



Appeal Decision

Site visit made on 3 January 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 24th January 2020

Appeal Ref: APP/H1705/W/19/3235375

Land west of Cufau de Lane, Bramley RG26 5DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Willie Stokes against the decision of Basingstoke and Deane Borough Council.
 - The application Ref 19/01467/FUL, dated 29 May 2019, was refused by notice dated 9 August 2019.
 - The development proposed is the formation of an access track and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The appellant avers that the appeal is against the Council's failure to determine application Ref 19/01467/FUL within the relevant statutory period. However the appeal was made on 15 August 2019, after the Council's decision notice. That difference of perspective relates to the submission and assessment of additional evidence during the Council's determination of the application, albeit that there is a separate procedure for disputes in respect of validation.¹ In any event the Council's reasons for opposing the development proposed are set out in section 3 of their appeal statement and are consistent with those in the decision notice.
3. Since this appeal was made, other appeals seeking permission for the use of neighbouring land as traveller pitches have been dismissed (the 'previous appeals').² In all but two of the previous appeals, the appellant here was an appellant there. References to travellers in this decision are to the planning definition of such persons in Annex 1 to Planning policy for traveller sites, 'PPTS'. Notwithstanding that the appellant is a traveller, the scheme does not relate to authorised pitches, nor does it seek permission for such directly.
4. However the appellant explains that the proposed track is intended to be 'used in conjunction' with the traveller pitches under consideration via the previous appeals, and to be 'adequate for residential use'. I have assessed the appeal on that basis. However, setting that aside, provision of a consolidated track would likely lead to increase vehicular use of some form or another by virtue of providing an improved surface useable by a range of vehicles.

¹ Article 12 of the Town and Country Planning (Development Management Procedure)(England) Order 2015.

² Ref APP/H1705/C/18/3203089, APP/H1705/C/18/3203087, APP/H1705/C/18/3203090, APP/H1705/W/17/3183258, APP/H1705/W/18/3199357, APP/H1705/W/18/3199331.

5. Having noted the planning background here, each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this instance the development plan includes policies of the Basingstoke and Deane Local Plan 2011-2029 (adopted 26 May 2019, the 'LP') and of the Bramley Neighbourhood Plan 2011-2019 (made 30 March 2019, the 'NP'). I have had regard to various other material considerations, including the National Planning Policy Framework ('NPPF') and the Planning Practice Guidance ('PPG').

Planning background

6. The current scheme was advanced with the intention of demonstrating that satisfactory access to land west of Cufaude Lane could be achieved to serve the traveller pitches previously proposed. That was at issue in the previous appeals, amongst various other matters. Land west of Cufaude Lane is, on the plans and on the ground, subdivided into a number of rectangular parcels. The appellant owns what is annotated on certain plans as 'plot 4'.³
7. To the north-east the proposed track would make use of an existing field access related to the wider field in which plot 4 is situated. I understand that the authorised use of the field is a mix of agriculture and equestrian.⁴ The appeal site itself is a right-angled strip of land, running initially perpendicular to Cufaude Lane and thereafter broadly parallel to it southwards behind the parcels of land described above. It is presently compacted and uneven earth. The appeal site is not owned by the appellant, albeit I understand that he benefits from a right of access over it.
8. There are slight discrepancies between the plans before me and the area to which an Enforcement Notice of 8 July 2014 applies ('EN').⁵ The EN, subsequently supported via injunction, required the removal of hardstanding and site restoration. However the appeal site and land to which the EN applies overlap, and the appellant explains the proposal is to 'formalise an existing dirt track'. As such any mapping discrepancies do not suggest that the track now proposed is significantly different from the area to which the EN relates.

Main issues

9. Against the background above, and somewhat interconnected, the main issues are (i) the effect of the development proposed on the character and appearance of the area, (ii) whether or not it has been demonstrated that access to Cufaude Lane would be safe and suitable, and (iii) whether or not the scheme would be acceptable with regard to flooding vulnerability.

Reasons

Character and appearance

10. Connecting the village of Bramley with the outskirts of Basingstoke some way away, Cufaude Lane is narrow, winding and enclosed by hedgerows and trees. Here it is without dedicated footways or lighting. There are occasional buildings dotted along its length. However many are historic and few visually prominent.

³ HP616799, J002608-AA-01, 1803006-SK02.

⁴ Following planning permission Ref 17/02307/RET approved in 2017.

⁵ Ref Jan/XN04767.

