The Planning Inspectorate

Appeal Decision

Site visit made on 18 June 2019

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2019

Appeal Ref: APP/D3125/W/19/3221190
Woody Lane Paddock, Woodstock Road, Charlbury, OX7 3ET

- 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 & Mrs Matthew Emmott against the decision of West Oxfordshire District Council.
- The application Ref 18/02769/FUL dated 17 September 2018, was refused by notice dated 30 November 2018.
- The development proposed is the erection of three dwellings with access via the consented scheme under 17/03423/FUL.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues to be considered are i) whether the appeal proposal would constitute an appropriate form of development with particular regard to the provisions of local and national policy in respect of the location of the development and ii) the impact of the proposal upon the character and appearance of the area including the Cotswolds Area of Outstanding Natural Beauty and Charlbury Conservation Area.

Reasons

3. Charlbury is a small former market town with the appeal proposal utilising access off the B4437. The settlement benefits from a reasonable range of services. The appeal site is located within the Charlbury Conservation Area (CA) and the Cotswold Area of Outstanding Natural Beauty (AONB) with numerous public rights of way (PROWs) in the area and adjacent to the appeal site itself.

Provisions of Local and National Policy

4. Charlbury is classified within the Local Plan 2031 (2018) (LP) as a rural service centre but, due to its location with the AONB, it is stated to be relatively constrained in terms of its capacity to accommodate further development. A more restrictive approach to new housing is to be applied than in other sub-areas, as a result of the AONB, but that is not to say no development could occur. No reliance is placed upon windfall development within the Burford-Charlbury sub-area to specifically take account of its location within the more sensitive AONB.

5. LP Policy H2 sets out circumstances within which new dwellings will be permitted in rural service centres. The appeal site is not allocated for housing development in the LP or a Neighbourhood Plan nor is it previously developed. The other two listed circumstances require an assessment of whether or not the undeveloped land is within, or adjoining, the built-up area of Charlbury.

6. Whether the site is within the settlement is essentially a question of fact and planning judgement having had regard, for example, to the nature and size of the development itself, the location of the application site and its relationship to existing development adjoining and adjacent to it. From my site visit I found that the appeal site is open in its setting. It adjoins the development, being constructed at the time of my visit, at The Grange to the East. To the North there is a single dwelling, Woody Lane House, in a very spacious plot. There is a notable amount of open land to both the South and West. Given this I do not find that the appeal site is within the built-up area of Charlbury, it would not been seen in the context of other built form due to the lack of relationship with the main built up area of Charlbury as a result of open space. The proposal would fail to comply with the third point in the list of circumstances within LP Policy H2 for new dwellings. At best, and only due to the more recent planning approval at The Grange as discussed below, the site could be considered to adjoin the built-up area.

7. The consent for six dwellings[1] at The Grange was approved prior to the adoption of the current Local Plan. At the time of that determination the housing supply policies were out-of-date resulting in the application being determined in light of the presumption in favour of sustainable development in the previous National Planning Policy Framework (2012). The proposal was not assessed against the then emerging (now adopted) Local Plan due to the case officer acknowledging that increasing, but not yet full weight, could be attached to it. In The Grange application some harm was identified to the character of the AONB and to the character and appearance of the area, but this was considered to be outweighed by the supply of six dwellings during a time of housing need, combined with an affordable housing contribution. Similarly the scheme approved for twenty-two dwellings[2] had notable benefits, including nine affordable dwellings on site and securing a substantial area of undeveloped, protected, open space.

8. The circumstances surrounding the proposal which is the subject of this appeal are not comparable. Paragraph 12 of the Framework is clear that where a planning application conflicts with an up-to-date development plan permission should not usually be granted. Given the adoption of the Local Plan in September 2018, and the presence of a five-year housing land supply (with a current requirement to only demonstrate three-years housing land supply), I have no evidence or material considerations before me to support a departure from the Local Plan within the determination of this appeal.

9. On undeveloped land, adjoining the built up area, new dwellings are permitted by LP Policy H2 where convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs, it is accordance with LP Policy H1 and in accordance with other policies in the plan, in particular the general principles of LP Policy OS2. I do not consider that is the case for this appeal

[1] 17/03423/FUL
[2] 15/00567/FUL

site given no convincing evidence has been submitted that there is identified housing need or that housing numbers *could* fall behind at such an early stage within a new Local Plan as discussed below.

10. In considering the site as a windfall site, within the AONB, windfall housing proposals on undeveloped land adjoining built up areas will only be supported where there is convincing evidence of local housing need. I have no evidence before me to support that the proposed dwellings are necessary to meet local housing needs or that the scheme would give rise to benefits to the specific settlement or sub-area which would clearly outweigh any harms. Furthermore windfall development should recognise the character of the countryside and accord with other relevant policies. The Burford-Charlbury sub-area Policy BC1 supports development in rural service centres and not necessarily adjacent to them.

11. I note the submission of an appeal allowed at Blackthorn Road, Launton[3], however, I do not find the appeal circumstances to be comparable considering that there are differing policy implications as well as this appeal sites location within the AONB. Whilst I acknowledge that the Framework seeks to boost housing, and that housing numbers are not a cap, I attribute little weight to the appeal allowed against Cherwell District Council. I have no evidence before me to suggest there is potential for such a shortfall in delivery, so soon after adoption of the Local Plan, which would jeopardise the delivery of housing land supply and furthermore the Council have met the published housing delivery test delivery requirements. In any case there is no allowance made for windfall sites in the Burford-Charlbury sub-area, as has been specifically allowed for in other sub-areas.

