



Appeal Decision

Site visit made on 2 December 2019

by Richard Schofield BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11th December 2019

Appeal Ref: APP/R0335/W/19/3235241

Land to the south and west of 2 Fairclough Farm Cottages, Watersplash Lane, Warfield, Bracknell RG42 4SR

- 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 Lacey against the decision of Bracknell Forest Borough Council.
 - The application Ref 18/00918/FUL, dated 11 September 2018, was refused by notice dated 28 June 2019.
 - The development proposed is erection of five detached dwellings (2 no. 4 bedroom and 3 no. 5 bedroom) along with associated works on land to the west and south of Fairclough Farm Cottages, fronting Watersplash Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Unilateral Undertaking was submitted by the appellant as part of the appeal. The Council was of the view that this could overcome its fourth reason for refusal relating to a lack of contributions to relevant local infrastructure. I am not persuaded by that, in so far as the Council is not party to the UU and is not, therefore, under any obligation to spend the relevant contributions on the facilities detailed.
3. Had I been minded to grant planning permission, I would have pursued this matter further. As I am dismissing the appeal for a range of other reasons, however, I do not address this point.

Main Issues

4. The main issues are:
 - whether the appeal proposal accords with local planning policy for strategic development at Warfield, with particular regard to design; the character and appearance of the area; and connectivity;
 - whether, having regard to local and national planning policy, the appeal proposal would make appropriate provision for affordable housing;
 - the effect of the proposed development on protected species and biodiversity;

- the effect of the proposed development on the Thames Basin Heaths Special Protection Area; and
- whether surface water from the proposed development can be adequately drained, without increasing the risk of flooding elsewhere.

Reasons

Accordance with strategic planning policy for Warfield

5. Policy CS5 of the Bracknell Forest Core Strategy (CS) sets out a broad, strategic location for development at Land North of Whitegrove and Quelm Park (Parish of Warfield). This is described as being for “*a comprehensive, well designed mixed-use development*”.
6. Greater specificity is provided by the subsequent Bracknell Forest Site Allocations Local Plan (SALP), under policy SA9 (Land at Warfield). SA9 formally allocates a large swathe of land, containing the appeal site, and sets out policy requirements for infrastructure provision. Notably, it is clear that:

“prior to the submission of a planning application for any part of the site, masterplans will be prepared by the developer(s) and agreed with the Council in accordance with the requirements of Policy SA9, Core Strategy Policy CS5 and the Warfield Supplementary Planning Document unless otherwise agreed with the council”.
7. The Warfield Supplementary Planning Document (SPD) provides further support, setting out clear, detailed guidance for the development of the allocated area. It is clear that:

“A minimal number of additional new units on the north edge of the [Watersplash] lane could front onto the lane and use this existing access. However, access would not be allowed here for the remaining development parcels, which would use the new access and junction on Newell Green.”
8. It goes on to note that:

“Development should front onto Watersplash Lane whilst retaining the existing trees and hedgerows as a green buffer area. Trees and hedgerows should be retained and layouts should take into account the important trees and planting...”
9. Additional to this is the Warfield Central Area Masterplan Document. Although this does not appear to have been formally adopted by the Council, its production was a requirement of planning policy and it is, thus, a significant material consideration in decision making. It echoes the requirements of the SPD and emphasises limiting the number of units accessed off Watersplash Lane.
10. Watersplash Lane is a quiet (the noise from ongoing development notwithstanding), single track lane, lined by mature hedgerows and trees, which form a green tunnel over the lane in places. These features, together with grass verges and ditches, give the lane its characteristic rural sense and appearance, compromised only marginally by the few new dwellings to the north of the lane, immediately upon entering from the east.

