day-to-day activities.

10. That said, the development would be located directly alongside a range of employment opportunities and a private fitness club which provides access to a gym, swimming pool and café. Having a leisure facility on the doorstep and the ability to commute to work on foot would be significant factors in attracting persons to live in this particular location.

11. TRICS[1] data suggests that the scheme could generate up to 35 vehicle movements per day. However, surveys indicate that actual trip rates from the Courtyard are significantly lower. If the site specific data is extrapolated to the appeal proposal this would translate to approximately 18 vehicle movements between 0700 and 1900 hours. This analysis is not contested by the Council.

12. The appeal scheme proposes a number of measures designed to reduce car journeys further. These would include the provision of a pair of live-work units and a commitment to providing superfast broadband to future residents. The latter would facilitate home working, the use of supermarket home delivery and greater use of online services. I understand that once the infrastructure is installed the broadband service could be made available to existing residents and businesses on the Liscombe Park Estate. Paragraph 29 of the Framework recognises that smarter use of technologies can reduce the need to travel and this is one such example.

13. The development would also make provision for a dedicated electric car charging point and parking space. This would enable individual occupiers to operate electric vehicles and would also provide the opportunity for the establishment of an electric car club, should residents of the site so wish.

14. In my judgement, whilst the above measures would not completely mitigate the environmental impact of the development, they would nevertheless offset, to some degree, the harm arising from additional car use. The trip generation rate is likely to be at the lower end of the identified range and at least as low as those for the Courtyard.

15. The Framework at paragraph 29 seeks to balance the transport system in favour of sustainable transport modes. However, Government policy recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. It is almost inevitable that residents in rural areas, even within those settlements such as Soulbury where the Council is prepared to accept a limited amount of development, will have some level of reliance on the private car. This is particularly true for access to secondary schools, doctors surgeries and supermarkets which are more likely to be found in larger villages and towns. The car journey from the appeal site to these services and facilities would be relatively short and comparable to those trips already undertaken by the residents of Soulbury.

16. Notwithstanding the concerns put forward at the hearing in relation to social isolation and community cohesion, I am satisfied that occupants of the proposed development would have acceptable access to shops and services. However, it remains the case that the proposal would be likely to generate vehicle movements over and above the present situation, despite the measures put forward by the appellant. The number and length of car journeys is unlikely to be especially great. Nevertheless, they would lead to additional carbon emissions and this would bring the scheme into conflict with the environmental role of sustainable development. This finding needs to be factored into the overall planning balance.

Character and appearance

17. The Council is concerned that the appeal scheme would urbanise the area and materially alter its character. The site is bounded on three sides by built form

[1] Trip Rate Information Computer System

and lies within the perimeter road which encircles the Liscombe Park Estate. It therefore reads as part of the existing cluster of development. Although there would be no significant public views, from surrounding fields the proposed houses would be visible against a backdrop of buildings and consequently there would not be any visual encroachment into the countryside or landscape harm.

18. The development would result in the loss of various trees on the site and residents have raised the concern that this would effectively remove the green buffer between the Courtyard and commercial uses to the east. Although I acknowledge that there may be greater intervisibility between the two parts of the site, this would not amount to material harm. The proposed layout includes opportunities for replacement trees and other planting and this would help to soften the appearance of the development and assimilate it into its surroundings.

19. Residents have also raised specific concerns regarding the height and density of the proposed buildings. However, in my opinion the development would sit comfortably on the site with adequate visual separation to adjoining properties. The dwellings themselves would be well articulated and their detailed design would take cues from the adjacent farmhouse without necessarily competing. The roof of Plots 1 to 3 would be lower and hipped away from the farmhouse, with a single storey element at its closest point, thus creating a subservient relationship.

20. I conclude that the proposal would not cause material harm to the character or appearance of the area. It would therefore comply with saved Policy GP35 of the AVDLP. This policy is consistent with the Framework in seeking to ensure that new development responds to local character and history, and reflects the identity of local surroundings and materials.

Other Matters

21. The scheme would be connected to a package treatment plant on adjoining land which is owned and managed by the Courtyard Management Company (CMC). The existing plant does not have sufficient headroom to accommodate the effluent from the development but there is scope to increase capacity by installing an additional biofilter unit. This would also help in reducing ammonia levels and odour.

