



Appeal Decision

Site visit made on 7 August 2019

by Rebecca Thomas MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Appeal Ref: APP/J0405/W/19/3225749

Land to the rear of 23 The Green, Stoke Hammond MK17 9BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ian Sutton of Sutton Properties Ltd. against Aylesbury Vale District Council.
 - The application Ref 18/00893/APP, is dated 12 March 2018.
 - The development proposed is Residential development of 4 dwellings with associated parking and amenity land.
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Decision

1. The appeal is allowed and planning permission is granted for Residential development of 4 dwellings with associated parking and amenity land at land to the rear of 23 The Green, Stoke Hammond MK17 9BX in accordance with the terms of the application, Ref 18/00893/APP, dated 12 March 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Al Morrow on behalf of the appellant against Aylesbury Vale District Council. This application is the subject of a separate Decision.

Main Issues

3. Whether the proposed development would make adequate provision for affordable housing and off-site sport and leisure provision with reference to development plan policies concerned with such; and
4. The effect of the development on trees and hedgerows.

Reasons

Affordable Housing and contributions

5. The appeal proposal would result in the provision of four houses to the rear of the dwelling at number 23 The Green. The site would be accessed via the recently constructed, and adjacent, Brook Farm Close. The Council state that the development forms part of cumulative development, including that at Brook Farm Close, and as such the proposal would extend to beyond ten units. Brook

- Farm Close¹ appeared substantially complete at the time of my site visit, providing ten dwellings adjacent to the appeal site. The site at the former garage/workshop² was also substantially complete and provides five dwellings.
6. Government Guidance states that "*...planning obligations for affordable housing should only be sought for residential developments that are major developments...where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more...*"³. The appeal site provides fewer than ten dwellings and as such obligations should not be sought.
 7. The Council suggests that a site of between 10-24 units would require at least 10% affordable home ownership. Nonetheless, this would only apply if the appeal site were to be considered as a wider and cumulative development with those adjacent. Whilst the Council contends that the appeal site combined with the other two sites would cumulatively exceed ten units, the previously permitted sites appear to be substantially complete.
 8. I am not provided with evidence to demonstrate that any development proposals within the district which fall below the thresholds described above should be subject to affordable housing requirements, nor that 'cumulative' developments should also be subject to such obligations. The saved policies of the Aylesbury Vale District Local Plan (2004) 'AVDLP' remain silent on these issues. Therefore, in accordance with guidance, there is no requirement for the provision of affordable housing as a result of the proposed development.
 9. Policies GP.86, 88 and 94 of the AVDLP sets out the provisions for the support of community facilities, including sport and recreation through new developments for housing. The Council's Parks and Recreation officer has suggested that a contribution sum would be required, if the development were to be considered cumulative. As I have already concluded that the site does not form part of a cumulative development, the request for contributions would not apply.
 10. Notwithstanding that the appeal site would be accessed via Brook Farm Close, the appeal before me remains an independent scheme, providing four dwellings. The appellant confirms that the appeal site is under a different ownership and I have also taken into account the time between submissions of each planning application. It is clear to me that the appeal before me remains a standalone site and is subject to its own considerations.
 11. Government Guidance confirms that planning obligations should be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development⁴. The proposed affordable housing and leisure contributions suggested by the Council do not meet these tests and as such the requirement would be contrary to policy.

Trees and Hedgerows

12. The appeal development would result in the loss of some trees on site, with the potential to impact nearby trees. The trees and hedgerow currently form part

¹ 14/03460/AOP, 16/03006/ADP

² 17/00905/APP

³ National Planning Practice Guidance 23b-023-20190901

⁴ National Planning Practice Guidance 23b-002-20190901

of the existing garden to number 23 The Green. Whilst the trees are not subject to any specific protection or designations, I acknowledge that the proposed development would result in the loss of trees. The trees are domestic in appearance, being located in a garden space and are a mixture of trees in species and size. The site is tucked behind existing dwellings and the trees are not easily seen from outside the site. In a similar way, whilst the beech hedge is an attractive feature it is only visible from within the site.

13. The site would remain relatively enclosed due to its location to the rear of existing dwellings and views through the site would be localised only, with views restricted by existing buildings and the proposed dwellings at the appeal site. I acknowledge that the change from garden land to the dwellings would result in additional built form and hard surfaces, however the proposed plans show provisions for new planting. The development as seen from Brook Farm Close would be similar in character and appearance and as such the impact of the loss of the trees and hedgerows would not be significant.
14. Policy GP38 of the AVDLP in particular seeks to protect the character and appearance of areas through high quality design and ensuring that appropriate landscaping is provided through development. Whilst the appearance of the appeal site will inevitably change, the plans demonstrate the provision of hard and soft landscaping features, and these can be controlled through suitably worded conditions. Therefore, the development would accord with the provisions of Policy GP38.

