



Appeal Decision

Inquiry Held on 6 – 8 November 2019

Site visit made on 6 November 2019

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/D0121/W/19/3229938 Elm Grove Nursery, Elm Grove, Locking

- 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 outline planning permission.
 - The appeal is made by Gladman Developments against North Somerset Council.
 - The application Ref 18/P/2652/OUT, is dated 9 March 2018.
 - The development proposed is the erection of up to 110 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Elm Grove, demolition of 20 South Lawn and creation of emergency access from South Lawn. All matters reserved except for means of main site access.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The application subject of the appeal has been made in outline with all matters reserved for future determination, save for the main means of access to the site. I have had regard to the amended drawing number 1422/22 Revision B showing the means of access to the site as well as the site location plan reference 6413-L-01 B. I have regarded all other plans as indicative.
3. Whilst the Council did not issue a decision notice, it confirmed in its statement of case that it would have refused permission for the proposed development for three reasons, namely the failure to comply with the Council's housing strategy, the effect on the strategic gap in terms of its physical characteristics and openness, and the effect on the archaeological interest of the site.
4. Within the subsequent evidence submitted to the Inquiry is a statement of common ground on the matter of archaeology. It confirmed that there were no outstanding matters of dispute between the parties in respect of archaeology, subject to the imposition of appropriate conditions in the event that permission is granted. This matter is not, therefore, a main issue in this case.
5. The development plan for the area is the North Somerset Council Core Strategy adopted 2017 (CS), the North Somerset Council Sites and Policies Plan Part 1: Development Management Policies adopted 2016 (DMP), and the North Somerset Council Sites and Policies Plan Part 2: Site Allocations Plan 2006-2026 adopted 2018 (SAP).

6. The emerging West of England Joint Spatial Plan 2036 has also been referred to but only in so far as it is agreed that, given the stage it has reached and the likelihood of objections to its proposals remaining unresolved, it should only be afforded limited weight. Similarly, the emerging North Somerset Local Plan 2036 is at an early stage of its adoption and, as such, the parties agree that it be given no weight in the determination of this appeal. I have no reason to depart from the agreed position in respect of both these documents.
7. It is common ground between the parties that the Council are unable to demonstrate a deliverable 5 year supply of housing land.
8. Following the Inquiry, I received a signed copy of a Unilateral Undertaking addressing the provision of affordable housing and the other planning obligations that were discussed during the inquiry. This contained some minor amendments, but these are in line with the proposed amendments that were discussed during the Inquiry.
9. In addition to viewing the site myself from various vantage points before and during the Inquiry, I undertook an accompanied site visit on the first day of the Inquiry. This included walking the site itself and viewing the adjoining properties from within the site. I viewed the site from Elm Grove and South Lawn, including from the garden of a property within South Lawn. I also viewed the site from the wider area, including from the A371, Moor Lane and from various points in the village of Hutton. My attention has also been drawn to various locations along Elm Tree Road that would be the subject of proposed highway improvement works.

Main Issues

10. The main issues are as follows:

- i. Whether the location of the proposed development is acceptable, having regard to the local and national planning policies on the location of housing;
- ii. The effect of the development on the function and openness of the Strategic Gap; and
- iii. whether any development plan conflict and harm arising is outweighed by other material considerations, with regard to the National Planning Policy Framework (the Framework) and the benefits of the scheme.

Reasons

Location

11. Policy CS13 (Scale of New Housing) of the CS confirms that a supply of deliverable and developable land will be identified to secure the delivery of a minimum of 20,985 dwellings during the life of the plan.
12. Policy CS14 (Distribution of new housing) of the CS confirms the intention for the distribution of new housing within the Council area. In short, it directs as follows:
 - new housing development to the main towns of Weston-Super-Mare, Clevedon, Nailsea and Portishead;

