



Appeal Decision

Site visit made on 5 February 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2020

Appeal Ref: APP/L1765/W/19/3239617

North Winchester Farm, Stoke Charity Road, Kings Worthy SO21 2RP

- 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 The Humphrey Partnership against the decision of Winchester City Council.
 - The application Ref 19/00009/FUL, dated 21 December 2018, was refused by notice dated 31 May 2019.
 - The development proposed is demolition of a former agricultural building and erection of 3 no. detached dwellings, access, parking, landscaping, and associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by The Humphrey Partnership against Winchester City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council have advised that they no longer wish to defend the second reason for refusal which relates to the provision of affordable housing. I return to this matter later in my Decision as a main issue.
4. The appellant has submitted a preliminary landscaping plan (dwg no: P1-05) which shows the intended landscaping works that would be undertaken as part of the proposed development. As the submitted drawing does not evolve the scheme, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I am satisfied that neither the Council nor any other appeal party would be prejudiced by my determination of the appeal on that basis. For the avoidance of doubt, I have taken account of the preliminary landscaping plan in the determination of the appeal.

Main Issues

5. The main issues are (i) whether the proposed development would provide a suitable location for housing; (ii) the effect of the proposal on the character and appearance of the area; and (iii) whether it is necessary for the proposal to include a financial contribution towards affordable housing and, if so, whether there are mechanisms in place to ensure that any such requirements are properly controlled and achieved.

Reasons

Location of development

6. The appeal site is occupied by a former agricultural building, which is served by an existing access track. It is proposed to demolish the building and erect three detached dwellings at the site, which would be served by the existing access.
7. The site is located in the countryside outside of the defined settlement boundary of Kings Worthy. In such locations, Policy DS1 of the Winchester District Local Plan Part 1 – Joint Core Strategy (March 2013) (the 'CS') seeks to limit the provision of new open market housing.
8. Policy MRTA4 of the CS explains that the Council will only permit the following types of development in the countryside: (i) development which has an operational need for a countryside location, such as for agriculture, horticulture or forestry; or (ii) proposals for the reuse of existing rural buildings for employment, tourist accommodation, community use or affordable housing (to meet demonstrable local housing needs); or (iii) expansion or redevelopment of existing buildings to facilitate the expansion on-site of established businesses or to meet an operational need, provided development is proportionate to the nature and scale of the site, its setting and countryside location; or (iv) small scale sites for low key tourist accommodation appropriate to the site, location and the setting. In all cases, development should not cause harm to the character and landscape of the area.
9. The main parties agree that the appeal proposal would not meet any of the criteria set out within Policy MRTA4 of the CS. Consequently, given the countryside location of the proposed development and the tenure of housing proposed, I conclude that the proposal would not accord with Policies DS1 and MRTA4 of the CS.
10. Planning law¹, as noted by Paragraph 12 of the National Planning Policy Framework (the 'Framework'), dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.
11. In this instance, it has been brought to my attention that prior approval was granted by the Council on two occasions in June 2018² and August 2019³, respectively for a change of use of the existing agricultural building into three dwellings with associated operational development in accordance with the provisions set out in Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'). The evidence before me indicates that the respective proposals are identical.
12. Paragraph Q.2(3) of the GPDO states that the works must be completed within a period of three years starting with the prior approval date. Therefore, the latest prior approval remains extant until August 2022.
13. The appellant explains that there is a realistic prospect of the approved development being delivered should the current application be refused. Based

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

² Council Ref: 18/01074/PNACOU

³ Council Ref: 19/01411/PNACOU

on the evidence before me, I am satisfied that there is a greater than theoretical possibility of this fallback option being implemented. As such, I have afforded significant weight to this fallback position as a material consideration.

14. The Council argue that the fallback position does not justify setting aside the Council's development strategy. I am cognisant that the Council's development strategy, as set out within Policies DS1 and MRTA4 of the CS, aims to limit the provision of new open market housing in the countryside by directing development to the existing settlements. However, the implementation of the extant prior approval consent would result in the creation of three open market dwellings at the appeal site, which would be a comparable outcome to the appeal proposal. For the reasons given, I afford significant weight to the appellant's fallback position as a material consideration, and, on that basis, notwithstanding the conflict with Policies DS1 and MRTA4 of the CS, I conclude that the proposed development would provide a suitable location for housing.

