The Planning Inspectorate

Appeal Decision

Site visit made on 18 December 2017

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 9 January 2018

Appeal Ref: APP/R3325/W/17/3180025
Land OS 1200, Bayford Hill, Wincanton

- 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 Oxford Law Ltd against the decision of South Somerset District Council.
- The application No.17/01484/OUT, dated 28 March 2017, was refused by notice dated 13 June 2017.
- The development proposed is phased residential development of up to 150 dwellings, incorporating access with all other matters reserved for future consideration.

Decision

1. The appeal is dismissed.

Preliminary matters

2. The site address above is taken from the appeal form; on the application form it is recorded as "Land to the east of Penn View". The appeal application is in outline with all matters reserved for later consideration, but with access to be determined as part of the application.[1] I have had regard to other details shown on the submitted drawings as illustrative material not forming part of the application.

3. Several trees on and near to the appeal site are the subject of a Tree Preservation Order. Ivy House, a former farmhouse which lies to the south-east of the site, is a grade II listed building. So too, are St Anne and St Teresa's, an attached pair of 19th Century cottages, located opposite to the southern part of the appeal site. Lodge Farmhouse, a grade II listed building, is located to the north-east of the site. St Andrew's Church, Stoke Trister (grade II listed), lies further to the east. Bayford Lodge and The Gatehouse, both undesignated heritage assets, adjoin the eastern boundary of the site. The Bayford Hill portion of the Wincanton Conservation Area lies to the south-west of the site.

4. The Council's third reason for refusal referred to insufficient information about the potential impact of the proposal on ecology, but with the subsequent submission of additional information as part of the appeal process the Council removed reason for refusal 3.

5. A draft planning obligation was submitted, but no completed obligation had been provided at the time of issue of this decision. The draft obligation

[1] This is confirmed in the Application Form and in the description of the proposed development on the Council's Notice of Determination, and in the heading of the Officer Report. However, the text of the latter refers to Access and Landscaping to be determined and states; "The landscaping acknowledges the need to preserve a 'gap' presence between the settlements."

addresses affordable housing, along with financial contributions towards equipped play facilities, education and youth facilities on commencement of the development that is the subject of this appeal. It also provides for a travel plan.

6. In compiling the obligation a drafting error was identified in the boundary of the site edged red on the application drawings. A short length of footpath had been incorrectly included within the application site. The appellant sought to amend this drawing at the appeal stage. The minor reduction in the site would make no material difference to the proposal, and I concur with the Council that it is unlikely that anyone would be prejudiced by dealing with the appeal on the basis of the amended red line boundary. I have, therefore, considered the appeal site to be that depicted on the Site Location Plan submitted by email dated 14 December 2017, and I have dealt with the appeal on that basis.

Main issues

7. The main issues in this appeal are the effects of the proposed development on:

   (a) The character and appearance of the area, which includes protected trees.

   (b) Heritage assets.

   (c) Agricultural land.

   (d) The supply of housing.

Planning policy

8. The development plan for the area includes the South Somerset Local Plan (2006-2028), which was adopted in 2015 (LP). Policy SD1 reflects the provisions of the *National Planning Policy Framework* (hereinafter the *Framework*) concerning sustainable development. The appeal site lies adjacent to, but outside of, the defined Development Area for the Primary Market Town of Wincanton.

9. For the purposes of the LP the site lies within the countryside where Policy SS1 provides that national countryside protection policies apply, subject to the exceptions identified in Policy SS2. These provide for development in rural settlements that would meet an identified housing need, particularly for affordable housing, where it would be commensurate with the scale and character of the settlement, and would increase the sustainability of the settlement. However, Policy SS5, concerning the delivery of new housing growth, provides for a permissive approach to the consideration of housing proposals adjacent to the development area of Wincanton. Policy SS4 states that provision would be made for at least 15,950 dwellings in the plan period.

