
Appeal Decision

Hearing Held on 3 September 2019

Site visit made on 3 September 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/C1760/W/19/3227205

**Land at Oakcutts, Old Stockbridge Road, Kentsboro, Middle Wallop,
Stockbridge SO20 8DZ**

- 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 Adrian Burford against the decision of Test Valley Borough Council.
 - The application Ref 18/01866/FULLN, dated 17 July 2018, was refused by notice dated 24 October 2018.
 - The development proposed is described as retention of affordable dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The building in question is already exists. When first constructed it was presented as a building incidental to the enjoyment of Oakcutts, and as permitted development. The Council disagreed and issued an enforcement notice requiring demolition of the building, reference 15/0009/REG (the EN). The EN was upheld with minor modification in appeals reference APP/C1760/C/16/3142742, 3142743 and 3142744. These appeals were in turn upheld by the High Court in [2017] EWHC 1493 (Admin) (the High Court challenge). Both parties agree that the EN remains valid.
3. The residential use of the building has itself already commenced, albeit at the time of my visit parts of the building did not appear to be fully habitable given their lack of finished floors, walls or ceilings. Whilst the building and its use as I observed them have assisted in my assessment of the appeal proposal, I have made my decision on the basis of the plans as submitted.
4. In view of the above, and having canvassed the views of the parties on the matter during the Hearing, I have considered the appeal on the basis that planning permission is being retrospectively sought to change the use of an unauthorised building to an affordable dwellinghouse.
5. The Council confirmed at the Hearing that it wished to withdraw its second reason for refusal relating to highways safety. This is because the appellant has demonstrated that an acceptable visibility splay can be achieved, which I agree could be secured by condition.

6. An application for costs was made by Test Valley Borough Council against Adrian Burford. This application is the subject of a separate Decision.

Main Issues

7. The main issues are:

- whether the site is a suitable location for residential development, having regard to the principles of sustainable development; and
- the effect of the development on the character and appearance of the area.

Reasons

Location

8. Policy COM 2 of the Test Valley Borough Revised Local Plan DPD: Adopted Local Plan 2011-2029 Adopted 2016 (the Local Plan) seeks to direct development to within defined settlements. The Local Plan identifies these on the basis of their character, population, and the services and facilities available within, and accessible to them. As the site does not fall within a defined settlement, the Council principally refused planning permission on the basis that it is not a sustainable location for residential development. In this regard I see no fundamental conflict between the objectives of Policy COM 2 of the Local Plan and the promotion of sustainable development in social, economic and environmental terms, as set out within the National Planning Policy Framework (the Framework).
9. Policy COM 8 of the Local Plan nonetheless allows for the provision of rural exception affordable housing outside defined settlements. Its terms are broadly consistent with paragraph 77 of the Framework, which states that in rural areas planning decisions should be responsive to local circumstances, and should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs.
10. The appellant previously occupied an affordable dwelling, and may continue to meet the eligibility requirements to obtain affordable housing locally. This fact alone does not however mean that the building in question is therefore an affordable dwelling. In this regard a Unilateral Undertaking (UU) has been provided in order to secure the status of the building as discounted market sales housing; a type of affordable housing defined in the Glossary of the Framework.
11. Notwithstanding a dispute between the parties over whether the level of discount set out in the UU would make the dwelling affordable within the local market, it is apparent that this discount would only ever be realised in the event that the dwelling was offered for sale. In this regard, whether or not the appellant is eligible to purchase discounted market sales housing, he does not own the building at present. Here the UU would function simply to secure continued occupancy of the dwelling by the appellant and/or family members without any purchase being necessary. As the dwelling would only demonstrably become discounted market sales housing once placed on sale, and given that no such sale is envisaged, the UU would not alter the status of the dwelling either immediately, or indeed for the foreseeable future. In my view therefore the development would not provide discounted market sales housing.