Character and appearance

15. The appeal site lies within the Wonston Downs Landscape Character Area (the 'LCA'). The Council's Landscape Character Assessment explains that the LCA almost entirely comprises an arable landscape with very little tree/woodland cover.
16. The boundaries of the appeal site are marked by post and wire fencing and some scattered hedgerow. The land immediately around the former agricultural building is predominately grassed, but there are several groups of trees located within the appeal site. In terms of the immediate surroundings, the appeal site is encircled by farmland with a railway line to the east.
17. To the south of the appeal site there are a small number of residential properties. The Council explain that the properties are currently or were formerly associated with an agricultural use of the surrounding land, including the cottages to the south of North Winchester Farm all of which were originally agricultural workers dwellings. The residential properties are typically laid out in a fragmented linear pattern along Stoke Charity Road with agricultural land beyond. Overall, the local area has an intrinsically rural character.
18. Due to the functional and simple design of the existing building, when it is viewed from the local landscape, it is clear that the building has an agricultural character and appearance. As such, it is in-keeping with the rural landscape.
19. The proposal would provide a similar amount of residential floorspace when compared to the approved development. However, this would be achieved by demolishing the existing building and erecting three detached dwellings that would be laid out in a dispersed manner across the appeal site with a suburban style parking layout, which would include detached garages, all of which would represent a significant departure from the existing site layout and the approved development.
20. In addition, despite the use of materials in keeping with the local vernacular, such as timber cladding, the proposed dwellings would have an overtly domestic appearance and would feature large areas of fenestration, which would appear incongruous within the rural landscape, particularly the large areas of glazing at first floor level. Therefore, the agricultural character and appearance of the appeal site, including the existing building would be lost,

and, overall, the proposal would change the landscape and scenic qualities of the local area by introducing an out of keeping and sporadic form of residential development within the open countryside, which would not relate to the existing rural character. As such, the proposal would cause significant harm to the character and appearance of the area.

21. Whilst the introduction of additional trees and native hedgerow planting, as shown by the appellant's preliminary landscaping plan, would provide some benefit and landscaping screening of the proposed dwellings and associated outside amenity spaces, this would not outweigh the harm to the character and appearance of the area. In addition, this benefit cannot be guaranteed in perpetuity due to factors such as disease and accidental damage.
22. By contrast, the approved development would retain most of the existing building and the dwellings would be broken up with 'open sided barns', which the Council state would be used to provide integral parking. The external elevations would be upgraded with timber cladding and the roof would be renewed. Overall, there would be a limited degree of change to the functional and simple design of the existing building and it would retain an agricultural appearance. As such, the approved development would be in-keeping with the rural landscape and thus it would have a neutral impact upon the intrinsic character and beauty of the countryside.
23. The appellant contends that the fallback position does not make a specific allowance for the provision or control of parking. Therefore, he argues that the current proposal would represent an improvement over the fallback scheme. In addition, the appellant explains that the appeal site is not visible from the wider landscape, including from public rights of way. Even if I were to accept that external parking would arise away from the building in relation to the approved development, and that the proposed development would not be visible from the wider landscape, this would not overcome or outweigh the significant harm to the landscape and scenic qualities of the local area caused by the introduction of an out of keeping and sporadic form of residential development within the countryside.
24. The appellant argues that the proposal would be consistent with the prevailing pattern of residential development in the local area. However, on my site visit I observed that other residential dwellings within the immediate area are typically located next to or within close proximity of Stoke Charity Road. By contrast, the proposed dwellings at the appeal site would be located approximately 200 metres from the roadside and would be encircled by farmland, which would be a significant departure from the prevailing pattern of development in the local area and out of keeping with the area's rural character.
25. I recognise that there are some developments within the wider area that are set back from the road. However, the developments are located a considerable distance away from the appeal site. As such, the developments would not be seen in the context of the appeal site and would not therefore contribute directly to the distinctiveness of the local area.
26. My attention has been drawn to two appeal decisions⁴ where Inspectors have afforded significant weight to a fallback position provided by virtue of Schedule