- some small scale growth within larger villages, described as 'Service Villages'; and
 - development of an appropriate scale and character within 'Infill Villages'.
13. The CS has defined settlement boundaries around each of the above types of settlements. The appeal site is adjacent to but outside of the settlement boundary for Locking, which is identified in the CS as an infill village.
 14. Policy CS14 confirms that, outside of settlement boundaries, development will only be acceptable where a site is allocated in a Local Plan or where it comprises sustainable development which accords with the criteria set out in the relevant settlement policies, Policy CS33 (Infill villages, smaller settlements and countryside) being one such policy.
 15. Policy CS33 confirms that development outside of the defined settlement boundaries will be strictly controlled in order to 'protect the character of the rural area and prevent unsustainable development'. The supporting text goes on to explain that such an approach will avoid perpetuating unsustainable patterns of development, thus retaining the character of villages and the openness of the countryside (paragraph 4.92 of the CS). The development proposed would not be of the type identified in Policy CS33 as being appropriate outside of the defined settlement boundaries.
 16. It is common ground between both parties that the appeal proposal does not accord with the locational requirements of policies CS14 and CS33. I have no reason to reach a different conclusion.
 17. With regard to the harm that results from a failure to comply with the strategy, I note that Policy CS14 provides an indication of the anticipated distribution of new dwellings per type of settlement, suggesting 985 dwellings within other settlements and the countryside (including infill villages). This figure has been significantly exceeded with a current total suggested by the appellant as 1,438 units. This figure was not disputed by the Council.
 18. The Council suggest that the exceeded number of dwellings within other settlements and the countryside has distorted the housing figures and that adding to that number would cause further harm to the Council's housing strategy. That may well be the case if, like the appeal proposal, a significant proportion of those dwellings were approved in conflict with the adopted settlement policies, including Policy CS33. However, I have not been provided with sufficient evidence to show what proportion of the 1,438 units approved are policy compliant. It is of note that the figures provided within Policy CS14 are expressed as a minimum. It therefore follows that the development would not conflict with Policy CS14 simply because it added to the already exceeded number of dwellings within other settlements and the countryside. Harm would, however, arise by adding to that figure with dwellings that would not comply with the exceptions set out in Policy CS33.
 19. It is acknowledged that the strategy allows for the approval of dwellings within the countryside. However, such development has been considered in a planned manner as part of a wider strategy. Putting aside the matter of the Strategic Gap, whilst the development may well be acceptable in all other regards, conflict with the plan and the housing strategy would be harmful to the plan-led system and the approach of actively managing patterns of growth

in the interests of making the best use of previously developed land, minimising the need to travel to work and giving the residents of the Council area the best degree of access to services and facilities. Whether or not the strategy is failing is another matter to be considered later in this decision. As the development would be harmful to the Council's strategic settlement and housing delivery strategy, and conflict with policies CS14 and CS33 of the CS, I conclude that the location of the development would be unacceptable.

20. My attention has been drawn to a number of appeal decisions, many of which are consistent with my conclusions above with regard to compliance with the settlement strategy. Whilst the appellant has made particular reference to the appeal decision relating to land to the north of A368 at Sandford¹, this decision was made at a time when the CS policies referred to above had been remitted and could not, therefore, be relied upon. Accordingly, none of the appeal decisions referred to alter my conclusions on this first main issue.

Strategic Gap

21. Policy CS19 of the CS identifies a number of Strategic Gaps between settlements. This policy is also supported by SAP Policy SA7. Both the CS and SAP inform that strategic gaps are needed in the locations identified as reliance on countryside policies alone would be unlikely to provide sufficient protection against development which would harm the separate identity, character and/or landscape setting of settlements or distinct parts of settlements. Both parties agree that the Strategic Gap policies of the CS and SAP are consistent with the policies of the Framework.
22. Policy SA7 sets out the circumstances under which development within the Strategic Gaps will be permitted. These are as follows:
- the open or undeveloped character of the gap would not be significantly adversely affected;
 - the separate identity and character of the settlements would not be harmed; and
 - the landscape setting of the settlements would not be harmed.
23. The majority of the appeal site is located within the Strategic Gap (SG) that separates Weston-Super-Mare from the villages of Locking, Hutton and Parklands Village. In the vicinity of the appeal site the SG lies between Locking and the strategic housing site known as Haywood Village on the outskirts of Weston-Super-Mare. Whilst the SG includes an area of the Haywood Village strategic allocation, the area included within the SG would be retained as open space and would mainly be used for drainage purposes. Accordingly, the boundary of the SG in this location is, in general, along what would be the extent of planned built development within Haywood Village.
24. Between Haywood Village and Locking there are also areas of built development that have been excluded from the SG, including land at Weston Business Park (WBP) and the Helicopter Museum (HM), as well as the static and mobile caravan park known as Oaktree Park (OP).

