

Appeal Decision

Site visit made on 20 August 2019

Hearing date 20 August 2019

by S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/D0121/W/18/3215597

Land south of Crookes Lane, Kewstoke, Somerset, BS22 9XB

- 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 Mr Simon against the decision of North Somerset Council.
 - The application Ref 18/P/2423/OUT, dated 15 February 2018, was refused by notice dated 12 June 2018.
 - The development proposed is described as an "Outline application for the erection of 20 dwelling houses with associated access and landscaping."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal seeks outline permission with all matters reserved except for access and landscaping. In so far as the submitted plans and drawings show details of matters other than the access and landscaping, I have treated those as being purely illustrative.

Application for costs

3. An application for costs was made by Mr Simon against North Somerset Council. This application is the subject of a separate decision.

Main Issues

4. The main issues are:
 - Whether the site would be in an accessible and sustainable location, with regards to its location adjacent to the settlement boundary of Kewstoke.
 - The effect on the character and appearance of the area.
 - Whether the site would prejudice the future school capacity in the village.
 - The effect on flood risk by developing this site for housing.
 - The effect on protected species and European Protected Sites.

Reasons

Location of Development

5. The proposed development of dwellings is on a parcel of open and undeveloped land adjacent to the defined settlement boundary of Kewstoke, north of Weston-Super-Mare. The site would be in close proximity to other residential areas of this village.
6. The North Somerset Core Strategy (adopted January 2017) sets out a settlement hierarchy of types of settlement. These include towns, service villages, and infill villages. Kewstoke is defined as an infill village (policy CS33 of the Core Strategy). It therefore has a settlement boundary, but designation as only an infill village reflects the range of services, which in Kewstoke is limited but includes a primary school and shop, for example. The criteria for development in infill villages, as set out by CS33, is to strictly control development in order to protect the character of the rural area and to prevent unsustainable development.
7. For most services and facilities, residents would likely have to leave the village to travel to larger settlements such as Weston-Super-Mare. The bus service, as discussed at the Hearing, is limited (especially in winter months) to a degree that it would not be wholly conducive to rely on it to commute elsewhere for work, for example. I have no substantive evidence of there being a good public transport service generally for the village, with there also appearing to be limited employment opportunities locally. This all would result in it being likely that there would be a reliance on private vehicles for future residents of the proposed development to access typical day-to-day services and facilities, or their place of work.
8. This would therefore not accord with all the objectives of sustainable development as set out in paragraph 8 of the National Planning Policy Framework (the Framework) which states that there should be accessible services. Also, the Framework in paragraph 103 states that "significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes." I would regard 20 dwellings for Kewstoke as being a significant development, but it is not at a site that would be sustainable in terms of offering a choice of transport modes for accessible services.
9. As the proposed development is outside of the settlement boundary then, based on adopted planning policy, the site would be located within the countryside. It is also noted that the site is not allocated for housing (it is allocated for a new school, as discussed in detail later in this Decision Letter). In this regard, the proposal does not meet with any of the criteria for residential development outside of infill village settlement boundaries (policy CS33), such as being a conversion of buildings or where dwellings are needed for essential rural workers.
10. As noted above, Kewstoke does have a settlement boundary. Core Strategy policy CS14 considers development outside the settlement boundaries. It makes clear that proposals that do not comprise of development in village settlement boundaries will be very strictly controlled. However, even if the site

was within the settlement boundary of Kewstoke this policy states that development would only be acceptable if it was of an appropriate scale and character.

11. Overall, this proposal would result in a relatively large scale residential development on the edge of an 'infill village', outside the settlement boundary. The scale of this development is such that it would generate demand for local services and employment opportunities to an extent that cannot currently be sustainably met within Kewstoke, with a lack of public transport links further exasperating this matter.
12. Considering all the above, the proposal would not comply with policy CS33 of the Core Strategy, which seek to, amongst other things, focus appropriate scaled development within the settlement hierarchy for infill villages, amongst other things.
13. The appellant has raised the issue of the Council's lack of a sufficient housing land supply. This matter will be addressed in detail in the 'Planning Balance' later in this Decision Letter.