⁴ Appeal Refs: APP/Y3940/W/18/3200095 and APP/W1850/W/17/3171828

- 2, Part 3, Class Q of the GPDO when assessing the effect of the respective proposals on the character and appearance of the area. However, no plans or supporting information about the respective developments has been submitted and therefore I am unable to assess the relevance of the decisions in respect of the current appeal. In any event, I note that both of the appeal decisions relate to sites outside of the boundary of Winchester City Council, where different policies and material considerations apply. As such, I have given limited weight to the respective appeal decisions.
27. For the reasons set out above, I conclude that the proposed development would cause significant harm to the character and appearance of the area. As such, the proposal would not accord with Policies CP13 and CP20 of the CS which require new development to meet the highest standards of design; and protect and enhance the District's distinctive landscape.
28. In addition, the proposal would not accord with Policies DM15, DM16, DM17, DM18 and DM23 of the Winchester District Local Plan Part 2: Development Management and Site Allocations (April 2017) which state that new development should respect the qualities, features and characteristics that contribute to the distinctiveness of the local area; respond positively to the character, appearance and variety of the local environment; avoid unacceptable effects on key townscape or landscape characteristics; incorporate parking provision and vehicular access as part of the overall design of the scheme, including hard and soft landscaping, signage and lighting that is both necessary and of a high quality design, taking account of the character of the surrounding area; and avoid unacceptable effects on the rural character of the area, by means of visual intrusion and the introduction of incongruous features.
29. Accordingly, the proposed development would be inconsistent with paragraph 170(b) of the Framework which states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Affordable housing

30. Paragraph 63 of the Framework states that *'Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount'*.
31. The proposed development is not located within a designated rural area where the lower 5-unit threshold applies. In addition, the evidence indicates that the existing building was last used for agriculture and therefore the site is not brownfield land, as defined by Annexe 2: Glossary of the Framework.
32. Annexe 2: Glossary of the Framework defines 'Major development' as follows: *"For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m² or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015."*

33. In determining the application, the Council concluded that the proposal was a 'major development' because the appeal site has an area in excess of 0.5 hectares. Having regard to paragraph 63 of the Framework, the Council determined that affordable housing should be sought as part of the proposed development. As the proposal does not provide affordable housing, this formed the basis for the second reason for refusal.
34. The appellant argues by virtue of Part 1, Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 'DMPO'), that the proposal would not be a 'major development' because whilst the site area exceeds 0.5 hectares, the number of proposed dwellings is known and it's below 10. Therefore, he argues that the proposal is not required to provide affordable housing because it is not a 'major development'.
35. The Council do not dispute that the proposal would not be 'major development', as defined by the DMPO, and, on that basis, they have chosen not to defend the second reason for refusal.
36. However, the definition of 'major development' set out within Annexe 2: Glossary of the Framework separates development into two categories: 'housing' and 'non-residential development'. For housing, 'major development' means *'where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more'*. Significantly, the definition of 'major development' for housing makes no reference to the DMPO. Whereas, the DMPO is explicitly referenced within the definition in respect of non-residential 'major development'.
37. In addition, the PPG⁵ also differentiates between the two types of development and there is no explicit reference to the DMPO in respect of 'residential development'. As per Annexe 2: Glossary of the Framework, the DMPO is only referred to within the PPG in relation to 'non residential development'.
38. Had the draftsman intended for the DMPO definition of major development to apply to housing, I consider that the definition of 'major development' set out within Annexe 2: Glossary of the Framework, and the associated guidance contained within the PPG, would have been framed differently, to make clear to the reader that the reference to the DMPO was all encompassing, as opposed to explicitly referring only to non-residential development.
39. In this instance, the proposal is for a housing development on a site with an area in excess of 0.5 hectares. Therefore, it is a 'major development' as defined by Annexe 2: Glossary of the Framework.
40. I recognise that there is tension between the Framework and the Written Ministerial Statement of November 2014⁶ (the 'WMS'), which remains extant.
41. The WMS dealt with the matter of thresholds beneath which affordable housing contributions should not be sought from small scale and self-build development. In respect of small scale housing development, the WMS suggested that affordable housing contributions should not be sought for developments of ten-units or less (and which have a maximum combined gross

⁵ Planning Practice Guidance: Paragraph: 023 – Reference ID: 23b-023-20190901 (Revision date: 01.09.2019)

⁶ House of Commons: Written Statement (HCWS50), Department for Communities and Local Government, Written Statement made by: The Minister of State for Housing and Planning (Brandon Lewis) on 28 November 2014.