¹ Appeal reference APP/D0121/W/15/3139633

25. The SG between Locking and Haywood Village is fragmented as a result of the excluded areas (including WBP, the HM and OP). It is, therefore, reduced to three narrow areas or strips of land, namely the area between Haywood Village and WBP, the area between WBP and OP, and the area between OP and Locking. I have had regard to the appeal decision relating to land at WBP Laneys Drove², which is a site close to the appeal site and within the SG between Locking and Haywood Village. In her decision the Inspector emphasised the importance of the SG in this location and I would agree with her conclusions in this regard; the SG is sensitive in this location in view of its fragmented nature and narrowness.
26. The open and undeveloped character of the SG in the area of the appeal site can be appreciated from viewpoints along the A371, from Moore Lane and from Hutton. In particular, from the elevated viewpoints in Hutton I had a full appreciation of the western limit of Locking and the undeveloped gap that is present between Locking and OP. From here I could appreciate the sense of the SG starting from the southern boundary of the appeal site, extending over the A371 and onto the area between Weston-Super-Mare and Parklands Village. This is shown in Mr Hutton's photograph No 6³.
27. In addition to the above, the character of the SG can also be perceived from within the village of Locking, particularly through gaps in the existing houses along Elm Tree Road and South Lawn. From here I could distinguish the western limit of the village and could appreciate the open undeveloped land beyond.
28. The appellant has drawn my attention to the fact that the part of the appeal site that is within the SG is an extension to the boundaries of the SG as originally drawn, and that there is little written rationale for its inclusion within the SG. Whilst this may be the case, it is clear from the Inspector's report on the examination of the SAP⁴ that the area of the SG that is within the appeal site was the subject of discussion during the examination and that the Inspector pays particular attention in the report to whether or not it should be included. Her conclusion is that it should be included. The plan, which includes the amended boundary of the SG to include the majority of the appeal site, has been found sound. Whilst the appellant's objections and legal challenge to this are acknowledged, they do not reduce the weight given to the importance of this part of the SG.
29. Locking is a physically contained settlement that retains a separate identity. OP is also a physically isolated pocket of development within the SG. The development would extend the limit of the village of Locking westward, across the SG, linking it with the static caravan (residential) area of OP. It would cut across one of the three areas of SG between Locking and Haywood Village, referred to above, resulting in a significant reduction in the extent of the SG between the two. The swathe of development that would be a consequence of the development would not only cause harm to the existing contained character and identity of Locking, but would compromise its ability to retain its identity separate from Haywood Village and the wider settlement of Weston-Super-Mare.