Character and Appearance

14. The proposal for 20 dwellings is in outline, with only access and landscaping not reserved. The details of the proposal are limited to mainly an illustrative layout plan, which is indicative other than where there are details of the access and landscaping.
15. The development as indicated shows what I would consider to be a layout of an appropriate density, comparable with other nearby housing areas in the village. The landscaping would also contribute positively to the development, softening its visual impact.
16. Much of the village is made up of long streets with housing lined to one side or both. However, this is indicated to be a cul-de-sac. Whilst this form of layout is not typical of Kewstoke it would not be dissimilar to the layout of Southside Crescent opposite the site frontage. There are other similar cul-de-sac streets elsewhere in Kewstoke also. As such, I do not regard the layout as proposed to be at odds with the character of the village.
17. The site would be visible from public vantage points, but it would be seen against the context of other residential properties and adjacent to the Village Hall. The site would be urbanised, although its context is that it is already adjacent to existing village development, rather than being in an isolated rural location. I recognise that this is an area of undeveloped land, but it has not been sufficiently demonstrated why it is particularly important to the countryside setting of the village to remain undeveloped.
18. There may be some requirement to raise the ground level due to flood risk, but it is not clear at this stage how this would appear or what the resultant height of each of the dwellings may be.
19. The development would change the outlook from some of the neighbouring houses to the site but based on the level of detail before me it is not possible for me to conclude that it would have an impact that would severely or significantly effect outlook for these neighbours, being that the proposal is in outline at this stage.

20. As explained within the submitted Landscape and Visual Impact Assessment (LVIA) by Amalgam Landscape (August 2017), the proposal would introduce a new building element, but the development would be well enclosed by existing housing and mature vegetation and will conserve the landscape pattern. Indeed, it is my opinion after visiting the site that the development would also be visually and physically connected to Kewstoke.
21. The proposal would be of a suitable and appropriate layout and fit with the character of the village. At this stage, based on the evidence before me, the proposal would conserve the character and appearance of the village and the wider Kingston Seymour and Puxton Moors landscape area (as defined by the Landscape Character Assessment SPD).
22. The proposal is therefore in accordance with policies CS5 and CS12 of the Core Strategy, and DM10 of the Sites and Policies Plan Part 2: Site Allocations Plan (adopted April 2018). These policies seek to, amongst other things, require development to protect and enhance the landscape and townscape of North Somerset, be of a high quality design and be sensitive to the local character, and include appropriate landscaping.

School Allocation

23. As mentioned above, the village has a primary school (built circa 1909). However, this is an old building set within a constrained site. Some of the classrooms are within log cabins or modular buildings within the school curtilage. I also observed that there is little or no dedicated parking for the school, with no formal footpath to its frontage.
24. Under policy SA8 of the Sites and Policies Plan Part 2: Site Allocations Plan (adopted April 2018) the site is allocated for a community use, listed in Schedule 4 of that document specifically as being a 'primary school replacement site'.
25. As discussed at the Hearing, this site has been allocated for a primary school for many years under previous development plans. It has been explained at the Hearing that there are no current plans to expand or upgrade the existing primary school and the school pupil numbers are not at a level where a replacement school is needed on this basis. There also seems to be no imminent plan for the Council to purchase this land. I also note there has been a general decrease also in school pupil numbers. The proposed 20 dwellings could help support the school through increasing pupil numbers, but it could also mean that the need for a larger school is necessary sooner.
26. However, these are matters that could change and the Council has stated that this is an issue under constant review. The numbers at the school could rise, or there could be structural issues with the old school buildings or temporary structures that means a replacement is needed more urgently. It is on this basis that the policy SA8 of the Sites and Policies Plan Part 2 was recently adopted, with the allocated site having clear advantages over the existing constrained school site.
27. Essentially, developing this site for housing would mean this policy could not be implemented if a replacement school was needed. There are no other suitable alternative sites in Kewstoke that I am aware of that are available or have also been allocated for a replacement school if needed. If the situation became such

that a replacement school was needed, which is not an inconceivable circumstance in my opinion, then this allocation would likely be necessary. There is no clear trigger of when the new school would be required, but it is clear that there are several reasons why this could occur, not just relating to rising school pupil numbers.

28. I understand there has been the submission of a 'Blight Notice' by the land owner (which was not considered invalid by the Council), but this is an issue separate to my considerations of the planning merit of the proposals.
29. Overall, the proposal to develop this site for housing and not for a replacement school as has been allocated would be contrary to recently adopted policy SA8 of the Sites and Policies Plan Part 2 and policy DM68 of the Development Management Policies (Part 1), which seeks to protect land which is proposed for community facilities, amongst other things.

Flood Risk

30. The site is close to the coast on low lying land within a Tidal Flood Zone 3 but is protected by the existing Sand Bay defences. Being within Flood Zone 3 it is regarded as having a 1 in 200 or greater annual probability of flooding from the sea in any year. Tidal flood risk has been identified in the submitted Flood Risk Assessment (FRA) as being the main risk to flooding at the site. The Planning Practice Guidance (PPG) states that dwellings are regarded as being 'more vulnerable' in terms of flood risk.
31. The FRA states that there is a residual risk of flooding based on a possible breach or overtopping of defences. Whilst the FRA states that this would be unlikely to cause a "catastrophic" flood if such a breach was to occur, it does go on to recommend raised finished floor levels for the proposed houses and also states that in the event of flooding occupants can evacuate via Crookes Lane or seek refuge in the first floor areas of their houses. I also note that there is an Environment Agency (EA) warning service in place for the area.
32. In response to consultation, the EA acknowledged the Sand Bay defences which give the required standard of protection and are currently maintained. However, climate change would likely mean that over the lifetime of the development (considered to be 100 years plus climate change) the standard of protection would decrease. EA have clarified that there is currently no scheme in place for improvements to the existing defences.
33. My attention has been drawn to the planned improvements to the defences at nearby Hucker's Bow. However, the EA has stated that these works would not benefit the Sand Bay frontage. Therefore, these works would not be beneficial to the proposed development in terms of reducing flood risk over the lifetime of the development.
34. Whilst I recognise that there are other dwellings within Kewstoke and elsewhere in the County which are within a similar flood risk area, these would have been mostly built some time ago and I do not have full details of the flood risk circumstances considered at that time. In any case, the proposal is for 20 additional houses to be set within a flood risk area. This proposed intensification and increase in the number of residential units on the site would increase the number of households to be affected by any future flooding.

35. The allocation of the site as a school does not suggest the proposal for a housing development at this site is acceptable as it is a different use. The circumstances for allocating the school are different to the need to provide additional housing.
36. The PPG states that the suitability of sites in Flood Zone 3 should only be considered if there are no reasonably available sites in Flood Zones 1 or 2 (areas of low and medium probability of flooding). This is referred to as the sequential test.
37. A sequential test document has been submitted, which has been updated in August 2019. This set a search area district wide throughout North Somerset, which is reasonable. The site has an area of approximately 1.31ha, with the appellant therefore considering sites of a size range of between 1.2 and 1.75ha. As well as online searches, the appellant used the North Somerset Strategic Housing Land Availability Assessment 2018 (SHLAA). The submitted sequential test concluded that following these searches there were no other reasonably available sites in preferable locations where this proposed development could be sited.
38. Based on the SHLAA, the Council has, however, identified sites that could be considered further in a new Local Plan. As discussed at the Hearing, the Council consider that due to the different contexts of various sites, the size range of sites to be considered should be greater, with the Council suggesting a range of up to 2ha or more, rather than the narrower range used by the appellant in the sequential test. Whilst the Council's range, as explained at the Hearing, does not appear to have a minimum size of site to consider, I do regard a wider site size range to that the appellant has used as reasonable. A site could be in a town centre where high densities would be appropriate, whereas there could also be larger sites with constraints in rural areas where a much lower density would be suitable.
39. With a wider scope for site sizes used, the potential sites that could be still considered in the SHLAA and through online searches could be greater. Some of these sites within the SHLAA are in a Flood Zone 3a and some have already been assessed to be 'discounted' or 'unlikely' by the Council. However, there are also sites considered likely or having potential to some extent, which may still have some constraints (such as a high agricultural land classification) but could still have enough potential for further consideration within the sequential test process. Therefore, it is apparent to me that there are other sites not included within the sequential test which should have been considered. They may not be suitable for the development of 20 dwellings, but they have not been included in the process as they appear to have been discounted based on the overly restrictive plot size criteria used by the appellant.
40. Therefore, I do not consider that all possible sites have been explored within North Somerset as an alternative to building houses in this flood zone. I recognise that there are substantial constraints within North Somerset, such as other flood risk areas and Green Belt, but this is a large district area to find a preferential site outside of a high risk flood area, which would not likely result in an objection from the EA.
41. Whilst I acknowledge that the appellant states from their investigation that no other alternative site was found, the information provided does not sufficiently demonstrate that there are no other potential sites available for

accommodating a similar scheme to that proposed within the district which are not within Flood Zone 3 areas. In view of the seriousness of the consequences of flooding I am not satisfied that the sequential test has been passed. As such the exception test does not need to be considered.

42. Whilst I acknowledge the flood mitigation and plans for escape provided within the FRA, it is not possible from the evidence before me to conclude that there are no more suitable alternatives to this site away from high flood risk existing in the area. As such, it has not been sufficiently demonstrated that the proposal meets with the requirements of the Framework to avoid, where possible, flood risk to people and property. There could potentially be a technical solution, such as raising the finished floor levels of the development, but this does not change my conclusions on the submitted sequential test or this main issue overall.
43. The development is therefore contrary to Policy CS3 of the North Somerset Core Strategy, policy DM1 of the Development Management Policies (Part 1), which seeks to require development to consider flood risk for the life time of a development, factoring in climate change. The proposal would also be contrary to the Framework which requires that inappropriate development in areas of flooding should be avoided by directing development elsewhere.

Protected Species and Sites

44. With this appeal there has been a Preliminary Ecological Appraisal (June 2017) submitted. The Appraisal did find that the site could contain bats and other protected species. The Appraisal went on to recognise that the development would improve much of the grassland and some of the scrub, with some potential habitats for bats and reptiles for example. Some recommendations are made, such as the retention of the ephemeral rhynes and hedgerows and the requirement for a lighting plan. On the basis of the preliminary surveys, this Appraisal found that there were no further survey works needed.
45. However, both the Council and Natural England (NE) have identified that the site is within Band C of the consultation zone for the North Somerset & Mendip Bats Special Area of Conservation (SAC), as set out in the Supplementary Planning Document. As the presence of bats has been only assessed via a preliminary assessment in 2017 both the Council and NE have suggested further survey works necessary to inform mitigation. At the Hearing it was explained by the appellant's Ecologist that whilst in the consultation zone, the site itself does not lend itself to use by bats due to lack of linkages for example.
46. The site is within a short distance to the Severn Estuary designated a Special Area of Conservation (SAC), Special Area of Protection (SPA), Site of Special Scientific Interest (SSSI) and Ramsar site. NE have confirmed that in their opinion there would be no direct impact to these ecology designations as a result of the proposal. I would concur with this as there is a clear gap between the site and the coast, with other houses and buildings in between. However, the 20 additional houses proposed so close to the estuary would result in a potential small increase in recreational access to the estuary and therefore to the risk of disturbance to birds for example, especially when considered in combination with other developments in the wider area.

47. Whilst the appellant has stated that they would be willing to make an offsite contribution towards maintenance of the Severn Estuary to offset any adverse impact, there is no mechanism in place for this to be received by the Council to be used as part of a wider strategy. No contribution has been made in these circumstances.
48. Had I been minded to allow the appeal it would have been necessary for me to undertake an Appropriate Assessment of the development in order to confirm its effect and need for mitigation. I may have had to re-consult NE on any proposed mitigation strategy. However, even if there were no likely significant effects to ecology, thereby being in accordance with North Somerset Council Core Strategy Policy CS4 and National Planning Policy Framework paragraph 170, that would be neutral in the planning balance rather than representing a positive factor weighing in favour of allowing the appeal. As such, in these circumstances, I have not pursued this issue further.