12. There are opportunities within the Local Plan to bring forward modest, policy compliant, proposals within the constraints of the area but on this occasion I find the proposal conflicts with LP Policy H2 which requires development of undeveloped land adjoining a settlement to evidence that it is necessary to meet identified housing needs and also be in accordance with the general principles of LP Policy OS2.

Character and Appearance

13. At the time of my site visit I entered the appeal site via the proposed access route. I also walked along Woody Lane to the North of the appeal site and drove into the settlement of Charlbury itself. As discussed above, in concluding the site does at best adjoin the settlement as a result of more recent development, the site is relatively open in its setting. The site has a green and undeveloped character as an area of countryside on the edge of Charlbury beyond the main bulk of the settlement. I find this area of green space complements the character of the area.

14. The site is relatively well screened by vegetation and views across the open field along sections of the adjoining PROW are attractive. The effects experienced by users of the short section of public right of way within the site would be particularly acute. Whilst the development at Little Lees is partially visible through the retained band of trees when stood in the appeal site, the site still presents as countryside outside of the built-up area. Despite the

[3] APP/C3105/W/17/3188671

screening the proposed dwellings are large and are likely to be taller than surrounding vegetation which would impact on longer views. No formal landscape or visual assessment has been submitted to evidence a lack of impact. I find that the proposal would extend into historically open countryside within the AONB and would encroach unacceptably into an area of unspoilt countryside at the edge of Charlbury. The proposal would fail to positively relate to the settlement or the existing rural setting and therefore it would impact negatively upon the character and appearance of the area and fail to conserve or enhance the AONB.

15. When considering the scale, design and form it appears to have been based on the development at The Grange. There has been some attempt to create three, differing, dwellings and the design detailing of plot one could be greatly improved by removing some of the detailing, but this is not so harmful it would warrant refusal on its own. Whilst it may show similarities to the adjacent site the site context is different given that The Grange was previously developed land which subdivided the existing curtilage within an existing residential boundary. In terms of the layout of the appeal proposal, it fails to contribute to, or re-enforce the landscape character by creating large homes, in large plots that encroach into the open, undeveloped, field.

16. Based upon evidence before me it is evident that Charlbury has evolved to a limited extent over recent years, however, the appeal site is located within the Charlbury Conservation Area (CA). All of Charlbury, and a notable amount of surrounding land, was designated as a CA which I find is indicative of the surrounding lands importance to the historic, rural, setting of Charlbury. Regardless of whether the proposal is not visible in wider views it would be notable from the immediate boundaries and the proposal would not conserve or enhance the CA. The harm identified as a result of the proposal on an undeveloped open field amounts to less than substantial harm, however, paragraph 193 of the Framework requires great weight to be attributed to harm regardless of the level of harm identified.

17. Paragraph 196 of the Framework requires the harm identified to be assessed against any public benefits of the scheme and this is reiterated within LP Policy EH9. As discussed below, whilst there are social and economic benefits associated with providing new homes, when having regard to these factors the public benefits of the proposal do not outweigh the great weight which the Framework advises should be given to the conservation of the designated heritage asset in the context of the less than substantial harm identified.

18. The proposal would be inconsistent with LP Policy EH1 which requires development to conserve and enhance the countryside and LP Policy OS4 which requires new development to respect the landscape character of the locality and contribute to local distinctiveness. It would also conflict with LP Policy EH9 which requires proposals to conserve and/or enhance the special character of heritage assets and LP Policy EH10 which requires development in a Conservation area to conserve or enhance the character, appearance and setting. There would be conflict with LP Policy OS2 which sets out general principles for development including forming a logical complement to the settlement pattern, protecting the landscape character and setting of the settlement and not involving loss of an area of open space which makes an important contribution to the character or appearance of the area.

19. The proposal would also conflict with paragraph 127 of the Framework which seeks to ensure that developments are sympathetic to the local character and history, including the surrounding built environment and landscape setting, paragraph 170 which requires that decisions should contribute to and enhance the natural environment by protecting and enhancing valued landscapes and paragraph 172 which requires great weight to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.

Other Matters

20. I note the appellant's original offer to provide a contribution to affordable housing however, this is not a policy requirement so would have been unlikely to meet the tests for planning obligations. Despite this I note that the offer has now been withdrawn that no legal agreement has been submitted with this appeal. In that regard this matter has not fallen within the consideration of this appeal despite being referred to as a social benefit of the proposal with the submitted statement of case.

21. I note one comment in support of this appeal, however, for the reasons outlined above given the open nature of the site I do not consider the site to be infill. No evidence that there is a shortage of larger houses with appropriate size gardens has been submitted as evidence with this appeal.

Conclusion and Planning Balance

22. The development offers potential benefits in terms of increasing housing supply. It would have some economic benefits for local services and facilities once occupied, together with short term and temporary economic benefits in terms of necessary construction works associated with the development. These elements would be of limited weight in favour of the proposal in terms of economic and social sustainability. When having regard to these factors the limited public benefits of the proposal do not outweigh the great weight which the Framework advises should be given to the conservation of the designated heritage asset in the context of the less than substantial harm identified. Similarly, the benefits advanced would not outweigh the harm to the AONB or CA as I have described. There may be opportunity to provide biodiversity enhancements in favour of the proposal but overall it would fail to contribute to protecting and enhancing the natural and historic environment.

23. The conflict with the development plan and the Framework, when taken as a whole, and the associated harm identified are significant and overriding factors. Consequently, the material considerations in this case, including the contribution to housing supply and associated benefits previously identified, do not indicate that the application should be determined otherwise than in accordance with the development plan.

24. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR