



Appeal Decision

Hearing held 11 September 2019

Site visit made on 11 September 2019

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/W0340/W/19/3223949

Land adjacent to Victoria Park, A4 Bath Road, Woolhampton RG7 5RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning outline permission.
 - The appeal is made by Ms Annie Brazil against the decision of West Berkshire Council.
 - The application Ref 18/01732/OUTD dated 7 May 2018 was refused by notice dated 5 September 2018.
 - The development proposed is residential development of 2 No detached 4 bed dwellings and 3 No 3 bed terraced cottages.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the hearing an application for costs was made by West Berkshire Council against Ms Annie Brazil. This application is the subject of a separate Decision.

Procedural Matter

3. The application was submitted in outline with approval being sought for matters relating to the access, appearance, layout and scale with landscaping reserved for future approval. I have dealt with the appeal on that basis, treating any details relating to landscaping as illustrative only.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area
 - the effect of the proposal on flood risk
 - the effect of the proposal on the Woolhampton Reed Bed Site of Special Scientific Interest and the East Kennet Biodiversity Opportunity Area
 - whether the scheme makes appropriate provision for affordable housing
 - whether the proposal would amount to sustainable development having regard to the development plan and national policies (the planning balance).

Reasons

Character and appearance

5. The appeal site is an open area of land bound by wire fencing on the edge of the main built up part of Woolhampton on the south side of Bath Road. To the east is a small mobile home park set back from the road behind mature landscaping. To the west is a green area of land containing trees and shrubs separating the appeal site from Watermill Court, a complex of older person's housing set back from the road on lower ground also behind mature landscaping.
6. On the opposite side of Bath Road is a petrol filling station, a garage and a site under construction for 35 dwellings¹. This will be built in two tiers as the land rises to the north with new two storey dwellings extending along the road frontage opposite the appeal site.
7. Overall, the varied arrangement of the buildings interspersed with greenery gives the area a relatively spacious, verdant and edge of settlement character and appearance.
8. I accept the new development opposite will alter the character of the area. It will replace countryside with new residential development directly opposite the appeal site. However, those new dwellings will fill a gap between the garage buildings and the former telephone exchange building. In contrast, the proposed dwellings would be positioned next to a small mobile home park which has modest buildings set back from the road behind mature landscaping. Furthermore, they would sit next to a relatively large green area containing trees and shrubs separating the appeal site from Watermill Court which is also partially concealed behind landscaping.
9. The proposed five two storey dwellings would be formally arranged in a row of three buildings positioned close together. When considered in the context of the land either side of them they would result in a significant introduction of noticeable built form into this part of the south side of Bath Road. Thus, through its bulk, formal positioning and relationship with surrounding land, the proposed development would be highly prominent when travelling along Bath Road entering or leaving the village.
10. However, due to landscape screening and the development under construction on the north side of Bath Road, the proposal would not be prominent when using the public footpath running from the north side of Bath Road to the north.
11. Nevertheless, when experienced from Bath Road, the scheme would have an urbanising effect on the south side of Bath Road. Through its prominence it would erode the relatively spacious, verdant and edge of settlement character and appearance of this part of the area.
12. In reaching these conclusions I have noted some trees were being removed at the time of my site visit on the land to the west. However, this has the effect of increasing the prominence of the appeal site. I also note substantial illustrative landscape buffering is shown on the plans incorporating the existing tree.

¹ Council reference 16/01760/OUTMAJ

13. However, the existing frontage landscaping is limited and new landscaping would take some time to become established. Whilst it would soften the appearance of the proposal it would not screen it from view. It would be visible above and through gaps in the landscaping and through the access drive. I am not therefore satisfied that any proposed landscaping would overcome the harm I have identified.
14. Thus, overall, for the reasons given, I find the proposal would harm the character and appearance of the area. It would therefore be in conflict with Policies CS14 and CS19 of the West Berkshire Core Strategy 2006 – 2026 Development Plan Document (2012) (CS) which seek to achieve good design and protect the character of an area. For the same reason it would also be in conflict with the good design aims of the Quality Design - West Berkshire Supplementary Planning Document (2006).

