



Appeal Decision

Site visit made on 8 June 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/J0405/W/20/3246440

Land off Water Stratford Road, Tingewick MK18 4NX

- 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 Mr J Horsman (Montpelier Estates Ltd) against Buckinghamshire Council – Aylesbury Area.
 - The application Ref 18/03921/AOP, is dated 31 October 2018.
 - The development proposed is erection of a single dwelling.
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Decision

1. The appeal is dismissed and planning permission refused.

Application for costs

2. An application for costs was made by Mr J Horsman (Montpelier Estates Ltd) against Buckinghamshire Council – Aylesbury Area. This application is the subject of a separate Decision.

Procedural Matters

3. During the course of the appeal, the council who originally determined the planning application merged with a number of other local planning authorities into Buckinghamshire Council. The details in this decision reflect this change. Also, I have taken the post code for the site from the Council's questionnaire rather than the application form as it is more accurate.
4. The application sought outline planning permission and approval for details of access. Accordingly, I have assessed the submitted access details but treated the layout and landscaping details as illustrative.
5. The emerging Vale of Aylesbury Local Plan (eVALP) has been the subject of examination and Main Modifications to the Submission Plan have been published for consultation. The Council has referred to eVALP policies D3, BE2 and NE8 and has advised that the examining Inspector requested main modifications be made to all of these policies. As no responses to the consultation process have been provided, I am uncertain as to the likelihood of the eVALP policies being adopted in the form presented to me. As such and in light of paragraph 48 of the National Planning Policy Framework (the Framework), I attach limited weight to the eVALP policies in my assessment.

Main Issues

6. There is no formal Council decision on the application but in light of the comments received the main issues are (i) the effect on highway and pedestrian safety in respect of the suitability of the access, (ii) whether sufficient information has been provided in respect of land stability and (iii) the effect of the proposal on the character and appearance of the area.

Reasons

Highway and pedestrian safety

7. A drive off Water Stratford Road that serves 4 dwellings would form the access to the proposal. The drive is not wide enough to allow 2 cars to pass simultaneously and its narrow width would lead to drivers waiting on the road until obstruction has cleared before accessing the site. The appellant suggests that vehicles meeting at the access would be an infrequent event and that cars would not wait long on the road to enter the drive. Also, the proposal would lead to a modest increase of 6 to 8 two-way car trips in a 12 hour period. Nevertheless, these additional trips would increase the likelihood of vehicles waiting on the road to access the drive and driver hesitancy when approaching the entrance. Such actions would impede the free flow of traffic and would be dangerous to other drivers.
8. Moreover, the drive has no pavements and is shared by vehicles and pedestrians. Hesitancy when drivers meet at the access and car manoeuvres to avoid obstruction would affect pedestrian movements and so would be dangerous, particularly to vulnerable people. The proposal would increase the likelihood of these events occurring and so would prejudice pedestrian safety.
9. Refuse vehicles would not need to enter the drive to serve the development and vehicle turning areas could be included. Also, it is likely local traffic speeds are not excessive and there is no evidence that the drive access has been the cause of any accidents. However, these factors do not address the additional on-going risk to safety that would be caused by the proposal.
10. For the above reasons, I conclude the proposal would prejudice highway and pedestrian safety by reason of the unsuitability of the access. In this regard, it would be contrary to paragraph 109 of the Framework which aims to prevent an unacceptable impact on highway safety. For the same reasons, the proposal would be contrary to Buckinghamshire Local Transport Plan 4 and the Buckinghamshire County Council Highways Development Management Guidance 2018.

Land stability

11. While there is no evidence of subterranean works, its previous quarrying use and steep slopes indicate that the site may be the subject of land instability. The appellant suggests that this matter could be addressed through the imposition of a planning condition, but in the absence of any proper assessment there is no evidence that demonstrates any land instability could be satisfactorily mitigated. The failure of the Council to request a land stability assessment prior to the appeal or its different approach in respect of ground contamination do not override my concern in this respect.

12. As such, I conclude that insufficient information has been provided that shows the site would be suitable for the proposal taking account of any risks arising from land instability. In this regard, the development would be contrary to saved policy GP.35 of the Aylesbury Vale District Local Plan 2004 (LP) and the Framework. These aim, amongst other things, to ensure development respects the physical characteristics of a site and that there are suitable ground conditions for development. For the same reasons, the proposal would be contrary to eVALP policy BE2, although this attracts limited weight as the eVALP is not yet part of the development plan.