22. CMC contends that, whilst the appellant has the legal right to connect to the existing facility, it is not entitled to install new plant on land which it does not own. It is not within my remit to adjudicate on what is effectively a private legal matter. In this instance the planning objectives can be met by imposing a negatively worded condition to secure the necessary infrastructure upgrades prior to development commencing. Although such a condition would not be appropriate where there is no prospect at all of the works being carried out, there is no substantive evidence to convince me that agreement cannot be reached within the timeframe imposed by the permission. For this reason I consider that a condition would pass the reasonableness test.

23. I have noted the concerns regarding the impact on wildlife. However, I have no reason to question the finding of the submitted ecology assessment that the proposal is unlikely to have a significant negative effect on the ecology of the local area. There is no firm evidence of protected species being resident on site but, applying the precautionary principle, a condition can be used to prevent harm to birds, bats and reptiles during the site clearance phase. Appropriate

ecological mitigation and enhancement measures can also be secured as part of the planning permission.

24. It has been put to me that the proposal would harm the living conditions of adjoining residents. However, the distance to neighbouring properties would be sufficient to ensure that there is no unacceptable loss of daylight, sunlight or privacy. Whilst there would be a change in outlook from the two parcels of garden land abutting Plot 1, the impact would not be so harmful as to warrant dismissal of the appeal.

25. The vehicle movements generated by the development would represent a very modest increase over the present situation. For this reason, I do not consider that there would be harm to pedestrian safety and existing residents would not suffer from unacceptable levels of noise or disturbance once the development is occupied. There would be some disruption during the construction phase but this could be minimised by requiring the developer to adhere to a Construction Method Statement which would need to be agreed with the Council prior to works commencing.

26. Residents assert that the development would interfere with the broadband service to Liscombe Park Estate which relies upon a direct line of sight link. It is unclear based on the evidence whether this would actually be the case, but in any event the matter is resolvable using a suitably worded planning condition.

27. All other matters referred to in the representations and orally at the hearing have been taken into account but no other matter is of such strength or significance as to outweigh the considerations that led me to my conclusions.

Conditions

28. The parties have suggested various conditions in the event that I am minded to allow the appeal. These were discussed at the hearing. I have considered each against the six tests set out in paragraph 206 of the Framework and advice within the Planning Practice Guidance. Where necessary I have adjusted the wording to improve precision and enforceability.

29. In addition to the standard commencement condition, it is necessary to attach a condition to define the plans with which the scheme shall accord. This will provide certainty regarding the scope of the permission. Conditions are also required to secure samples of external materials for the buildings, the submission and implementation of a hard and soft landscaping scheme, and details of tree protection measures, in the interests of protecting the character and appearance of the area.

30. An ecological management plan is required to prevent harm to protected species during construction and provide mitigation for any loss of habitat. A condition is also required to secure a surface water drainage scheme, to ensure satisfactory drainage of the site and prevent flooding.

31. I have attached a pre-commencement condition to secure a Construction Method Statement to minimise danger, obstruction and inconvenience to users of the adjacent access road and to protect the living conditions of existing residents.

32. To ensure satisfactory parking provision and to maintain access to existing uses on the Liscombe Park Estate, conditions are required in connection with

the laying out of the parking and manoeuvring areas. It is also necessary to secure the provision of the cycle store and electric car parking and charging point, in order to provide future residents with the option of using sustainable transport modes.

33. Furthermore, a condition is required to guarantee the provision of superfast broadband in order to reduce the dependence of residents on the private car. A condition restricting the studios within the live-work units to activities within the B1 Use Class[2] will achieve the same objective, but will also protect the living conditions of future occupiers and neighbouring residents.

34. It is necessary to secure details of refuse collection and storage arrangements to ensure satisfactory provision and in the interests of the living conditions of future residents. In addition, conditions are required to address potential contamination on the site, which may have arisen due to its former use as a construction compound.

35. The appellant has suggested a condition which would achieve the energy and water efficiency standards set out in the Sustainable Development Statement. These would be in excess of minimum Building Regulation requirements. I am content that such a condition would be justified in the interests of reducing water and energy usage, and maximising the sustainability of the dwellings.

36. Finally, to ensure satisfactory living conditions for future residents, conditions are needed in relation to the necessary sewage infrastructure upgrades and to ensure continuity of foul drainage for existing residents.