Flood risk

15. The proposed dwellings would be within Flood Zone 2 as identified on the Environment Agency's Flood Zone Maps. The appeal site therefore has a medium probability of flooding. Paragraph 155 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
16. Buildings used for dwelling houses are defined in the Technical Guidance on Flood Risk² as a more vulnerable use which is only appropriate development in Flood Zone 2, subject to passing the Sequential Test. Furthermore, the Planning Practice Guidance (PPG) explains how the Sequential Test should be applied to individual planning applications, it states the area to apply the Sequential Test across will be defined by local circumstances. Moreover, the sequential approach to locating development in areas at lower flood risk should be applied to all sources of flooding. It also gives reasons why the Sequential Test may not be necessary.
17. I acknowledge the Environment Agency do not object to the proposal. However, their response does not explicitly say the Sequential Test is passed. Whilst, the evidence contained in the analysis of the five year housing land supply position would be useful to inform a Sequential Test the data has not been analysed or presented in this context. There is also no substantive evidence to suggest the Council agreed an area of search specifically applicable to this proposal nor that all sources of flooding have been considered. Moreover, whether or not a Council can demonstrate a five year housing land supply is not quoted as a reason to negate the need for the Sequential Test in the PPG or technical guidance.
18. Therefore, without substantive evidence with clear conclusions on the outcome of a Sequential Test, irrespective of the five year land supply evidence I cannot be satisfied that alternative sites are not available which would avoid the need to develop in Flood Zone 2. Whilst the Flood Risk Assessment and the flood mitigation and safety measures proposed therein may demonstrate the proposal could be made safe it does not negate the need to consider alternative locations with a lower probability of flooding.

² Technical Guidance to the National Planning Policy Framework, DCLG, March 2012

19. Thus, on the basis of the evidence before me, I must therefore conclude that the proposed development would increase the risk of flooding in the area, without appropriately considering developing in locations of a lower probability of flooding. The proposal would therefore conflict with the aims of Policy CS15 of the CS and the Framework which seek to avoid flood risk by directing development away from areas at risk of flooding.

Site of Special Scientific Interest and the Biodiversity Opportunity Area

20. The appeal site boundary adjoins the Woolhampton Reed Bed Site of Special Scientific Interest (SSSI) and the East Kennet Biodiversity Opportunity Area (BOA). Both have dense reed bed, some areas of taller fen vegetation and woodland and are notable for nesting bird populations and the presence of a diversity of insects including uncommon species.
21. Paragraph 175 of the Framework makes clear that in determining planning applications, local planning authorities should apply a number of principles. These include development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted.
22. There is a petrol filling station and a garage close by and the site is in Flood Zone 2. I was also told the appeal site was also used in the past for parking cars and that material had been imported onto the site some time ago to create a temporary hard surface for parking. Reflecting these factors, the appellant's geotechnical, ecological and sustainable drainage evidence notes that without mitigation measures the scheme could have the potential to cause harm through among other things the mobilisation or transmission of hydrocarbons in to the SSSI through construction or new drainage and seek to address the risk.
23. However, Natural England have specifically requested boreholes and a monitoring well are installed to obtain samples to assess the current level of leaching of contaminants before permission is granted. Given the high risk of hydrocarbon contamination due to adjacent sources, this request is reasonable and without this information, I am not satisfied that the potential for the scheme to cause harm to the important characteristics that contribute to the designation of the SSSI have been fully assessed.
24. Thus, without an assessment of samples from a monitoring well and boreholes I cannot be satisfied that any harmful effects even if fully assessed could be mitigated. It would not therefore be appropriate for me to grant permission subject to the imposition of a condition requiring such.
25. I accept the proposal is in outline only. I also acknowledge that the final details of construction, particularly foundation design details may not be available such that it also may not be possible to fully identify any necessary mitigation measures.
26. However, only landscaping is reserved for future approval and without substantive evidence to the contrary, I must take a precautionary approach and conclude that there is a significant risk that the proposal would harm the SSSI. For the same reasons it would also risk harm to the BOA. Consequently, the proposal would conflict with Policy CS17 of the CS which seeks to ensure biodiversity and geodiversity assets are conserved and enhanced.

Affordable Housing

27. Policy CS6 of the CS requires the provision of up to 40% of the proposed development to be as affordable homes. The appellant agrees to provide 40% of the proposed dwellings on site as affordable dwellings. The Council has provided detailed evidence to support its request for 40% and the appellant has provided no substantive evidence to the contrary.
28. However, even if I were to accept 40% was required on this site, the appellant suggests that such provision could be secured by a planning condition which requires the appellant to enter into an agreement to provide the affordable housing in accordance with terms to be agreed with the Council.
29. The PPG makes clear that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation or an agreement under other powers as it would fail the test of enforceability. It does state in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain developments can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).
30. I acknowledge the appellant's comments that there are no other measures that would need to be dealt with in a planning obligation. I also note the costs associated with preparing and executing such an obligation. However, there is no substantive evidence to suggest that the circumstances of this case are exceptional. In my view it would not therefore be appropriate to attach a planning condition which requires an agreement to be entered into.
31. Consequently, there is no appropriate mechanism before me to ensure that 40% of the proposed dwellings would be and would remain as affordable housing and therefore it would not make appropriate provision for affordable housing. It follows therefore that on the basis of the evidence before me, I must find the scheme would be in conflict with Policy CS6 of the CS which seeks to ensure new residential development meets the housing needs of the area.