10. LP Policy PMT4 provides for a direction of growth on the opposite site of Wincanton to the appeal site. LP Policy EQ2 requires development to be designed to achieve a high quality, which promotes South Somerset's local distinctiveness and preserves or enhances the character and appearance of the district. LP Policy EQ4 seeks to protect the biodiversity of land.

11. The *Framework* seeks to boost significantly the supply of housing, but one of its core principles is to take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.

Reasons

Character and appearance

12. The site lies with the Blackmoor Vale NCA, which is characterised by lush clay vales with a rural character, along with small towns, like Wincanton, overlooking the vales. At the District level the site falls within the sub-area 'Wooded ridges and clay vales' landscape character area of the larger 'Escarpments, ridges and vales east of Yeovil'. Land use is predominantly pastoral. This character area is further subdivided, with the appeal site located within the 'Low Hills' character area, described as a group of hills which divide the clay vale above and below Wincanton. Windmill Hill is identified as the main landmark in this area. It notes that the greater part of Wincanton has grown over its southern hillsides. Within this character area the urban edge opens to wider countryside to the north (Windmill hill top and northern hillsides), east (Land around Bayford to the east of the town) and south-east (Land to the southeast of the A303 corridor). The appeal site falls within the 'Land around Bayford'.

13. The Council's assessment for 'Land around Bayford' refers to the shallow valley between Windmill Hill and Sunny Hill. Bayford is linked to Wincanton by the former alignment of the A303 coach road, which along its eastern side includes ribbon development, otherwise the settlements are separated by the raised saddle of ground that extends from Windmill Hill towards Coneygore Hill. It notes that this topographic separation places Bayford apart from Wincanton, within an individual valley setting. The historic landscape pattern is in part intact, with exceptions over part of the parkland south of Bayford Lodge, where field boundaries have been lost, along with specimen trees. This is graded of 'moderate sensitivity'. The narrow field adjacent to Penn View, which is considered to be dominated by urban presence, is graded 'low sensitivity'.

14. The appellant's landscape assessment finds that the proposed development would initially have a 'Moderate adverse' effect on the Land around Bayford to the east of the town sub area, which would reduce to 'Slight adverse' with mitigation planting after 10 years. I consider that this understates the likely harm that would result to the character of the area from the substantial erosion of the valley setting that currently separates Bayford from Wincanton. The appellant's assessment acknowledges that the proposal would have a 'Substantial' effect, both initially and after 10 years, on a key characteristic of this valley setting, which is its sloping topography.

15. I am not convinced that an acceptable scheme could be devised for 150 dwellings on this site that would maintain adequate separation between the built areas of Wincanton and Bayford. I do not consider that the illustrative scheme does so, because it shows dwellings occupying a substantial part of the gap that currently exists, to the rear of the roadside tree belt, between the dwellings at Way Close and The Gatehouse. A significant erosion of this gap would harm a feature of considerable local landscape importance.

16. Field trees within the site, along with former hedgerow trees give the site a parkland character. However, the most striking feature of the site is the established belt of trees along the site's southern boundary adjacent to the highway. This tree belt is a distinctive feature, which makes a significant contribution to the landscape character of the area. VPphoto10 shows the roadside wall and belt of trees, but it does not convey the extent of the dip in the land here between Wincanton and Bayford, or the importance of these

trees in their wider context. It was evident from my site visit that this is much more apparent in views from the road for receptors travel east away from Wincanton. However, there are no photographs from this vantage point.

17. The proposed access and its visibility requirements would require the removal of a substantial part of protected tree group G5, including removal of 16 protected trees (1 Class C, 14 Class B and 1 Class A). The loss of these mature trees and the existing wall from the lower part of the gap between Wincanton and Bayford would alter the outlook from the road and significantly change how this part of the countryside was perceived. Trees could be replanted, but these would take a long time to mature, the wall would be set back further from the existing road alignment, and a permanent gap in the tree belt and wall would remain for the proposed access road and footways. I consider that the proposed access and the resultant loss of protected trees would have an adverse impact on the appearance and amenity of the area of substantial significance.