11. There is a very short ribbon of residential development on the southern side of the lane, when approaching from the eastern end, but from the driveway of 2 Fairclough Farm Cottages westwards, the lane retains its strong sense of quiet, verdant rurality.
12. It was also notable from my site visit that the lane is not a through route for vehicles, due to two large wooden bollards located just west of the entrance to Larks Hill open space. This serves to further reinforce the lane's characteristic rural feel, with vehicles only using it in order to reach the dwellings at the eastern end. Indeed, it is a pleasant route for pedestrians, cyclists and riders, largely uninterrupted by motor vehicles.
13. The appeal proposal clearly shows the creation of two additional access points onto Watersplash Lane, which would serve five new dwellings next to 2 Fairclough Farm Cottages. This would result in a notable increase in the number of dwellings currently accessed from Watersplash Lane, with a commensurate increase in vehicle movements; movements that would occur further down the lane than at present.
14. This, combined with the proposed removal of a considerable stretch of mature trees and hedgerow; the culverting of the ditch to allow driveways to cross it; and clear sight from the lane into areas of extensive hardstanding, would result in a development that compromises the function of the lane as a largely non-vehicular route; appears at odds with its the verdant, rural feel; and conflicts with the aims of the planning documents referred to above in so far as their ambitions for Watersplash Lane are concerned.
15. The appeal site would also have no connectivity with the wider development area, in conflict with one of the key principles of the SPD. Namely that:

"New development must connect with, and enhance, the existing footpaths, cycleways, bridleways and road network as well as creating logical routes within the site. This should be developed into a network of connected routes and spaces. New development should be easy to understand and navigate through".
16. Indeed, the resulting development would be a rather incongruous, standalone cul-de-sac, divorced from the wider allocation by extensive close boarded fencing, and at odds with the form and orientation of dwellings to the east. Being prosaic, it would appear rather 'plonked down' amidst wider planned and extant development, rather than fitting neatly as *"the final piece of the jigsaw for this part of the wider site allocation"*¹.
17. I conclude, therefore, that the appeal proposal would be at odds with local planning policy for strategic development at Warfield, the requirements of which are outlined above, with particular regard to design; the character and appearance of the area; and connectivity.

Affordable housing

18. Saved policy H8 of the Bracknell Forest Local Plan 2002, upon which the Council relies, requires affordable housing on *"identified major housing allocations"* and sites where a net increase of 25 dwellings or more would occur. The appeal scheme clearly falls within the remit of this policy, being part

¹ Appellant's Statement of Case p11

of a major housing allocation. The policy may be old, but that is neither here nor there. It does not depart from national planning policy.

19. The Council also refers to CS policy CS16 and to SALP policy SA9. The latter sets out that the Warfield allocation will provide affordable housing; the former that development will be permitted that:

"contributes to meeting the identified housing needs of all sectors of the community through the provision on suitable development sites of one or more of the following: i) a range of housing types, sizes and tenure; and ii) some dwellings for those with special needs; and iii) some dwellings designed to meet mobility needs and accessibility principles in line with best practice; and iv) affordable housing."

20. As read, the policies require that the Warfield allocation delivers an (unspecified) amount of affordable housing and that new development meets at least one of the criteria in CS16.

21. Policy CS17 reiterates that the Council will require affordable housing on suitable development sites. It then sets out that the Council will establish affordable housing thresholds and the amount to be provided on relevant sites. I am not directed to any recently adopted planning policy where this has been done.

22. Balanced against this is paragraph 63 of the National Planning Policy Framework (the Framework). This states that that:

"provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas..."

23. The Framework is a material consideration of significant weight and I treat it accordingly.

24. The appeal proposal, taken alone, is not major development. Nor is the site within a designated rural area. Even so, in this particular instance and circumstance, I do not consider that the Framework outweighs the clear and present requirements and ambitions of the adopted development plan as they apply to the Warfield allocation.

25. Indeed, taking the appellant's argument to its logical conclusion, a large housing allocation could be divided up into smaller plots with the clear purpose of avoiding affordable housing provision. This would serve only to undermine the delivery of mixed and balanced communities.

26. I am also mindful that, if I were to accept the appellant's argument that the appeal site should be considered apart from the wider allocation, then the proposal would likely fail to accord with policy CS16 in any case. It would not include affordable housing, which would be acceptable, but it does not appear to feature a range of house types, sizes and tenures; some dwellings for those with special needs; or some dwellings designed to meet mobility needs and accessibility principles in line with best practice.