² Appeal Reference APP/D0121/W/17/3184845 – Core document CD10.1

³ Appendix 4 of proof of evidence of Michael J Muston

⁴ Planning Inspectorate Reference PINS/D0121/429/12 – Core document CD7.5

30. It is unlikely that the development would be visible from the A371, due to the degree of separation between the A road and the appeal site. However, it is likely that the development would be visible from South Lawn, particularly from views between dwellings and from the proposed pedestrian and emergency access that currently forms part of the scheme. From South Lawn in particular, the perception of the western limit of the village to the rear of the dwellings along South Lawn would be lost.
31. The effect of the development on the SG would be most appreciated from the viewpoints in Hutton. From here the southern boundary of the appeal site is clearly discernible and, whilst the site falls away towards its northern boundary, it is still likely that the scheme would be prominent as a link of continual development from Locking to OP. Whilst it may be the case that the development would not appear to have great depth when viewed from Hutton, one would still appreciate the effect of the closing up of one of the three narrow strips of the gap between Haywood Village and Locking. In addition to this, the two strips of the SG that would remain are not readily visible from the viewpoints in Hutton. As such, from this view it is likely that the development would result in a continual strip of development from Locking across to Haywood Village.
32. Having noted how clearly I could see existing development in the vicinity of the appeal site, it is unlikely that the appellant's suggestion of an enhanced landscaping scheme along the southern boundary of the appeal site would successfully screen the development from views from Hutton. Notwithstanding that landscaping should be used to enhance a development, and not screen it from views.
33. The gap beyond the A371 and that between Haywood Village and Hutton would remain and still be visible from here, but the gap between Locking and Haywood Village (and the wider settlement of Weston-Super-Mare) would, in all likelihood, be lost as a result of the development.
34. Whilst views of the site from Hutton are not from within the SG, the contribution made by the part of the SG that is within the appeal site is, nevertheless, appreciated from Hutton. Policy SA7 does not require an assessment of impact from within the Gap. As such, it would not be reasonable to reduce the weight to any harm caused to the SG that can only be appreciated from outside the gap. Furthermore, I see no reason to reduce the weight I give to the harm that would be caused to the SG as viewed from Hutton simply because of the distance of the appeal site from Hutton.
35. Whilst my attention has been drawn to appeal decisions that consider the effect of development on the SG, I can agree with the appellant that the assessment of harm would be a site specific matter. Nevertheless, whilst the development on land north of Oldmixon Road may well have been approved within the SG, the decision was made at a time prior to the adoption of the SAP when it was not certain whether or not the appeal site in that case would be within the boundary of the SG and whether compliance with Policy CS19 was required. This decision does not, therefore, alter my conclusions above.
36. To summarise on this second main issue, having regard to the sensitivity of the SG between Locking and Haywood Village and the effect the development would have on this part of the SG, it follows that the scheme would have an unacceptable effect on the function and openness of the SG. The development

would conflict with CS Policy CS19 and SAP Policy SA7 as it would significantly adversely affect the open and undeveloped character of the SG and would compromise the separate identity and character of adjoining settlements, in particular the village of Locking.

Other Matters

37. I have had regard to other matters raised in objection to the development, particularly in respect of highway safety and drainage. As I am dismissing the appeal on the main issues, I have not addressed these matters further.

Planning Balance

38. The Council are unable to demonstrate that it currently has a five year supply of housing land, as required by paragraph 73 of the Framework. Accordingly, the provisions of paragraph 11d)ii of the Framework apply. In this regard, the appellant is right, that the strategy is failing. As such, the CS policies that form part of the strategy and are most important to the determination of this appeal (policies CS14 and CS33) can be regarded as being out-of-date for the purposes of paragraph 11 d). Furthermore, as CS Policy CS19 and SAP Policy SA7 also have the effect of restricting the supply of housing land, I conclude that these policies are also out-of-date. Such a matter is a significant material consideration in the determination of this appeal.
39. In this regard the appellant points to the addition of up to 110 units of housing to the supply of housing in the area. This would be an unquestionable benefit, along with the addition of 30% of the scheme as affordable housing. Whilst the Council may well be performing well in the delivery of affordable housing, when compared to the total requirement set out in the CS, this would not reduce the weight I give to its provision in this case. These are matters that add substantial weight in favour of the development.
40. The appellant suggests that the development would result in a net benefit to biodiversity in the area, although the final biodiversity works to be secured by the development would only be known and agreed at reserved matters stage. Notwithstanding this, development should in any event contribute to, and enhance, the natural environment in order to accord with the Framework (paragraph 170). Whilst a biodiversity gain would be a benefit, it is a requirement for development to be considered acceptable. As I have nothing before me to suggest that the gain to be provided by this development would be substantial, I give this matter limited weight.
41. The appellant has also pointed to the improvements that would result from the development, including the provision of public open space and play equipment as well as off-site highway improvements and traffic calming measures. The introduction of sustainable drainage on site would also reduce the site's contribution towards any future incidents of flooding. Whilst these are noted, it has not been suggested that these improvements would be more than the minimum required to mitigate the impact of the development. I acknowledge that, by their nature, the mitigation works would be of some benefit to the existing residents of Locking. For this reason, they would merit limited weight, as opposed to being neutral in the planning balance.
42. The economic benefits during construction of the development would also add weight in favour of the scheme, albeit such benefits would be temporary. The

social and economic contribution the occupiers of the site would make to the community and the local economy are also acknowledged and add weight in favour of the scheme.