18. Views from Public Rights of Way (PRoW) on Coneygore Hill (VPphoto13 and VPphoto14) include the steeply sloping western part of the appeal site as a prominent feature located at a high point in the local landscape. The upper slopes of the western part of the site also feature in views from the minor road near to the Church at Stoke Trister (VPphoto12). VPphoto9 provides a more local view of the significance of these upper slopes. Housing on these upper slopes would harm an acknowledged feature of the local landscape.

19. There are also glimpses of the appeal site from Bayford Hill (VPphoto7 and VPphoto8), but these also show the houses along Penn View on the skyline. VPphoto5 indicates in the foreground the more shallow sloping land at the top of the appeal site, with the steeper land apparent in views from Coneygore Hill screened by the overgrown hedgerow and the local topography. The same applies for views from the southern part of the site in the vicinity of Penn View (VPphoto4). The local significance of these upper slopes is less apparent in views from PRoW to the east of the site (VPphoto3 and VPphoto2). But it is clear from VPphoto1 that dwellings spilling down this steeper part of the appeal site would be intrusive in both close-up views from PRoW WN28/1, and in the more distant views from Coneygore Hill.

20. VPphoto11 and VPphoto6 show the field in the northern part of the appeal site, which is traversed by PRoW. Dwellings here would project into the open countryside and would appear, because of the topography and configuration of this field, poorly related to the existing residential development in the area.

21. On the first main issue, I find that the proposal would have a substantial adverse effect on the character and appearance of the area. The loss of protected trees would be particularly significant in this regard. The proposed development would conflict with LP Policy EQ2 because it would not promote South Somerset's local distinctiveness or preserve the character and appearance of the district.

Heritage assets

22. I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building. The protected trees and wall on the opposite side of the road to St Anne and St Teresa's form a part of the setting to these listed buildings. Opening up a gap here would detract from the setting

of this modest pair of cottages by altering the perceived scale of their surroundings. The tree belt and wall currently provide a sense of enclosure for the rural space in front of the cottages. The proposed gap to create an access to the site would, even in the long term, have an adverse effect on the setting of these listed buildings. This would amount to less than substantial harm to the significance of a designated heritage asset for the purposes of applying the *Framework.*

23. The setting of the listed buildings at Ivy House and Lodge Farmhouse comprise their immediate context, and I do not consider that the proposal would materially affect the setting or significance of these designated heritage assets. St Andrew's Church is a considerable distance from the appeal site and the proposed development would not affect its setting. The undesignated heritage assets at Bayford Lodge and The Gatehouse would both be affected to some extent by the erosion of the gap between Wincanton and Bayford, along with some adverse impact from the loss of part of the roadside tree belt. But given the significance of these assets and the scale of likely harm, I do not consider that any adverse impact to either Bayford Lodge or The Gatehouse would weigh significantly against the proposal.

24. The Bayford Hill portion of the Wincanton Conservation Area is separated from the appeal site by public open space and a dwelling set within a large curtilage. Given the visual separation between the site and the Conservation Area, I am satisfied that a scheme could be devised for the proposed development that would not significantly affect views into or out of the Conservation Area.

25. On the second main issue, I have found that the proposal would harm the setting of the listed cottages at St Anne and St Teresa's. This harm should be weighed against the public benefits of the proposal.

Agricultural land

26. The Design and Access Statement does not mention the grade of agricultural land for the site, but maps submitted with the application indicated that it was classified as part grade 2 and part grade 3a, and the parties dealt with the application on this basis. The Council's first reason for refusal refers to a significant, avoidable and unacceptable loss of grade 2 and 3a agricultural land. The appellant's statement of case and draft Statement of Common Ground dated July 2017 refer to land classified as grade 2 with a smaller part grade 3a within the site's north-western corner. However, the appellant's final comments, dated November 2017, included an assessment, dated July 2014, which concluded that the land at Windmill Farm can be classed as predominantly grade 3b.