The dispersed built form of Bramley only becomes apparent by the junction with The Street several hundred metres away northwards.

11. The NP aptly explains how, south of the Village, the landscape is principally characterised by a mosaic of irregular pastoral fields, contributing towards an 'unspoiled rural setting'.⁶ Those characteristics are evident around the appeal site. Views along Cufau de Lane close to Lock's Bridge across Bow Brook nearby are referenced in LP illustration 6c as of particular importance to the rural setting of Bramley. The site also falls within the North Sherborne Character Area, as defined in the Council's 2001 Landscape Character Assessment ('LCA'), the key characteristics of which are similarly given as an undulating landform of agricultural land cut by networks of tributaries and lanes.
12. In summary, and amongst other things, LP policies EM1, EM10 and NP policies D1 and D2 require that all development integrates appropriately with local character and distinctiveness. Similarly, noting my reasoning in paragraph 4 above, PPTS paragraph 26 and NPPF paragraph 170(b) guide as to how development should respect the environment, including recognising the intrinsic character and beauty of the countryside.
13. In that context, I agree with the observation of the Inspector who determined the previous appeals, in so far as hedge clearance to facilitate access to various parcels of land west of Cufau de Lane, in conjunction with other development, has had 'a significant adverse impact' on rural character. Nevertheless field accesses are not inimical to a countryside setting. A consolidated track would inherently be low-lying. The use of muted, unobtrusive materials could also be required via condition were the proposal otherwise acceptable.
14. However the management of road verges and hedgebanks in order to maintain rural character is identified as a key issue in the LCA. That the proposal would enable the reinstatement of vegetation lost to provide access to individual parcels of land west of Cufau de Lane is incidental given that such development is unauthorised (as established via the previous appeals). I also saw how, for visibility along the Lane, some clearance of vegetation around the field access appears to have already occurred. The existing access is atypically wide and open compared to others along Cufau de Lane,⁷ or that which is commonplace in association with agricultural fields.
15. Moreover a consolidated track composed of whatever material would be somewhat at odds with the rural character of the area. It would inherently result in the introduction of an artificial and geometric form in an element of land which is presently broadly consistent with its natural surroundings (effectively reversing the requirements of the EN). The development proposed would inevitably be visible from vantage points along Cufau de Lane, detracting from its otherwise essentially consistent character. There would also likely be fleeting visibility from public footpath No 23 to the west, which runs initially from Vyne Road towards the appeal site and touches Bow Brook. In my view there would be limited opportunity to reduce such effects via landscaping and planting given the need to keep access unobstructed.

⁶ Paragraph 2.18 and the vision for Bramley under NP paragraph 3.03.

⁷ Noting the hedge clearance referred to in paragraph 3.23 of the Council's statement of case.

16. Furthermore, whilst the provision of hardstanding in connection with an agricultural use is permitted development under certain circumstances, such development must be 'reasonably necessary' for agricultural purposes. With that in mind, and given the recognition given in the development plan and NPPF to the character of the countryside, incongruous development must be appropriately justified. There is no clear rationale for the development proposed with regard to the extant authorised use of the site (a matter to which I will return).
17. As set out above there are various factors that would moderate the visual effects of the proposal. Nevertheless the scheme would result in discordant development relative to, and to the detriment of, the intrinsic character of the countryside here and its value to the rural setting of Bramley. The proposal would consequently adversely affect local character and appearance, in conflict with the relevant provisions of development plan policies and elements of national planning policy referenced in paragraph 12 above.

Access provision

18. LP policy CN9, criteria b) and d), NP policy T2, and NPPF paragraph 108(b) seek to ensure that all development benefits from safe and suitable access. Policy CN9 references the Government's guidance in Manual for Streets ('MfS'). Amongst other things MfS sets out recommendations for access visibility with regard to stopping site distances ('SSD'), i.e. the distance necessary for vehicles to come safely to a stop and avoid collisions.
19. Here Cufaude Lane is subject to the national speed limit. However drivers are likely to moderate their speed on account of its narrow and winding character. The appellant's survey of traffic speeds (the 'speed survey') measured observed speeds at two locations either side of the field access to Cufaude Lane; 'site 1' to the north and 'site 2' to the south, locations I saw during my site visit with reference to the supporting photographs.
20. Observed average speeds during dry conditions are given in the speed survey as 37.9kph to the north and 35.5kph to the south. Based on the methodology in MfS, those speeds generate a recommended SSD of approximately 55m and 50m respectively. Those figures, with a 2.4m set-back from Cufaude Lane in line with MfS paragraph 7.7.6, are annotated on plan 1803006 – SK02. Therefore at face value the scheme appears to provide for acceptable levels of visibility of oncoming traffic.
21. The appellant has brought my attention to an article of November 2010 from the CIHT's publication Transportation Professional. That references the publication of Manual for Streets 2 ('MfS2') and the flexibility therein 'of not sticking too rigidly to design standards...'. MfS2 notes, as regards SSD recommended via MfS, that 'unless there is local evidence to the contrary, a reduction in visibility will not necessarily lead to a significant problem'.
22. However there are three critical shortcomings with the scheme in this respect. Firstly plan 1803006 – SK02 shows visibility splays related to access from plot 4 directly to Cufaude Lane, rather than in respect of the appeal site. Plan J003279-DD05 purports to show that the same visibility could be achieved from the existing field access. However that is on the basis of a set back from Cufaude Lane of only 2m as opposed to 2.4m.