12. Footnote 26 of the Framework indicates that affordable housing may include self-build housing. However, and contrary to paragraph 1 of the Schedule of the UU, the building was not constructed as a dwelling. Construction in any case commenced prior to the Self-build and Custom Housebuilding Act 2015, to which footnote 26 specifically refers. Furthermore, self-building does not exist as a valid justification for unauthorised development, and has little bearing on whether a dwelling can or cannot be considered to constitute affordable housing.
13. In view of the above, Policy COM 8 of the Local Plan is not engaged, as the development would not provide affordable housing. Though both parties have addressed the various sub-criteria set out within Policy COM 8, including local affordable housing need, local employment, residency and care, all are contingent on whether or not affordable housing would actually be provided, which I have found that it would not. As this finding would not be altered regardless of the outcome of any additional finding made in relation to these sub-criteria, their further consideration is unnecessary.
14. In broader terms, paragraph 78 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. This offers a somewhat more flexible approach than Policy COM 2 the Local Plan.
15. In this context, few services or facilities have been identified as existing locally, or indeed within nearby villages. Aside from a small supermarket attached to the filling station in Kentsboro, and bus stops adjacent, these principally include a café at a nearby military museum. Whilst I accept that occupants of the development might occasionally use the shop and café, both, it would appear, are principally sustained by visitors to the museum, or drivers using the A343.
16. Furthermore, though the appellant states that the shop can be reached on foot, this is both unsafe and impractical given the reasonably long distance involved, and the lack of any footpath or consistent verge along Old Stockbridge Road, which carries fast-moving traffic. It follows that the same is true of the café and bus stops. For these reasons, and taking into account of the fact that the appeal scheme involves a single dwelling, the development is unlikely to make any significant contribution to sustaining local services or facilities, or therefore the economic vitality of the rural community. A reliance of the occupants on longer journeys by private vehicle to access services or facilities in settlements such as Andover is instead a reasonable certainty, as too is the existence of the environmental harm such journeys generate.
17. In social terms, the small scale of the development, and the lack of safe or easy accessibility between it and other dwellings, aside from Oakcutts, limits the extent of any contribution its occupants might potentially make to the social vitality of the community. Therefore, in both social and economic terms, paragraph 78 of the Framework offers no additional support for the development.
18. Paragraph 79 of the Framework further states that decisions should avoid the development of isolated homes in the countryside. In this regard the Inspector in appeal APP/C1760/A/14/2222806, which related to a previous proposal to construct a dwelling on site, concluded that residential development on the site would indeed be isolated. Since this time however, the courts, principally in

[2018] EWCA Civ 610, have provided some clarification on the way in which the term 'isolated' should be interpreted. As such, further consideration of the specific circumstances of the site and its setting is necessary.

19. The undefined settlement of Kentsboro principally consists of a large military base whose perimeter is tightly defined and enclosed, and access to which is restricted. A similarly well-defined housing development covering a much smaller area is located adjacent. Whilst a very loose ribbon of development which comprises a small number of dwellings occurs along Old Stockbridge Road, this does not immediately adjoin development in Kentsboro, and is not otherwise connected to it by open spaces integral to the layout of the settlement. This includes the area of apparently derelict open land to the south.
20. Oakcutts is, furthermore, the most peripheral member of the ribbon of dwellings along Old Stockbridge Road. The appeal dwelling is in turn reasonably well separated from Oakcutts by a paddock, and is singularly located with its frontage on Broad Road. It is otherwise surrounded by open agricultural land. The position of the building is therefore both visually and spatially separate from the existing ribbon along Old Stockbridge Road, which is itself not an integrated part of Kentsboro. Thus, whether or not the building occupies land associated with Oakcutts, and regardless of the past use of the site, the dwelling is readily perceived as occupying an isolated position. I am satisfied that this finding is consistent with the approach set out in the relevant case law. Furthermore, as the development does not meet any of the exceptions set out in paragraph 79 of the Framework, paragraph 79 indicates that that approval of the scheme should be avoided.
21. For the reasons outlined above I conclude that the site is an unsuitable location for residential development having regard to the principles of sustainable development. The development therefore conflicts with Policy COM 2 of the Local Plan, which seeks to direct development to locations well provided for by services and facilities; and relevant provisions within the Framework, which seek to secure sustainable development.