27. The *Framework* provides that the planning system should contribute to and enhance the natural environment by, amongst other things, protecting and enhancing soils. Paragraph 112 of the *Framework* provides that the economic and other benefits of best and most versatile agricultural land should be taken into account, and that where significant development of agricultural land is necessary areas of poorer quality should be sought in preference to that of higher quality.

28. The evidence submitted indicates that only a small part of the appeal site is best and most versatile agricultural land. Given that future housing provision in Wincanton by expansion into the adjoining countryside would be likely to have some impact upon agricultural land of grade 3a quality, I do not consider

that the loss here, and any related policy conflict, would weigh much against allowing the appeal.

Housing supply

29. The appellant and the Council came to an agreed position concerning housing land supply. On the latest available information, set out in a paper dated September 2017, the Council is considered to have 4.2 years supply. Paragraph 49 of the *Framework* provides that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Therefore, in taking the decision for this appeal the second bullet point of paragraph 14 of the *Framework* applies. But that does not mean that LP Policies SS1 and SS2 should be disregarded, as they reflect the core principle of the *Framework* about recognising the intrinsic character and beauty of the countryside.

30. Up to an additional 150 dwellings would make a significant contribution to boosting the supply of housing in the District. The affordable units would be particularly beneficial. The contribution of the scheme to the provision of housing in the area is a consideration which weighs in favour of allowing the appeal.

Other matters

31. There is local concern about the effects of the proposal on highway safety. This includes additional traffic on Bayford Road serving a permitted AD facility in the locality. However, there is no technical evidence to indicate any likelihood that the proposed development, and its access, would give rise to an unacceptable risk to highway safety.

32. There is also local concern about the effects on wildlife, but no convincing evidence was adduced to indicate that harm to biodiversity would justify dismissing the outline proposal. I find no grounds to indicate that the proposal would be at odds with LP Policy EQ4.

33. I have taken into account all the other matters raised in the evidence, including reference to a 1920 covenant purporting to include an embargo on building houses on part of the appeal site. However, any such covenant would be a matter of law for the parties involved and not a consideration in determining this planning appeal on its merits.

34. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

Conclusions

35. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. Notwithstanding that LP Policy SS5 provides for the consideration of housing proposals adjacent to the development area, the proposed development would conflict with LP Policies SS1 and SS2. I find that this is sufficient to bring the proposal into conflict with the development plan when taken as a whole.

36. Paragraph 14 of the *Framework* is engaged here because the Council cannot demonstrate a deliverable five-year housing supply. There are no specific *Framework* policies which indicate that the development should be restricted, and so the presumption in favour of sustainable development applies here. Therefore, the planning balance that applies in determining this appeal is whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole. This requires a balancing exercise of weighing the benefits of the proposed development against the harm, having regard to the three dimensions to sustainable development, as set out in paragraphs 6-10 of the *Framework*, and applying a 'tilt' in favour of the grant of planning permission.

37. The significant benefits of the additional housing, including affordable units, along with the overall contribution to the local economy, would weigh in favour of the scheme. The public benefits of the housing would outweigh the harm I have identified to listed buildings. But in my judgement, I consider that the substantial harm I have identified to the character and appearance of the area would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole. I find that the planning balance here falls against the proposal. I do not consider that the scheme would be sustainable development, and so it would not accord with LP Policy SD1.

38. I have no reason to doubt that the matters cited in the draft obligation could be reasonably addressed by a completed section 106 agreement, which I understand is awaiting the required signatures. However, in the absence of a signed and dated agreement the lack of provision for necessary affordable housing and infrastructure means that the appeal cannot succeed.

39. There are no material considerations in this case which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock
Inspector