23. I understand that Cufaude Lane accommodates a significant volume of traffic, notably associated with Chineham Business Park at the fringes of Basingstoke. The speed survey corroborates that point, explaining how during the study period of 13-19 March 2018 between 4092 and 4201 vehicles passed by the site, a comparatively high volume for many rural lanes. Given observed speeds and vehicle flows, in my view the proposal would not relate to a 'very lightly-trafficked and slow speed situation' as set out in MfS paragraph 7.7.7 where a 2m set-back may be considered.
24. Secondly there is a methodological flaw in the selection of the location of speed survey 'site 2'. That likely stems from visibility being initially assessed from plot 4, as set out above. Site 2 is just to the south of Lock's Bridge where Cufaude Lane narrows and twists, and from where the field access is not visible. In that location forward visibility is significantly more limited than next to the appeal site, such that observed speeds there will likely be unrepresentatively low. My reasoning in that regard is reinforced by the difference in observed speeds between the two speed survey sites set out above. The Inspector who determined the previous appeals reasoned that access visibility from the pre-existing field access was 'satisfactory'. However that may be a reference to the use of the access in association with the authorised uses of the wider field. Regardless, the speed survey before me was not before him.
25. Thirdly, in order to achieve the visibility splays illustrated on either plan 1803006 – SK02 or J003279-DD05, land outside of the appellant's ownership or control will need to be kept free of obstruction. Paragraph 4.3 of the appellant's statement of case explains that, in this instance, the owners of 'The Oaks', which includes land to the south of the field access transgressed by the visibility splay, 'was served notice and did not object to the appeal proposal'. That does not amount to confirming acceptance of maintaining visibility.
26. Moreover the Council explain that ownership of The Oaks is unknown. There is no indication of the position of any individual with an interest in that land. Whilst private land ownership and planning are largely separate matters, in this instance the former is relevant as to whether appropriate visibility can be achieved in practice. In that context, and with regard to the approach in the PPG, I cannot reasonably require that appropriate visibility is maintained over third-party land.⁸ There is also no indication of the extent to which visibility of oncoming traffic would fall short in the absence of visibility splays across neighbouring land.
27. Plan J003279-DD05 also shows that some vegetation may need to be cleared north of the site, which would not be necessary were the arrangements shown on plan 1803006 – SK02 implemented on account of the difference in location between the two.⁹ Although I accept that visibility northwards is greater, on account of the straighter alignment of Cufaude Lane that way, it is not certain that such land would be maintained so as not to cause obstruction, or that the owner is agreeable to that. Moreover the need to keep visibility splays maintained reinforces my view in respect of the first main issue (with regard to paragraph 14 of this decision in particular).

⁸ There is no deed before me in this respect, and a condition requiring such would not be appropriate or reasonable (with regard to NPPF paragraph 55 and PPG Reference ID: 21a-010-20190723).

⁹ The latter appears to be the basis upon which the Council have assessed implications for hedgerow reduction.

28. Furthermore NP paragraph 6.110, and supporting Appendix G to it, note particular locations where there is evidence of traffic hazards or conflict. Cufau de Lane is identified as such on account of its alignment and width relative to its strategic location described above. Given the nature of Cufau de Lane, the volume of traffic it accommodates, and as it is part of National Cycle Network Route 23, there is the potential for bottlenecks and conflict between different users to arise. That is likely to be exacerbated via the creation of substandard accesses, even if the shortfall in visibility relative to MfS recommendations is relatively modest.
29. For the above reasons I am not satisfied that suitable levels of access visibility could be achieved. As such it has not been demonstrated that safe and suitable access would be provided, nor can I legitimately remedy that by conditions. The proposal therefore conflicts with the relevant provisions of LP policy CN9, NP policy T2 and NPPF paragraph 108, with regard to the approach in MfS.