Other Matters

15. Concerns are raised with regard to overdevelopment of the site. The proposal would provide four dwellings with space for gardens and the scale and layout is appropriate to the size of the appeal site.
16. Access to and from the site is acceptable, with the appeal documents demonstrating that the site could be accessed safely by large vehicles without having to reverse onto the public highway.
17. The appeal site is located at a slightly lower level to those dwellings in nearby. This, and the site layout, ensures that there would be no harm to living conditions of neighbouring properties from overlooking, however the plans also include obscure glazing to some windows and it is reasonable to ensure that these are implemented.
18. Other issues such as drainage, layout and biodiversity are capable of being controlled via suitably worded conditions. There are queries over the treatment of boundaries however these are detailed in the proposed plans.

Conditions

19. I have imposed conditions as set out in the schedule below, having had regard to the proposal and the guidance set out in the Planning Practice Guidance.
20. The three year period in which the planning permission may be implemented (1) is a statutory requirement. It is also necessary in the interests of clarity to specify the plans approved and that the development shall be undertaken in accordance with these unless further modified by any condition set out below (2). In the interests of the character and appearance of the area I have

imposed a condition to confirm the external materials are of similar appearance and colour to those nearby (3).

21. The Council has suggested a condition with regard to biodiversity enhancements for bat tubes however there is no evidence to support this requirement and as such is not relevant to the proposed development and the Council's Ecologist has found that there is no reasonable likelihood of impacts to protected species. As such, this requirement would fail the tests for conditions.
22. The Council has requested conditions which deal with hard and soft landscaping and slab levels. Nevertheless, the plans provided with the application give appropriate detail for both hard and soft landscaping proposals. Therefore, there is sufficient information in the plans. It is necessary to ensure that there is provision for the replacement of any trees or shrubs within the site (4) in the interests of ensuring a high quality development.
23. It is necessary to attach conditions to ensure the proposed parking and access arrangements are completed in the interests of highway safety (5 and 6).
24. The Council have suggested the restriction of permitted development rights from the new dwellings once completed which is necessary and reasonable to ensure an appropriate amount of development over the site (7). Similarly, the open nature of the rear boundary to the north of the site is to be protected by restricting walls, fences or gates along this boundary. Whilst I understand the nature of this condition, it is not clearly related to the proposal and is unreasonable and as such a restriction of these structures should be limited to 1m (8).
25. The Council have requested details of cycle parking, however the plans show to me that there is ample space for occupiers to store bicycles to the rear of their properties and so this condition is unnecessary.
26. In the interests of protecting the living conditions of neighbouring properties, it is necessary to ensure that the proposed frosted glass shown on the plans is to be retained as such (9).

Conclusion

27. For the reasons as set out above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Rebecca Thomas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers 17-154-01 Rev B; 17-154-02; 17-154-03; 17-154-04; 17-154-05.
- 3) The materials to be used in the construction of the external surfaces of the buildings hereby permitted shall be completed and retained in a similar finish, colour and texture to the nearby dwellings at Brook Farm Close.
- 4) Any tree or shrub which forms part of the approved development hereby permitted which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a similar species, size and maturity to be approved by the Local Planning Authority.
- 5) The scheme for parking and manoeuvring indicated on the submitted plans shall be laid out prior to the initial occupation of the development hereby permitted and that area shall not thereafter be used for any other purpose.
- 6) Prior to the occupation of the development minimum vehicular visibility splays of 43m from 2.4m back from the edge of the carriageway from both sides of the access onto Leighton Road shall be provided in accordance with the approved plans and the visibility splays shall be kept clear from any obstruction between 0.6m and 2.0m above ground level.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no enlargement of any dwelling nor the erection of any structure shall be carried out within the curtilage of any dwelling the subject of this permission, no windows, dormer windows, no buildings, structures or means of enclosure shall be erected on the site which is the subject of this permission other than those expressly authorised by this permission.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no fences, gates or walls exceeding 1m in height shall be erected along the northern boundary of the application site, serving plots 2, 3 & 4 the subject of this permission.
- 9) The window(s) shown as frosted on drawing 17-154-02 of the development hereby permitted shall not be glazed or re-glazed other than with obscured glass to a minimum of level 3 and non-opening unless the parts of the window that can be opened are more than 1.7m above internal floor level.