Character and appearance

13. The site contains a number of large trees and undergrowth that give it a natural appearance. Despite the appellant's aboricultural summary statement recording most as being of low value, the trees on the site are covered by a tree preservation order and are visible from the surrounding area. The site is not designated as a significant open space and has not been actively managed. However, as an attractive wooded area and backdrop to nearby buildings it contributes positively towards Tingewick's rural village character.
14. The indicative plans show the proposed house towards the west of the site where there are no significant trees. However, the proposed access would be between mature trees and down a steep slope and so it is likely its construction would affect tree roots. Also, the indicative plan shows significant earthworks on the site and the erection of retaining walls towards the eastern boundary where there are large numbers of mature trees. As there is no land stability assessment, it is unclear whether the submitted drawing provides a realistic indication of the earthworks required to allow the construction of the proposal. In any event, the limited information before me suggests the development as a whole would require the removal or would risk the well-being of trees, particularly those on the northern boundary close to the proposed access and those nearest to the central part of the site.
15. The loss of mature trees and vegetation cover as a result of the proposal would undermine the site's natural qualities and would be detrimental to its pleasant sylvan character. While the proposal would represent low density development, the submissions fail to clearly demonstrate how the design of the dwelling, the retention of trees or the provision of new planting would safeguard or enhance the site's appearance. Given the uncertainty over land stability, there is significant risk the proposal would cause a marked harmful change to the appearance of the site. The evidence fails to demonstrate that these concerns could be fully addressed through the imposition of reserved matters or other planning conditions.
16. For these reasons, I conclude the development would cause significant harm to the character and appearance of the area. In this regard, it would be contrary to saved policies GP.35, GP.39 and GP.40 of the LP as well as the Framework. These all aim, amongst other things, to ensure developments respect the characteristics of an area including natural features such as trees. For the same reasons, the proposal would also be contrary to policies BE2, D3 and NE8 of the eVALP although I attach limited weight to this conflict as these policies do not form part of the development plan.

Other Considerations

17. As there are no up-to-date housing supply development plan policies, paragraph 11 d of the Framework is applicable and so the benefits of the proposal need to be weighed against its adverse impacts. The site adjoins the Tingewick Conservation Area (CA) which gains significance in part from the attractiveness and historic interest of its buildings. The proposal would be heavily screened from the CA and so would preserve its character and appearance. Also, the Council raise no concerns in terms of flood risk and ground contamination and the development would include facilities to provide satisfactory living conditions for occupiers. However, acceptability in all of these regards is a neutral factor rather than a benefit of the proposal.
18. The development would add to the housing stock and would create construction employment. Also, it would be the more efficient use of land in a location where occupiers would have reasonable access to facilities. The development would accord with the Framework in all of these regards, although I attach only modest weight to these benefits as only 1 dwelling is proposed.
19. I attribute moderate weight to the identified harm to highway and pedestrian safety and significant weight to the lack of information relating to land stability and the risk the site may be unsuitable for the proposal due to this reason. Also, in light of paragraph 127 of the Framework, I attach significant weight to harm that would be caused to the area's character and appearance.
20. Overall, I find the harm caused by the proposal would demonstrably and significantly outweigh its benefits when assessed against the Framework as a whole. As such, the presumption in favour of sustainable development as set out at paragraph 11 of the Framework does not apply.
21. Ecological information provided by the appellant indicates that further surveys are required regarding badger activity on the site. I am mindful of the provisions of the Protection of Badgers Act 1992 and government advice that it is essential to ascertain the presence or otherwise of protected species before granting planning permission¹. However, I need not consider this point further as the appeal has failed. For clarity purposes, if found to be acceptable in this regard, such a finding would not have affected my conclusion on the proposal.

Conclusion

22. The proposal would conflict with the saved policies of the development plan. Also, it would not comply with eVALP policies and would not benefit from the presumption in favour of sustainable development as set out in the Framework. As such, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR

¹ Office of the Deputy Prime Minister Circular 06/2005 paragraph 99.