43. Whilst the appellant suggests that the payments for the Community Infrastructure Levy (CIL) would be an economic benefit of the scheme, such requirements are necessary to mitigate the impact of the development and would, therefore, have a neutral effect in the planning balance.
44. The above benefits of the scheme are acknowledged and, in some circumstances, given substantial weight. However, I attribute significant weight to the adverse effects of the development, particularly with regard to the effect of the development on the SG. I conclude that the harm caused in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. Accordingly, the proposal would not benefit from the Framework's presumption in favour of sustainable development.

Conclusion

45. Having regard to the harm found in this case on the first two main issues, in particular the demonstrably harmful effect the development would have on the function and purpose of the SG, the development would be in conflict with policies CS14, CS19 and CS33 of the CS as well as Policy SA7 of the SAP. There are no material considerations that would indicate that the decision in this case should be taken otherwise than in accordance with the development plan. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

J Moss

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel	Instructed by Head of Development Management at North Somerset Council
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He called:

Mr Michael J Muston BA (Hons) MPhil MRTPI	Director of Muston Planning
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The following also contributed for the Council:

Philip Anelay	North Somerset Council
Roger Willmott	North Somerset Council
G Felstead	North Somerset Council
Michael Keep	North Somerset Council

FOR THE APPELLANT:

Martin Carter of Kings Chambers	Instructed by Miss Diana Richardson of Gladman Development Limited
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He called:

Ben Jackson BEng (Hons) MSc MCIHT	Director of Ashley Helme Associates Limited
Matthew Travis BSc (Hons) MSc C.WEM M.CIWEM CSci C.Env	Director of Enzygo Limited
Dianna Richardson MA BA (Hons) MRTPI	Planning Director of Gladman Developments Limited
Gary Holiday BA (Hons) MPhil CMLI	Director in FPCR Environment and Design Limited

INTERESTED PERSONS:

Paul Jones	Chair of Locking Parish Council
Elfan Ap Rees	Local Resident
Carl Prosser	Local Resident
Mark McManners	Local Resident
Mark Compitus	Local Resident
Linda Day	Local Resident
David Day	Local Resident
M G Hill	Local Resident
Mrs Kathleen Jones	Local Resident
Michael Butcher	Local Resident
Mrs Carol Butcher	Local Resident
Shirley Chapman	Local Resident
James Chapman	Local Resident
Julia Richards	Local Resident
Frank Richards	Local Resident

Trefor Garfield	Local Resident
Martina Garfield	Local Resident
Denise Jones	Local Resident
David Jones	Local Resident
Terry Porter	Local Resident
Steve Willie	Local Resident
Malcom Woody	Local Resident
Denise West	Local Resident
Margaret Driver	Local Resident
Kevin Driver	Local Resident
J Telling	Local Resident
Steve O'Leary	Local Resident
Mike Solomon	Local Resident
D Price	Local Resident
Tim Poupard	of Gladman Developments Limited
Rob Wilding	of Gladman Developments Limited
Richard Naylor	of Gladman Developments Limited
David Price	of Gladman Developments Limited
Natalie Richards	North Somerset Council

INQUIRY DOCUMENTS

1. Appearance List for the appellant
2. Draft version of the unilateral undertaking
3. Opening statement made on behalf of the appellant
4. Opening statement made on behalf of North Somerset Council
5. Statement of Mr Elfan Ap Rees
6. Statement of Mr M McManners
7. Two plans provided by Mr Paul Jones
8. Bundle provided by Mr Carl Prosser, containing email correspondence and photographs
9. Plan number 1422/25 entitled 'Pedestrian Inter-visibility'
10. Amended list of conditions
11. Plan number 6413-E-01 Revision B entitled 'Ecological Buffers Parameter Plan'
12. Haywood Village – Western Park Phase II Indicative Masterplan
13. Closing submissions made on behalf of North Somerset Council
14. Closing submissions made on behalf of the appellant.

Documents Submitted following the close of the Inquiry:

1. A certified copy of the unilateral undertaking