The Planning Inspectorate

Appeal Decision

Site visit made on 30 September 2019

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2019

Appeal Ref: APP/L1765/W/19/3233660
Former site of Oakley Cottage, Sandy Lane, Waltham Chase, SO32 2LR

- 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 Tapley of GAMRA Family Trust against the decision of Winchester City Council.
- The application Ref: 18/02676/OUT dated 7 November 2018, was refused by notice dated 28 January 2019.
- The development proposed is erection of five self-build/custom build houses.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The original application was made in outline with only access to be determined at this stage. All other matters were reserved for future determination. I have had regard to the existing and proposed site plans and the indicative layout of the proposed development as shown in these drawings but have regarded all elements of these drawings as indicative apart from the details of the access.

Main Issues

3. The main issues are:

   - whether or not the appeal site is a suitable location for housing, having regard to local and national policy for the delivery of housing; and
   - the effect of the proposed development on the integrity of the Solent Special Protection Areas.

Reasons

Suitable location

4. The appeal site is a plot of land which was previously occupied by a dwelling, Oakley Cottage, which was demolished many years ago. The site is on the west side of Sandy Lane, self-contained and enclosed by mature hedging and trees, with a gated access to Sandy Lane. The appeal site is positioned between two houses, set within sizeable plots with farm buildings and fields to the rear. The area has a semi-rural appearance and open character. The appeal site is located on the edge of, but outside the defined settlement of

Waltham Chase. On the opposite side of Sandy Lane, within the settlement, there is a new residential development of 63 dwellings.

5. The Council's strategy for managing growth is set out in Policy DS1 of the Winchester Local Plan Part 1 – Joint Core Strategy 2013 (JCS). It focusses new development on existing settlements following a sequential approach and restricts development outside those areas. As the appeal site is outside the defined settlement, it is therefore located within the countryside for planning purposes where policy MTRA 4 of the Winchester District Local Plan Part 2: Development Management and Site Allocations 2017 (DMSA) applies. This policy sets out that development in the countryside will only be permitted in a limited number of specific circumstances including where it has an operational need for a countryside location, such as for agriculture, horticulture or forestry or where it involves the reuse of existing rural buildings for employment, tourist accommodation or affordable housing. Both parties acknowledge that the proposed development would not meet the requirements of policy MTRA 4.

6. I accept that Policy MTRA 4 pre-dates the 2019 revision of the Framework. However, the settlement boundary for Waltham Chase was amended in 2017 when the DMSA was adopted. The appeal site was not identified as an area for the village to grow and was not included within that settlement boundary. This approach is not inconsistent with the approach to rural housing set out within the Framework. Furthermore, it is not the purpose of this appeal to reconsider this boundary, which is essentially a matter for the development plan process.

7. The appeal site is immediately opposite a new development of houses which was an allocated site within the DMSA and included in the settlement boundary of Waltham Chase. I acknowledge that the appeal site therefore has a similar level of access to services as that recently developed site. However, it is not directly comparable with the appeal site due to its location beyond the defined settlement.

8. I appreciate that the character of this section of Sandy Lane has been altered as a consequence of the new housing development opposite and that the appeal site is now contained by development on four sides. However, the west side of Sandy Lane, outside the settlement boundary, has a semi-rural character with dispersed houses, farm buildings and fields beyond. The existing spacious pattern of development forms a natural transition between the more high-density built-up area within the settlement and the open countryside.

9. The indicative layout shows small houses close together with limited garden space around them. This would be a form of development at odds with the existing pattern of spacious development on the west side of Sandy Lane. Whilst the site does not form part of a valued landscape, it nevertheless contributes to the semi-rural character on the settlement boundary. Higher density development in this location would represent encroachment into the countryside. In this context the development of the appeal site would result in harm to the open character of the countryside.

10. It is claimed that the scheme would-be high-quality design and would employ sustainable construction techniques and incorporate measures to minimise environmental impact. However, these positive aspects of the scheme do not justify a location which is in conflict with the development plan.

11. I conclude that the appeal site would not be a suitable location for housing, having regard to local and national policy for the delivery of housing. It would therefore conflict with Policy MTRA 4 of the DMSA which restricts the development of housing in the countryside in order to protect its rural character.

Solent Special Protection Areas

12. The site is within 5.6km of the Solent and Southampton Special Protection Area (SPA) and Ramsar site, Solent Maritime Special Area of Conservation (SAC), Portsmouth Harbour SPA and Ramsar Site and Chichester and Langstone Harbours SPA and SAC, collectively known as the Solent SPAs. The Solent SPAs are protected as European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017.

13. Regulation 63(5) imposes a duty on local planning authorities as the competent authority, to consider whether any proposal may have a significant effect on such protected areas either alone, or in combination with other plans and projects. Following the Court of Justice of the European Union (CJEU) judgement[1] in April 2018 the decision maker, when considering the effect that a proposal may have on a European site, is required to consider mitigation within the framework of an Appropriate Assessment (AA) rather than at screening stage.

14. The Solent SPAs provide an internationally important habitat for thousands of overwintering birds. There is evidence that increased human populations at the coast, leads to an increased level of recreation which results in disturbance to bird species.

15. The Council has undertaken an AA for this site and concluded that in the absence of avoidance and mitigation measures, the proposed development which would result in five additional dwellings would have a likely significant effect on the integrity of the protected sites. The Council has adopted the Solent Recreation Mitigation Strategy (SRMS) which sets out the mitigation in the form of financial contributions towards mitigation projects in the Strategy. The Council's AA concluded that, subject to financial contributions in line with the requirements of the SRMS being secured by way of legal agreement, the proposed development would not result in adverse effects on the integrity of the Solent SPAs.

16. The appellant accepts the need to provide a financial contribution towards the SRMS and has indicated a willingness to secure this via a legal agreement. A Unilateral Undertaking (UU) was submitted during the course of the appeal. However, the UU contains limited details and is therefore incomplete and I am therefore unable to take its provisions into account. The mechanisms to ensure the delivery of any required mitigation are not therefore secured.

17. It therefore follows that I have no choice other than to conclude that the proposed development would adversely affect the integrity of the Solent SPAs. It would therefore conflict with Policies CP15 and CP16 of the JCS which, together and amongst other things, seek to protect and enhance green

[1] People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C;2018:244

infrastructure, and protect nature conservation sites from inappropriate development and require appropriate mitigation to avoid adverse impacts.

Other Considerations

18. Under Section 1 of the Self Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) (the Act), local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under Sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand.

19. The Council has a self-build register which lists 298 people since the register was introduced on 1 April 2016, of whom 55 per cent live outside the Winchester District. My attention has been drawn to a Council report[2] that suggests that while the Council can meet the need for those who joined the register between 1 April 2016 and 31 October 2016, meeting the need beyond that would be a challenge due to the difficulty self-builders have in acquiring suitable plots. However, I note from this report that the Council were proposing an alternative way of categorising the demand which could have changed the way the demand is identified. Furthermore, the Council confirms that provision for this type of housing is being made through the use of the Council's brownfield register and that there are currently sufficient plots available.

20. Whilst the Council's development plan policies pre-date the Framework, I note Policy CP2 of the JCS supports development that meets a range of community housing needs and delivers a wide choice of housing including a range of dwelling types. Whilst I appreciate the policies may not be as specific as the appellant may wish on self-build/custom-build housing they are not inconsistent with the Framework and the development plan policies in relation to housing and the location of development are not absent or silent.

21. In the absence of firm evidence that the Council is not meeting the needs of people on the register, the fact that the scheme would provide five self-build/custom-build houses is a neutral factor.

22. The proposed houses would be limited to a maximum of 120 square metres and would therefore be smaller houses. This would accord with the requirements of Policy CP2 which seeks the provision of a range of dwelling types and sizes, the majority of which should be smaller, two and three-bed houses to meet an identified community housing need. This would be a benefit in the scheme's favour.

Planning Balance and Conclusion

23. The Government is seeking to boost the supply of housing and to diversify the housing market. The proposed development in providing five small, self-build/custom-build houses which, due to the small size of the site, could potentially be built-out relatively quickly would deliver social and economic benefits and I give these limited weight in my decision. The scheme would additionally deliver sustainable construction techniques which would provide an environmental benefit. I also give this limited weight.

[2] Winchester City Council Self-Build and Custom Build Register, CAB3141(HSG) dated 20 March 2019

24. I have concluded that the appeal site is not a suitable location for additional housing arising from its relationship with the settlement of Waltham Chase. It would also lead to encroachment of built development into the countryside. These are matters which I give significant weight.

25. In addition, paragraph 11(d)(i) of the Framework states that where the application of policies within the Framework provide a clear reason for refusal, the presumption in favour of sustainable development does not apply. In this case footnote 6, which refers to protected habitat sites, applies. This is further expanded in paragraph 177 of the Framework.

26. The proposed development would result in harms as I set out above and to which I attach significant weight. These are not outweighed by the scheme's limited benefits. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, I find that in this case material considerations do not indicate that a decision should be made other than in accordance with the development plan. For the reasons set out above, and with regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Rachael Pipkin

Inspector