27. The appeal site is part of the wider Warfield allocation, which includes significant levels of housing. It is, clearly, a *"suitable development site"*. As such, it falls to be considered under all of the relevant development plan

policies and should make an appropriate contribution to the delivery of affordable housing in order to meet the clear objectives for the Warfield allocation. How that contribution should be established is far from clear, in so far as the planning policies relied upon are concerned, but the principle remains sound.

28. My attention has been drawn to an appeal decision for a six unit scheme in Oxford, which was granted with no affordable housing provision. That appears to be for a standalone scheme, rather than for a site that was part of a wider allocation. As such, its relevance to the proposal before me is very limited.
29. I conclude, therefore, that the appeal proposal would fail to make appropriate provision for affordable housing in line with the requirements of development plan policy cited above.

Protected species and biodiversity

30. A Preliminary Ecological Appraisal (PEA) was submitted by the appellant with the appeal. This states that [my emphasis]:

"Measures to mitigate for impacts have been set out along with recommendations for enhancement of the Application Site's ecological value. Implementing all of the recommendations detailed within this report will ensure that there are no significant impacts upon protected species and that the proposals will be in conformity with relevant legislation and policy".

31. Among the recommendations are the inclusion of compensatory shrub planting in, and wildflower seeding of, soft landscaping areas; retention of all hedgerow habitats in their entirety; incorporation of reptile hibernacula on the site boundaries; creation of a stag beetle loggery *"within an area of proposed dense shrub planting and out of sight of residents"*.
32. Ecological mitigation measures can, in principle, be conditioned. The difficulty in this instance, however, is that the appeal scheme appears to have been designed in advance of the PEA. It is far from clear how some of the above measures could be accommodated.
33. The area of proposed dense shrub planting, for example, is not identified. Indeed, the only areas of *"soft landscaping"* appear to be private; chiefly rear gardens and small frontages. There does not appear to be any open space on the site that would be in the control of a body that could or would maintain it appropriately, such that it could meet the recommendations above.
34. There are also inconsistencies within the report. It states, for example, that *"the hedgerows will be retained in order to comply with policy EN1"* and notes that *"inherent mitigation has been incorporated into the development with the retention of the hedgerows and trees which form some of the Application Site boundary"*. It then discusses the removal of 20 metres of hedgerow to allow for accesses and, it would appear, to allow for a clear outlook from the front of dwelling 2².
35. It also suggests that provision for reptile mitigation *"is to be achieved via ensuring the retention of suitable habitat during the design stage"*, which has

² Albeit that I note that there is a *"worst case scenario"* of some 47 metres of hedgerow removal, as per the Appellant's final comments and as referenced in the email from the appellant's ecologist, included therein.

not occurred. The later email from the appellant's ecologist³ then performs a *volte face* by stating that:

"the lack of provision of reptile habitat in the Proposed Development would not generate any significant adverse effects to reptiles, and should not be a reason for refusal of the Appeal."

36. Further on in the report, it notes that:

"the loss of this section of the native species-rich hedgerow with trees will be compensated for via the creation of approximately 140 metres of new native-species hedgerow running the length of the southern and eastern boundaries of the Application Site".

37. Again, however, it is not clear how or if this could be achieved. Certainly, plan P1375.07 shows the site bordered by a 1.8 metre close boarded fence.
38. Finally, reference is made to biodiversity enhancements for bird and bats. Again, however, such features do not appear to be integral to the building designs shown and it is not clear if retrofitting could be achieved.
39. In short, the ecological work provided does not inspire confidence for a range of reasons and a precautionary approach is fully warranted.
40. I conclude, therefore, that there can be no certainty that the appeal scheme would not have an adverse impact upon protected species or that it would provide biodiversity enhancements required by adopted planning policy.
41. It would conflict with CS policies CS1 and CS7, which seek, among other things, to ensure that new development protects, promotes and enhances biodiversity.