Planning Balance

49. Both parties agree that the Council cannot currently demonstrate a 5 year land supply. I have carefully considered this matter, but in so doing have been mindful of the wording of paragraph 11 of the Framework. This sets out that decisions should apply a presumption in favour of sustainable development where the policies which are most important for determining the application are out of date, with paragraph 11(d) stating that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 to paragraph 11 clarifies that the policies referred to would include those in the Framework relating to areas at risk of flooding.
50. As I have already concluded, the proposed development would conflict with paragraphs and policies from the Framework related to flood risk, which for the reasons already set out provide a clear reason for refusing the development proposed. As a consequence, even in the event that the Council was shown to be unable to demonstrate a deliverable 5-year supply of housing land, the 'tilted balance' would not be applicable in this instance.
51. Nonetheless, the proposal does include some important beneficial aspects. There has been a legal agreement completed and submitted, signed by the appellant and the Council. This includes a provision that a significant portion of the development would be for affordable housing. The agreement also would require the developer to provide towards public open space. Whilst these aspects would be beneficial, especially the provision of affordable housing, I would give these matters modest weight given the scale of the development.
52. There would also be benefits with the provision of market housing, provide a boost to local business, and improvements to the highway with a bus stop, but after considering all the positives of the proposal the significant and demonstrable level of harm would be such that the overall planning balance would not be in favour of the development.

Conclusion

53. For the reasons given above, the appeal is dismissed.

S. Rennie

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Amanda Sutherland	Agent
Mr Christopher Burton	Agent
Mr Andrew Charles	Ecologist
Mr Timothy Simon	
Ms Margaret Simon	
Mr Keith Simon	
Mr Nicholas Simon	
Mr Keith Hewlett	

FOR THE COUNCIL:

Ms Natalie Richards	Planning Policy Officer
Mr David Tate	Planning Officer
Mr Michael Reep	Planning Policy Manager
Ms Felicity Williamson	Pupil Places and Planning Manager

INTERESTED PARTIES:

Mr Eric Adams	Parish Council Planning Chairman
Ms Lindsay Ireland	Vice Chair Parish Council
Ms Pandora Hay-Wheeler	Local Resident
Mr Philip Ian Rees	Local Resident
Ms Lesley Ann Rees	Local Resident
Mr James Long	Local Resident
Ms Shelly Long	Local Resident
Mr Jim McDonald	Local Resident
Mr Mike Hardwick	Local Resident

DOCUMENTS SUBMITTED WITH THE HEARING

- Kewstoke Housing Needs Analysis sheet
- Letter entitled "Keep the land that is designated as a site for a new school in Kewstoke"
- Letter from Kewstoke Primary School Head Teacher Sarah Harding.
- Bus Timetable for Route No 1 from 'First Weston'.
- One aerial photograph of Kewstoke and two maps covering a larger area of North Somerset (Plan 1 and Plan 7) to illustrate bat commuting patterns in Kewstoke and the density and consultation bands for bats (Greater Horseshoe and Lesser Horseshoe) relating to the Mendip Bats SAC.
- Planning Obligations Statement of Compliance with the CIL Regulations 2010 (as amended).
- Covering letter from Mr Jim McDonald with attached photographs of flooded areas of Crookes Road and a domestic garden in Kewstoke, taken 19 August 2019.
- Letter from local residents regarding 'Road Safety Concerns'.
- Two photographs showing flooding under a house.
- Kewstoke Parish Council Statement
- Letter from T M Long (retired Environment Agency Policy Advisor) on the issue of flood risk and drainage.
- North Somerset Council rebuttal to the Appellant's application for an award of costs.
- Council response to the Appellant's submitted sequential test assessment regarding alternative sites.