Sustainable development (planning balance)

32. Policy ADPP1 of the CS seeks to direct new development to within or adjacent to settlements identified in the hierarchy. Furthermore, it states the majority of development will take place on previously developed land and only appropriate limited development in the countryside will be allowed, focused on addressing identified needs and maintaining a strong rural economy.
33. Furthermore, Policy CS1 of the CS states, new homes will be primarily developed on suitable previously developed land within settlement boundaries, other suitable land within settlement boundaries, strategic sites and broad locations identified on the core strategy key diagram and land allocated for residential development in subsequent Development Plan Documents.
34. The appeal site is outside but close to the defined settlement boundary for Woolhampton. However, with the development under construction opposite built out, the proposal would adjoin the settlement.

35. I acknowledge, the site has previously been used for parking, I also noted some evidence on site that surfacing material had been imported onto it to provide a suitable hard surface for parking at that time. However, whilst I note the majority of the vegetation on site was low without any significant mature plants or trees, overall the site appears green and covered with low growing vegetation. There is also no substantive evidence to suggest that planning permission has ever been granted for any particular use or is there any evidence of any permanent structures other than the boundary fencing. Overall, without substantive evidence to the contrary, the remains of any fixed surface have in my view blended into the landscape.
36. Consequently, on the basis of the evidence before me, I do not regard the site to be previously developed land. Furthermore, there is no substantive evidence to suggest that the proposal would address identified needs and make any significant contribution towards maintaining a strong rural economy. It therefore follows that the proposal would be in conflict with Policies CS1 and ADD1 of the CS which seek to direct new development to within settlements and on previously developed land unless it addresses specific local needs.
37. However, it is contested whether the Council can currently demonstrate a five year supply of deliverable housing land in accordance with paragraph 73 of the Framework. I have considered the numerous appeal decisions and the technical reports from both parties on the matter.
38. However, if I did find the five year supply could not be demonstrated and the shortfall was as suggested by the appellant, the proposal would need to be considered in accordance with the presumption in favour of sustainable development which means the Framework taken as a whole and the tilted balance engaged.
39. Paragraph 78 of the Framework makes clear that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Furthermore, paragraph 79 of the Framework states decisions should avoid the development of isolated homes in the countryside.
40. The proposed dwellings being adjacent to Woolhampton where a range of services and transport options are on offer would not be isolated and would contribute to the shortfall in housing suggested. They would also help to maintain the vitality of the rural community. I attach significant weight to these benefits. Moreover, I also note the associated new homes bonus and Council tax revenues and that the proposal would also provide new customers and potential employees for local businesses and services and there would be economic benefits associated with construction.
41. However, even with the tilted balance engaged the combined social, economic and environmental benefits of the proposed development are significantly and demonstrably outweighed by the substantial combined environmental harm I have identified with regard to the character and appearance of the area, flood risk, the SSSI and the BOA and the social harm arising through the lack of an appropriate mechanism to secure affordable housing.
42. Overall, I therefore conclude that even if the tilted balance was engaged and the housing shortfall was as suggested by the appellant, the proposed

development would not amount to sustainable development when considered against Framework taken as a whole.

Other Matters

43. In reaching these conclusions I note the appeal site has been identified as potentially developable within the Council's Strategic Housing Land Availability Assessment. However, this does not overcome the conflict with the development plan or the Framework. I have also considered the examples of sites granted planning permission by the Council nearby³. However, these examples are in different contexts to the appeal site, particularly in terms of their flood zone, relationship with the SSSI and their overall character setting as such I afford them limited weight.

Conclusion

44. For the reasons set out above, having had regard to all other matters raised, on balance the proposal would not accord with the development plan or the Framework. The appeal should therefore be dismissed.

L Fleming

INSPECTOR

³ Council reference 15/02412/OUTD & 13/02879/FULD

APPEARANCES

FOR THE APPELLANT

B Woods	WS Planning and Architecture
A Brazil	Landowner

FOR THE COUNCIL

M Masiwa	West Berkshire Council
C Peddie	West Berkshire Council
L Hannify	Iceni Projects
L O'Carroll	Iceni Projects
G Sutton	GS Ecology

DOCUMENTS SUBMITTED AT THE EVENT

1. Signed Statement of Common Ground
2. Appeal Decision APP/W0340/W/16/3153899
3. Costs application evidence