Unilateral Undertaking

37. The appellant has supplied a signed S106 unilateral undertaking which provides for the creation of a Local Management Organisation to manage and administer the communal parts of the site. The deed also ensures that the live-work studios are not sold off, let separately or occupied separately to the dwellings to which they are attached. The obligations contained within the undertaking are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They are therefore compliant with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Planning balance and conclusion

38. In the absence of any relevant development plan policies on the supply of housing, the proposal stands to be considered against paragraph 14 of the Framework. I have found that residents of the scheme would be heavily dependent on the private car and this would lead to additional carbon emissions. This is the main factor weighing against the scheme. Against this I must balance the social benefits of delivering five additional dwellings and the economic benefits to the construction industry.

[2] Defined as use for all or any of the following purposes—
(a) as an office other than a use within class A2 (financial and professional services),
(b) for research and development of products or processes, or
(c) for any industrial process,
being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

39. The scale of the scheme dictates that the combined benefits would be modest. However, the Framework requires local planning authorities to boost significantly the supply of housing and I have attached this factor considerable weight in the planning balance. The existence of a five-year supply of housing land does not act as a ceiling. The additional vehicle use would weigh against the scheme but the harm would be tempered by the small number of houses being proposed, the location of the site adjacent to employment and leisure uses and the measures being put forward to reduce car trips. In my judgement, the harm would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. The proposal therefore constitutes sustainable development.

40. For the reasons given above, I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kevin Coleman	Phase 2 Planning
Dave Harris	Director Thameside Homes Ltd
Paul Symonds	Architectural Designer

FOR THE LOCAL PLANNING AUTHORITY:

Nina Hewitt-Jones	Senior Planning Officer, Aylesbury Vale District Council
David Marsh	Senior Development Management Officer, Buckinghamshire County Council Highways
Suzanne Winkels	Team Leader, Buckinghamshire County Council Highways

INTERESTED PARTIES:

Ian Morrison	Representing The Courtyard Management Company and residents of the Courtyard

DOCUMENTS SUBMITTED AT THE HEARING

1. Surface Water Assessment
2. Map showing public rights of way
3. Representation from The Courtyard Management Company (Rock Lane Farm) Limited

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos 770-SP1, 770-02B, 770-03A, 770-04A and 32816.

3) No development shall commence until samples of all external facing materials for the walls and roofs of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development shall commence until the capacity of the existing sewage treatment plant shown on Plan 770-02B has been increased to accommodate the flows arising from the development, either by the installation of an additional Maxi Biofilter unit as detailed in the correspondence dated 11 May 2016 from Allerton (submitted as part of the application) or such other capacity enhancement as the local planning authority approves in writing in the event of an application for the approval of further details pursuant to this condition. The development hereby approved shall be connected to the sewage treatment plant prior to first occupation.

5) No development shall commence until a scheme for the installation, connection and future management and maintenance of the sewage treatment plant has been submitted to and approved in writing by the local planning authority. The submitted details shall include (but shall not be limited to) the following:

   - a method statement setting out the measures to be taken to ensure continuity of foul drainage for existing residents; and
   - details of the means by which access to the sewage treatment plant shown on Plan 770-02B, and any associated equipment relating to the operation of that plant, will be achieved.

   The scheme shall be implemented in accordance with the approved details for the lifetime of the development.

6) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall thereafter be carried out in accordance with the approved management plan, which shall include details of:

   - Management and timing of deliveries;
   - Vehicle parking for site operatives and visitors;
   - Loading/unloading and turning areas;
   - Site compound/storage of plant and materials;
   - Precautions to prevent deposit of mud and debris on the public highway;
   - Measures to control the emission of dust, dirt and noise during the construction; and
   - Hours of construction works.

7) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles as set out in the Surface Water Assessment by Cannon Consulting Engineers dated June 2016, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include details of maintenance activities and management responsibilities for the SUDS element for the lifetime of the development. The scheme shall be implemented in accordance with the approved details prior to first occupation of the development and thereafter maintained in accordance with those details.

8) No site clearance works or development shall take place until there has been submitted to the local planning authority for its approval a Tree Protection Plan showing the type, height and position of protective fencing to be erected around each tree to be retained, consistent with the details in the submitted tree survey (Patrick Stileman Ltd dated 20 April 2016). No site clearance works or other works shall be commenced until such a scheme is approved in writing by the local planning authority and thereafter the development hereby permitted shall only be carried out in accordance with that scheme. The area surrounding each tree within the approved protective fencing shall remain undisturbed during the course of the works, and in particular in respect of these aspects:

    a. There shall be no change in ground levels;
    b. No materials or plant shall be stored;
    c. No buildings or temporary buildings shall be erected or stationed unless these are elements of the agreed tree protection plan;
    d. No materials or waste shall be burnt within 20 metres of any retained tree; and
    e. No drain runs or other trenches shall be dug or otherwise created, without the prior written consent of the local planning authority.