Thames Basin Heaths Special Protection Area

42. The appeal site is in close proximity to the Thames Basin Heaths Special Protection Area (SPA), designated for its ability to provide a habitat supporting breeding populations of Dartford warbler, nightjar and woodlark, which are protected species under the EC Wild Birds Directive.
43. The CS has identified a zone of influence (within which the appeal site falls), wherein it is assumed that any new residential development will result in a likely significant effect upon this site. This is articulated through CS policy CS14.
44. The Thames Basin Heaths SPA SPD sets out an avoidance and mitigation strategy for new development. It requires provision of Suitable Alternative Natural Greenspace (SANG) and the provision of funding towards strategic access management and monitoring measures (SAMM).
45. The UU provided by the appellant contains an undertaking to pay a contribution of £4,770 to the Council for the SAMM. It also undertakes to provide appropriate levels of SANG space at Moss End Farm. This appears to be a SANG area known to the Council. This being so, the UU would appear to address the issue of a SANG appropriately, with bars to commencement and occupation of the appeal scheme until relevant SANG provision stages are

³ Appendix D to final comments.

passed. It is possible that a Grampian condition could address the matter also, were the UU felt to be deficient.

46. Of concern, however, is the lack of detail provided about the nature of the SANG provision and its ongoing maintenance. This being so, I cannot be certain whether what is proposed would be what is required to mitigate the impact of the proposed development.
47. Of greater concern is the issue that I addressed in paragraph 3 above, namely the fact that the Council is not party to the UU. As such, there can be no certainty for me that the necessary SAMM payment would be spent as it should be by the Council. This is no criticism of the Council but, as the competent authority in this matter, I must be certain that the appropriate mitigation would occur. A UU does not provide such certainty. Once again, a precautionary approach is warranted.
48. I am unable to conclude that the appeal proposal would not have likely significant effects upon the integrity of the SPA. The proposal would conflict with Local Plan Policy EN3, CS policies CS5 and CS14, SALP policy SA9, The Warfield SPD and the Thames Basin Heaths SPA SPD. These seek, among other things, to prevent any adverse effects upon the integrity of the SPA.

Flood Risk

49. There is a fundamental difference of opinion between the parties in relation to the degree to which the information provided with the application is sufficient to establish whether the site could be properly drained. It is never easy to come to a view on such matters when experts disagree.
50. My concern is that much of the appellant's case appears to be based upon rather bald assertions. To wit, in response to the Council's critique, urban creep can be addressed by increased storage, *"which can be accommodated within the proposed development layout"*; the area of permeable paving *"can be increased"* to meet water quality objectives; and using FEH rainfall calculations would entail more storage *"which is readily achievable"*.
51. As an aside, I also note that on-site sewage treatment is cited as being *"just one option"* for dealing with sewage.
52. It is possible that this is indeed the case, but without any demonstration of such, and bearing in mind that this is a full application with the site layout and materials set, some greater certainty that what is asserted as being achievable would be achievable is required. I do not consider it would be appropriate to relegate everything to a condition when there are fairly fundamental matters yet to be fully resolved.
53. I conclude, therefore, that it has not been satisfactorily demonstrated that surface water from the proposed development can be adequately drained, without increasing the risk of flooding elsewhere. As such, the appeal proposal would conflict with CS Policy CS1, which seeks, among other things to ensure that new development protects and enhances the safety of the local population.
54. It would also conflict with paragraph 163 of the Framework. This is clear that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

Other Matters

55. CS policy CS17 and SALP policy SA9 were not included in the Council's second reason for refusal. This is neither here nor there. They are part of the development plan and are, clearly, relevant to the proposal in question. The appellant has had the opportunity to address them and I do consider that they have suffered any disadvantage.
56. Reference is made to the proposal's accordance with relevant parking standards, a lack of highways objections, and a lack of adverse impact upon amenity of neighbouring dwellings. These are not scheme benefits, but basic expectations.
57. I am not persuaded that any significant community benefits would arise, as the financial contributions alluded to are mitigation for the impacts of the development (notwithstanding that the Council is not party to the relevant obligations). The same is true, as far as mitigation is concerned, for any highway works arising.
58. I have addressed above the suggestions that ecological benefits would arise.
59. There would be some benefits arising from the scheme, in so far as it would deliver five new (market) dwellings and some small economic benefits. I do not consider, however, given the degree of harms that I have found, that these small benefits would outweigh the scheme's shortcomings.

Conclusion

60. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard Schofield

INSPECTOR