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# Appeal Decision

Site visit made on 17 December 2018

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 December 2018**

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**Appeal Ref: APP/G3110/W/18/3203669**

**Land adjacent to 75, Town Furze, Oxford, OX3 7EP.**

- 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 Wells against the decision of Oxford City Council (the LPA).
  - The application Ref. 17/02437/FUL, dated 13 September 2017, was refused by notice dated 12 December 2017.
  - The development proposed is the erection of two 3-bed and two 4-bed dwellings and a swale/basin to provide SuDs.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. In an attempt to overcome the LPA's concerns regarding the impact upon an Oak tree that is growing immediately adjacent to the site, the appellant, as part of the appeal, has submitted an amended plan which shows a differently designed swale (drawing refs. 2908-LYE-ICS-XX-DR-C005-P1 and 2908-LYE-ICS-01-XX-DR-C-006-P1). A new Tree Report has also been submitted which takes into account the amended design of the swale.
3. I note the arguments of both main parties regarding the submission of the amended plans. The swale would comprise a significant element of the proposed development. To avoid the risk of prejudicing interested parties<sup>1</sup> it would only be appropriate for me to take the amended plans into account if all interested parties had been notified of them and given an opportunity of making further representations.
4. The amended plans were submitted when the appeal was lodged and interested parties have been notified of the appeal. However, it is unclear if these plans were specifically drawn to the attention of interested parties. Where an appellant decides to submit amended plans, in my experience, they usually notify any interested parties of the changes and afford an opportunity for any comments to be made before an appeal is determined. In this instance, this does not appear to have occurred.
5. Having regard to the Wheatcroft principles<sup>2</sup> and guidance<sup>3</sup> published by the Planning Inspectorate, there is a risk of prejudice if I was to take the amended

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<sup>1</sup> I note that the LPA received over 80 representations at application stage.

<sup>2</sup> *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37].

<sup>3</sup> 'Procedural Guide Planning Appeals – England', in particular, Annex M including the advice that the appeal process should not be used to evolve a scheme.

plans into account. I have therefore determined the appeal on the basis of the plans that were considered by the LPA when it determined the application.

6. Within the Statement that was submitted in support of the application it was argued that the LPA is unable to demonstrate a five-year housing land supply (HLS). Within the appellant's appeal Statement reference is made to the LPA's Annual Monitoring Report (October 2017) where, amongst other things, a severe housing crisis in Oxford is identified and a HLS of 6.95 years.
7. On the basis of the limited information before me, there is nothing of substance to support the appellant's assertion that the LPA does not have a five year HLS. The tilted balance contained within paragraph 11 (d) (ii) of the National Planning Policy Framework (the Framework) is not therefore engaged. Nevertheless, the housing requirement of the development plan is not a ceiling that cannot be breached and an objective of the Framework is to significantly boost the supply of homes.

### **Main Issues**

8. The four main issues are: firstly, the effect upon the character and appearance of the area; secondly, the likely effect upon the adjacent Lye Valley Site of Special Scientific Interest (SSSI); thirdly, whether the proposal should include provision for an element of affordable housing and; fourthly, whether matters relating to the proposed surface water management and archaeology could be dealt with by way of planning conditions.

### **Reasons**

#### *Planning Policy*

9. The development plan includes the Oxford Core Strategy 2026 (CS), adopted in March 2011, the Sites and Housing Plan 2011-2026 (SHP), adopted in 2013 and the 'saved' policies of the Oxford Local Plan 2001-2016 (LP), adopted in 2005. The most relevant policies to the determination of this appeal are: CS policies CS2 (previously-developed and greenfield land) and CS12 (biodiversity); SHP policies HP4 (affordable homes from small housing sites) and HP9 (design, character and context) and; LP policies CP1 (development proposals), CP8 (local character) and NE15 (trees).

#### *Character and Appearance*

10. This 0.25 hectare site is situated at the point where Town Furze turns into Lye Valley. The site slopes away from the road in a southerly direction towards a boggy area that comprises the southern portion of the SSSI. Southfields Golf course lies beyond. At the time of my visit, much vegetation had been cleared from the site although some Willows remained along the southern boundary. An early-mature Oak tree (approximately 14 metres high) is growing outside the site but part of its crown spread extends over the south west corner.
11. The application form describes the appeal site as "un-used" land and I note that in the past part of the site has been the subject of fly-tipping. However, there is no dispute between the main parties that this is a greenfield site. Moreover, as I noted during my visit, its unspoilt, green open qualities make a pleasing contribution to the street scenes of Town Furze and Lye Valley. The site assists in softening the impact of neighbouring built development and also