- floor space of no more than 1,000 square metres), excluding rural exception sites.
42. The WMS conflicts with the Framework, which refers to '*10 or more homes*', or sites that '*has an area of 0.5 hectares or more*'. The Framework is the latest expression of national planning policy, which I afford significant weight. Consequently, I afford the WMS very limited weight in my considerations.
43. Notwithstanding the Council's current position, for the reasons set out above, I conclude that the Council's initial assessment of the proposal against paragraph 63 of the Framework, in particular the meaning of 'major development' contained within Annexe 2: Glossary of the Framework, was not flawed. Therefore, the proposed development is required to provide affordable housing.
44. Owing to the limited number of proposed dwellings, the main parties agree that it would not be practical or desirable for a Registered Provider to provide on-site affordable housing as part of the proposal. The Council argue that a commuted sum of £164,400 should be secured as a planning obligation towards the delivery of off-site affordable housing elsewhere within the Council's administrative area.
45. The appellant contends that the sum of £164,400 would make the development unviable. To support this argument, the appellant has submitted an Affordable Housing Viability Statement (the 'AHVS'), which concludes that the development can only provide £21,927 towards the provision of off-site affordable housing provision. To this regard, the appellant has submitted a draft unilateral undertaking which would secure an off-site affordable housing contribution of £21,927, but the document is unsigned and therefore it has no legal effect.
46. Notwithstanding the fact that the Council no longer wish to defend the second reason for refusal, they have expressed concerns about the conclusions of the AHVS, in particular, the limited amount of detail provided in relation to build costs.
47. Even if I were to accept that the conclusions of the AHVS were based on accurate build cost data and that the reduced contribution of £21,927 towards the provision of off-site affordable housing provision was acceptable, this would not overcome the very weighty conflict with the identified development plan policies as outlined above in relation to the significant harm to the character and appearance of the area that would be caused by the proposal. Accordingly, it is not necessary for me to determine (i) the acceptability or otherwise of the AHVS; and (ii) whether the planning obligation meets all of the required tests having regard to Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 56 of the Framework.

Other Considerations

48. The appellant explains that biodiversity improvements would be delivered as part of the proposed development, which would include the installation of bat boxes/bat tubes and bird boxes. In addition, he states that the proposed development has been designed to minimise energy use and water consumption, which would reduce greenhouse gas emissions. The appellant argues that there is no mechanism within the approved development to secure the biodiversity improvements and sustainable construction methods proposed as part of the current proposal. Therefore, he contends that the current proposal would represent an improvement over the fallback position.
49. The biodiversity improvements and sustainable construction of the proposed dwellings would provide environmental benefits, including a reduction in greenhouse gas emissions, which weighs in favour of the proposal, albeit that the benefits would be limited due to the quantum of development proposed. In addition, I recognise that there would also be some limited benefits to the construction industry and from the spend of future occupiers, although similar economic and social benefits would also arise from the implementation of the approved development.
50. However, the significant harm to the character and appearance of the area which would be an adverse impact of the development at odds with the development plan and the Framework, would significantly and demonstrably outweigh the limited benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Accordingly, this is not a point that suggests the appeal should be determined other than in accordance with the development plan.

Other Matters

51. Reference has been made with regards to the Council's handling of the planning application. However, this is not in itself relevant to the consideration of the appeal proposal.
52. The appellant explains that the proposed development would be delivered without delay, which would make a positive contribution to the Council's housing land supply. Whilst this may be the case, the appeal site benefits from an extant permission for the delivery of three dwellings through the reuse of the existing building, and the appellant states that there is a realistic prospect of the approved development being delivered should the current application be refused. Consequently, this is a matter of neutral consequence in the overall planning balance and therefore does not outweigh my overall conclusion below.
53. The appellant argues that as part of the approved development large parts of the appeal site could become neglected and unmanaged. I cannot be certain that refusal of planning permission would necessarily equate to such consequences, but in any event, this would not overcome the weighty conflict that I have identified with the development plan policies as outlined above.
54. I note that the Council's landscape officer raised no objection to the proposed development. However, this does not outweigh or alter my conclusions on the second main issue.
55. None of the other matters raised alter or outweigh my overall conclusion below.

Conclusion

56. The proposed development would provide a suitable location for housing, having regard to the appellant's fallback position as a material consideration. However, very significant harm would be caused to the character and appearance of the area and this is a matter of overriding concern. Accordingly, I conclude that the appeal should be dismissed.

Christopher Miell

INSPECTOR