9) No site clearance works or groundworks associated with the development shall take place until there has been submitted to and approved in writing by the local planning authority an ecological management plan (EMP). The content of the EMP shall be consistent with the findings and recommendations set out in Section 4 of the Preliminary Ecological Assessment by the Ecology Partnership dated May 2016 submitted with the application. The development shall be carried out strictly in accordance with the approved EMP.

10) No development shall commence above ground floor slab level until there has been submitted to and approved in writing by the local planning authority a scheme for sustainable construction, setting out how the development will achieve the targets for energy efficiency and water efficiency set out at paragraphs 11.1.5 and 11.1.8 of the Sustainable Development Statement by Daedalus Environmental dated 16th June 2016, submitted as part of the application. The development shall be constructed in accordance with the approved details.

11) No development shall commence until a contaminated land assessment and associated remedial strategy, together with a timetable of works, has been submitted to and approved in writing by the local planning authority. The agreed remediation works shall be fully completed before any construction work commences. The assessment/strategy shall include the following:

a. The contaminated land assessment shall include a desk study which shall detail the history of the site uses. Where the desk study of previous site uses indicates that a site investigation is required then a site investigation strategy based on the relevant information discovered by the desk study must be produced.

b. The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a quality assured sampling and analysis methodology.

c. A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to the local planning authority. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters. The local planning authority shall approve in writing such remedial works as required prior to any remediation works commencing on site.

Prior to the first occupation or use of any part of the development, the approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance.

If during the works contamination is encountered which has not previously been identified then this additional contamination shall be fully assessed in accordance with the above requirements and an appropriate remediation scheme shall be submitted to and agreed in writing by the local planning authority.

12) Prior to the first occupation or use of any part of the development, a validation report shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the completed remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to demonstrate that the site has reached the required clean-up criteria shall be included in the validation report together with documentation detailing the type and quantity of waste materials that have been removed from the site.

13) Prior to first occupation of the development, full details of hard and soft landscaping works shall be submitted for approval in writing by the local planning authority. For hard landscape works, these details shall include: proposed finished levels, means of enclosure and hard surfacing materials. For soft landscaping works, these details shall include new trees and trees to be retained showing their species, spread and maturity, planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment) and schedules of plants, noting species, plant sizes and proposed numbers/densities. The approved works shall be carried out within the first planting season following the first occupation of the development or the completion of the development, whichever is sooner.

14) Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the local planning authority.

15) The development hereby permitted shall not be occupied until a secure cycle parking store has been constructed in the location shown on the approved plans, in accordance with details which shall be first submitted to and agreed in writing by the local planning authority. The secure cycle parking store shall be retained thereafter in accordance with the approved details.

16) The development hereby permitted shall not be occupied until provision has been made for the storage and collection of refuse, in accordance with details which shall be first submitted to and approved in writing by the local planning authority. The refuse storage and collection arrangements shall be retained thereafter in accordance with the approved details.

17) The development hereby permitted shall not be occupied until space has been laid out within the site for parking and manoeuvring in accordance with the approved plans. This area shall be permanently maintained for this purpose.

18) Prior to the first occupation of the development, details of the location of the proposed electric vehicle parking bay and charging point shall be submitted for the approval of the local planning authority. The submitted details shall set out the measures by which the use of the electric vehicle parking bay will be managed and the timing of its provision. The development shall be implemented in accordance with the approved details, and the use of the electric vehicle parking bay shall thereafter be maintained in accordance with the details and management measures set out in the approved scheme.

19) Prior to first occupation of the development, details of the means by which superfast broadband (defined as a connection in excess of 30mb/s) will be provided to the development shall be submitted for the approval of the local planning authority, and the approved details shall be implemented prior to first occupation of the development. The development hereby permitted shall not interfere with broadband provision for existing residents and businesses and, in the event of it doing so, measures shall be put in place immediately to restore an equivalent (or better) speed of service.

20) The accommodation marked as ‘studio’ within Plots 1 and 3 shall be used solely for purposes falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987, as amended, and for no other purpose (which includes use as habitable living accommodation).

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