- affords views south across the city. It adds to the quality of the local environment.
12. Together with adjoining land to the west and on the southern side of Lye Valley, including the above noted Oak tree, the site forms an area of greenspace that provides an attractive landscape setting to the houses to the north. It is also evident from the well-worn public rights of way that bisect the land to the south and west, as well as the numerous representations made by interested parties at application and appeal stage, that the site forms part of a valued area of local greenspace.
  13. The proposed houses would be designed and finished to match neighbouring dwellings. A sizeable part of the site would also remain open for use as private gardens and a swale. However, the new dwellings, garage and parking spaces would considerably erode the unspoilt, green open qualities of the site. When looking south along this section of Town Furze, or south and south east from properties in Lye Valley, the proposed development would significantly encroach into this area of local greenspace. It would markedly detract from the setting of neighbouring houses and the quality of the local environment.
  14. The proposed dwellings by virtue of their height and massing would also disrupt views south across the city. In addition, the construction of the swale would be likely to disturb important roots from the neighbouring Oak and foreshorten the life of a tree, which contributes to the amenity of the area. This would further compromise the quality of the local environment.
  15. Whilst I have determined this appeal on its own merits, if it was allowed, it could increase pressure for development on neighbouring land, which the LPA could have difficulty in resisting. In turn, this could result in cumulative harm to this area of greenspace and to the quality of the local environment.
  16. I conclude on the first main issue that the proposal would harm the character and appearance of the area and conflict with the provisions of SHP policy HP9 and LP policies CP1, CP8 and the objectives of NE15. This harm weighs heavily against granting planning permission.

### *SSSI*

17. The SSSI is an example of calcareous valley fen vegetation. It provides an important habitat for various plants, such as rushes and sedges and is also likely to be of importance for insects and birds. The SSSI is split into two parts and the area adjacent to the appeal site is approximately 0.5 ha in size. I note from Natural England (NE) that the site is within 50m of springs which feed the calcareous fens and is within an Impact Risk Zone. The proposed development has the potential to impact upon the nature conservation interest of this SSSI.
18. In responding to the planning application NE objected as the proposal could have potential significant effects on the SSSI and requested further information in the forms of: a hydrological assessment to determine the likely impact on ground and surface water feeding the SSSI; the potential impacts on species forming part of the notified interest features for the SSSI and; a detailed mitigation strategy.
19. In response, and as part of the appeal, the appellant has submitted a Preliminary Ecological Appraisal and separate report/calculations relating to the proposed swale from a firm of civil engineers. These are largely based upon

the amended plans, which for the reasons set out above, I have been unable to take into account.

20. NE has not made any representations at appeal stage. However, the Friends of Lye Valley<sup>4</sup> continue to object to the proposal. Had I not already identified harm in respect of the first main issue above, I would have required those details requested by NE (in respect of the plans before me) as well as NE's response before I could consider granting any planning permission. In particular, the necessary hydrological assessment/information has not been provided. As a consequence, I am unable to ascertain whether the quantity and quality of water feeding into the spring would be adversely affected.
21. I conclude on the second main issue that there is insufficient information before me to properly assess the likely impact upon the SSSI. As this matter could not be addressed by way of any suitably worded planning conditions, I find that the proposal would be at odds with the objectives of CS policy CS12.

#### *Affordable Housing*

22. There is no dispute between the main parties that there is an acute need for affordable housing in Oxford. As set out within the development plan, much of Oxford's supply of new housing comes from small sites and it is important that these sites contribute to achieving a balanced community. Under SHP policy HP4, planning permission will only be granted for residential development on sites with capacity for 4 to 9 dwellings if a financial contribution is secured towards delivering affordable housing elsewhere in Oxford. The level of contribution will depend on development viability. The proposal does not include any such contribution and would be at odds with SHP policy HP4
23. However, amongst other things, the Framework, which is an important material consideration and carries very considerable weight, states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas.
24. The LPA has drawn my attention to local circumstances relating to the availability of large sites, the unaffordable nature of housing within the city, as well as several previous appeal decisions<sup>5</sup>. Whilst I do not under-estimate the difficulties of providing or obtaining access to affordable housing in Oxford, the threshold in the Framework is clear and outweighs the conflict with policy HP4.
25. I conclude on the third main issue that the proposal should not include provision for an element of affordable housing.

#### *Surface Water Management / Archaeology*

26. Amongst other things, the Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. If there were adequate details before me regarding the swale then its future management could have been addressed by way of a planning condition.
27. The appellant's Heritage Asset Impact Assessment, whilst noting that the area is rich in archaeological remains, reveals that there is no recorded history of

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<sup>4</sup> This is a voluntary organisation which works to protect and preserve the SSSI. Its Committee includes suitably qualified members and it has provided a detailed response to the proposals.

<sup>5</sup> Copies of these have not been provided by they all appear to pre-date the revised Framework.

development and no above ground heritage resources. If the appeal was allowed, a planning condition requiring a programme of archaeological observation and recording during groundworks, to locate and identify any possible archaeological remains, would therefore be appropriate.

28. I conclude in the fourth main issue that matters relating to the proposed surface water management and archaeology could be dealt with by way of suitably worded planning conditions.

*Other Matters*

29. The proposed development would increase the choice and supply of housing and would help support the construction industry. This weighs in favour of an approval. However, this greenfield site has not been allocated for housing within the development plan and it is not required to maintain a five year HLS. The proposal would therefore be contrary to CS policy CS2.

*Planning Balance / Overall Conclusion*

30. My findings in respect of the first and second main issues above are sufficient to justify withholding permission. This would not be outweighed by my findings in respect of the third and fourth main issues or the other matters that I have identified. The harm that I have found, including the conflict with the development plan, significantly and demonstrably outweighs the benefits of providing additional housing. The proposal would not amount to sustainable development and the appeal should not therefore succeed.

*Neil Pope*

Inspector