Character and appearance

22. The Council confirmed at the Hearing that subject to the revised scheme of landscaping being implemented, it would have no objection to the development on grounds of its effect on the character and appearance of the area. The Council's specific concern is that the scheme cannot be implemented, and/or would not be sustained on account of the fact that it would give rise to unacceptable effects on the living conditions of the occupants.
23. At the time of my visit the study and play room on the east side of the building were uninhabited, and uninhabitable on account of their lack of finished floors, walls and ceilings. The bedroom was however in use. The outlook from the study and playroom is directly towards the remains of a concrete block-built structure. Roadside vegetation beyond this is only visible at high level, and is otherwise so sporadic and sparse that it cannot reasonably be described as a hedge. The outlook from the bedroom also partially includes the outbuilding, but otherwise features the site access.
24. The landscaping scheme outlines the removal of the concrete block structure and the planting of a hedge along the boundary. These measures would improve the outlook from all of the windows in question, and would provide the

site with a satisfactory appearance from Broad Road. The fact that the space between the windows and hedge would be of limited depth would not cause any obvious harm in itself, or indeed affect use of the rooms in question. Given that removal of the hedge would directly expose the building to the road, it appears most unlikely that its removal would occur.

25. With regard to levels of light, all 3 rooms are affected by the fact that the building features a deep eaves overhang, its orientation, and by tall trees along Broad Road. In this context the introduction of the hedge would make very little difference, and this is confirmed by the submitted lighting report. Again, there would be no clear benefit for the hedge to be removed after it was planted, or therefore any reason to believe that this would occur.
26. Whilst reference is made to windows in the south elevation of the building within both the Council's officer report and appeal statement, and related pressure to fell trees, it was confirmed at the Hearing that the Council does not wish to pursue an objection on these grounds.
27. I am satisfied that the landscaping scheme could be secured by condition, and that this would not be at odds with Policy LHW4 of the Local Plan, which seeks to secure development which provides for the amenity of occupants, including with regard to light.
28. Therefore, for the reasons outlined above, I conclude that the development would not have an adverse effect on the character and appearance of the area. It would not therefore conflict with Policy E2 of the Local Plan, which seeks to secure the protection, conservation and enhancement of the landscape.

Other Matters

29. The appellant has drawn attention to the impact that dismissal of the appeal would have on the human rights of the appellant and his family. Article 8(1) of the First Protocol to the European Convention on Human Rights (the Convention), as incorporated in the Human Rights Act 1998 (the HRA) sets out that everyone has the right to respect for his private and family life, his home and his correspondence. Within this context Article 3(1) of the United Nations Convention on the Best Interests of the Child further provides that the best interests of the child shall be a primary consideration.
30. Dismissal of the appeal is likely to lead to the Council seeking to implement the EN. This would result in the loss of the appellant's home. Additionally, the appellant states that his family would be split up and his daughter may no longer be able to attend her current school. The resulting, potentially harmful effects on her education, would clearly not be in her best interests.
31. In the event that the appellant lacked sufficient resources the Council indicates that the family would be eligible for emergency housing. Whilst avoiding homelessness, this would cause the current household to be split up, and, depending on the location of such housing, might require a change of school. I have however been provided with no reason to believe that the appellant would be unable to make use of rental accommodation in the local area, or elsewhere within the school catchment. Furthermore, it was confirmed at the Hearing that sufficient space exists at Oakcutts to accommodate the appellant's family. Whilst it was nonetheless stated at the Hearing that the cost of demolishing the building and clearing the site would require the sale of Oakcutts, I have been