Vulnerability to flooding

30. The appeal site falls within flood zone 3b, i.e. the functional floodplain, as shown in the Council's Strategic Flood Risk Assessment (updated in 2012). Unsurprisingly that is land with the highest probability of flooding, in this instance related to the potential for fluvial flooding associated with Bow Brook (a designated main river). Access tracks are not accorded a discrete flood risk vulnerability rating, with land and buildings used for agriculture being defined via the PPG as 'less vulnerable' than other uses or types of development.¹⁰
31. Broadly LP policy EM7 and NP policy RE1 seek to ensure that all development is appropriately located with regard to minimising vulnerability to flooding. That is similarly the approach in the NPPF, at paragraphs 158 and 159 in particular. LP policy CN5 relates specifically to travellers, and sets out that traveller sites will only be allowed outside of allocations subject to various criteria being met including d) that safe and reasonable access to the highway can be achieved. Supporting paragraph 5.44 to LP policy CN5 refers to flooding vulnerability, explaining that sites in flood zone 3 will not be permitted.
32. Subject to adherence to appropriately-worded conditions, the proposed track could be created out of porous materials so as to little alter the permeability of the site. However mobile homes intended for permanent residential use, as were proposed via the previous appeals, are rated 'highly vulnerable' to flooding. Within the terms in which the application was made as set out in paragraph 4 of this decision, the proposal is intended to facilitate the provision of mobile homes in the functional floodplain.
33. The previous appeals refer to various instances of flooding in this location in 2007, 2010, 2013, 2014 and 2019. Reference is also therein made to 30 flood alerts since 2012 in the wider Upper River Loddon Flood Alert Area which encompasses the appeal site. Set against that clear evidence of flooding previously, the proposal is not supported by a flood risk assessment with reference to NPPF paragraph 164 and footnote 50 (as should accompany all development proposed in flood zone 3). There is also no hydraulic modelling or evidence of flood depths here previously or forecast to arise in the future.

¹⁰ Reference ID: 7-066-201040306.

34. Furthermore, the Inspector who determined the previous appeals reasoned that the suitability of the field access in conjunction with traveller pitches 'must remain in considerable doubt because it has not been demonstrated that it could provide safe access/ egress in the event of flooding'. He further reasoned, with regard to Environment Agency Guidance, that flood depths likely to arise would be classified as giving rise to 'danger for most', whereas it is recommended that safe access should instead have a 'very low' hazard rating. There is no substantive evidence before me to counter that reasoning.
35. I cannot legitimately impose some form of condition requiring that safe access is provided with regard to flooding vulnerability in the absence of robust evidence demonstrating that would be feasible. In itself, or in connection with the extant authorised use of the site, an access track would not be inherently unacceptable in this respect. However the proposal seeks to enable, or to aid, the establishment of a highly vulnerable use within the functional flood plain without adequate justification. I therefore conclude that the proposal would conflict with the relevant provisions of development plan policies and elements of the NPPF set out in paragraph 31 above.

Other matters

36. The proposal would be beneficial in connection with the extant uses of the wider field and any potential future uses. The appellant highlights NPPF paragraph 127(e), which sets out how decisions should seek to ensure that development 'optimises the potential of the site to accommodate and sustain an appropriate amount and mix of development'. I have also noted that there are various factors that would moderate the visual effects of the proposal, and appreciate that the scheme and supporting evidence were originally advanced by way of potential solution to a matter at issue in previous appeals.
37. However the proposal would adversely affect local character. Based on the information before me it would also fail to accord with the provisions of the development plan and NPPF in respect of ensuring safe and suitable access and minimising the vulnerability of development to flooding. That is on the basis of the terms in which the application was made, albeit I have also explained that there is no compelling justification for the scheme in association with extant uses of the field (which do not require an access of residential standard).
38. Inherent in that reasoning is that the scheme does not provide an acceptable solution in terms of access as was previously in dispute. As such it is unnecessary to address any wider points at issue in the previous appeals, including traveller pitch need or provision more generally. No other matters are therefore sufficient to justify taking a decision other than in accordance with relevant provisions of the development plan.

Conclusion

39. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and with regard to all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow
INSPECTOR