- provided with no proof that this would be necessary, or indeed evidence that such a sale would itself result in homelessness.
32. With regard therefore to Article 8(2) of the Convention as incorporated in the HRA, I am satisfied that an interference in the appellant's rights and those of his family would be in accordance with the law, and would be necessary in the context of the regulation of land use through development control measures. The latter are recognised as an important function of Government. These objectives could not be met in a way which interfered less with rights of the appellant and his family. For this reason, the interference would be proportionate. As such the dismissal of the appeal would not result in a violation of rights set out in Article 8, or prejudice the best interests of the appellant's daughter.
33. The appellant states that the development is necessary in order to provide care to elderly parents who suffer from disability. With reference to the Public Sector Equality Duty contained in the Equality Act 2010 (EA 2010), I have due regard under Section 149 of the EA 2010 to the requirement to take steps to meet the needs of persons who share a protected characteristic. The EA 2010 defines disability as one such characteristic. These needs have been outlined as including help with day to day tasks such as mowing the lawn and hanging up washing, and potential assistance in the event of a fall. The development meets these needs by providing family members accommodated in a dwelling close at hand. Dismissal of the appeal would mean that this was no longer the case. However, the potential nonetheless exists that the appellant might subsequently move into the available living accommodation at Oakcutts, and family members would otherwise continue to be present at Oakcutts on a regular basis in relation to work, if not residence. Furthermore, and notwithstanding the inevitable effects of aging, the stated needs do not currently require provision of a high or dedicated level of care, which could not be reasonably met in other ways. As such the needs in question do not justify the presence of a dwelling on the site. I therefore consider that dismissal of the appeal would not give rise to an adverse effect on persons who share a protected characteristic.
34. The appellant has provided a planning statement and legal opinion prepared in relation to development at the former Bishopstoke Day Services Centre. Whilst neither is therefore directly relevant to the appeal scheme, the development itself related to a retirement community, offering a minimum package of core care and support services. As such neither the type of development, nor the domestic arrangements in question are comparable with those of the appeal scheme. As such this material has little bearing on my findings set out above.
35. I further acknowledge the appeals, and associated court case referenced by the appellant relating to sites at Bilsthorpe Road, Eakring; Birds Farm, Belchamp Walter; and Walthams, Great Henny. These schemes however relate to developments at different locations whose circumstances differ from those of the appeal site. Again therefore, these schemes do not alter my view of the acceptability of the proposed development in relation to the specific circumstances of the appeal scheme, the Local Plan and Framework.
36. The provision of a safe visibility splay has been advanced as a benefit of the development by the appellant. However, notwithstanding the fact that the access existed prior to the dwelling being built, such works are required to

mitigate the effects of increased use of the access in relation to the dwelling. As such this does not attract weight in favour of the scheme.

37. In the context of the general need for housing, the development provides a single additional dwelling. The level of associated public benefit is however very limited in scale, and is decisively outweighed by the harm otherwise caused by the unsustainable location of the development.
38. During the course of the appeal, Natural England (NE) issued advice which stated that due to current uncertainty, in its view, it was likely that all new housing development within South Hampshire would have a significant effect on the integrity of European sites in the Solent. This is on account of nitrates in wastewater. The Council has confirmed that no strategy currently exists to achieve nitrogen neutrality for any size of residential development within the Borough. Though challenging the scientific legitimacy of NE advice, the appellant also indicated that nitrogen neutrality could not be achieved in relation to the appeal scheme. Had I been minded to grant planning permission it would have been necessary for me to undertake an Appropriate Assessment in order to both confirm the effect on European sites, and the need for mitigation. As I am dismissing the appeal for other reasons however, I do not need to consider this matter any further.

Conclusion

39. For the reasons set out above, I conclude that though, with landscaping, the development would not harm the character and appearance of the area, the location is nonetheless unsuitable with regard to the principles of sustainable development. I conclude therefore that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

Appearances

FOR THE APPELLANT

Adrian Burford	Appellant
Maureen Burford	Joint owner
Michael Burford	Joint owner
Lisa Cook	Appellant's partner
Robert Duff	Earlsfield Town Planning

FOR THE LOCAL PLANNING AUTHORITY

Mark Stainscliff MPlan MRTPI	Principal Planning Officer
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Documents

Draft Unilateral Undertaking

File note: Oakcutts, Middle Wallop 23 October 2015

Official copy of land register title HP348840 27 June 2012