
Appeal Decision

Site visit made on 27 May 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/J0405/W/19/3242624

Green Farm, High Road, Soulbury, Buckinghamshire LU7 0DD

- 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 Mrs L Russel and Knowles-Brown Properties Ltd against Aylesbury Vale District Council.
 - The application Ref 19/01996/AOP, is dated 30 May 2019
 - The development proposed is described as "Outline application (hybrid). Full details in Conservation Area. Demolition of dwelling, conversion of barns to offices and erection of 15 units".
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Decision

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

Application for costs

2. An application for costs was made by Mrs L Russel and Knowles-Brown Properties Ltd against Aylesbury Vale District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application form submitted with the appeal documents, dated 24 May 2019, is for Full Planning Permission and no mention is made of any reserved matters. However, I have been provided with a copy of an application form for Outline Planning Permission with appearance and landscaping of the development reserved for determination at a later date. Full details are provided for the works within the Soulbury Conservation Area (the CA).
4. The appellants have provided plans in support of their proposal. I have taken the details shown on those plans that relate to appearance and landscaping as being illustrative only except in regard to the works within the CA.
5. It is clear from the documentation that the parties have considered the proposal on the basis that it is an application for outline planning permission, although there is conflict upon which matters are reserved. I have determined the application form on the basis that it is an application for outline planning permission with appearance and landscaping reserved for determination at a later date.

6. There has been a previous appeal against the refusal to grant outline planning permission for a proposal of similar scale on the site in October 2018¹ (the 2018 appeal scheme). Given that this decision relates to similar development on the same site this is a material consideration of significant weight.
7. I received requests to view the site from the properties of two nearby residents, living at 4 Laburnham Cottages and 5 High Road, and was able to do so during my site visit.
8. On 1 April 2020, Aylesbury Vale District Council was merged with Buckinghamshire County Council, Chiltern District Council, South Bucks District Council and Wycombe District Council to create Buckinghamshire Council. I have referred to Aylesbury Vale District Council in the banner heading above as this was the determining authority at the time of the decision. The development plan is unaffected by this merger.
9. The draft Vale of Aylesbury Local Plan (the emerging Local Plan) has been published but has yet to be examined and found sound. It therefore carries limited weight as a material consideration.

Background and Main Issues

10. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit this appeal. The Council has confirmed that, had it been in a position to do so, it would have refused the proposal due to concerns over its effect on the setting of the Soulbury Conservation Area (the CA) and nearby Grade II Listed Buildings, the character and appearance of the area, the suitability of the area for new housing, highway safety, biodiversity and the provision for sport and leisure. Accordingly, the main issues in this appeal are: -
 - The effect of the proposed development on the setting of the CA;
 - The effect of the proposed development on the nearby Grade II Listed Buildings (2, 5 and 7 High Road and 1 The Forge on Stewkley Road) and the Grade II* All Saints Church;
 - The effect of the development on the character and appearance of the landscape;
 - Whether the site is a suitable location for the appeal scheme having regard to local and national policy for the delivery of housing;
 - Whether the proposed development would incorporate a safe and suitable access for all users;
 - The effect of the proposed development on biodiversity; and
 - Whether the proposed development would make adequate provision for affordable housing, sport and leisure, education and transport.

¹ Appeal ref APP/J0405/W/18/3194652

Reasons

Heritage assets – Conservation Area

11. Soulbury is a village with a generally linear form. It occupies high ground overlooking the Ouzle valley to the east and a smaller valley to the south. There is, however, some development within the village off the principal routes through the village such as Chapel Hill, Mount Pleasant and The Mead. The appeal site is located opposite the junction of Stewkley Road with The Green and High Road. There is existing residential development to the south and north of the site, and on the opposite side of The Green and High Street. The Green forms a verdant public open space, crossed only by relatively informal tracks providing access to one or two dwellings. Beyond the site lie undeveloped open rolling fields.
12. The appeal site is currently an open, undeveloped field, except for the presence of an existing dwelling and three other buildings close to the frontage onto The Green and High Road. The area around these buildings was, at the time of my site visit, somewhat overgrown. There is a ridge of land running across the site, roughly perpendicular to the road. The site is crossed by a public footpath, which the proposal would relocate around the site at its north-east corner.
13. The front part of the appeal site (including the existing buildings) is located within the CA. Opposite and adjacent to the site there are Grade II Listed Buildings (5 and 7 High Road and 1 The Forge on Stewkley Road). Nearby lies another Grade II Listed Building (2 High Road) whilst the Grade II* All Saints Church lies further away to the south.
14. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that, in making decisions on planning applications that may affect a listed building or its setting, special attention is paid to the desirability of preserving the building or its setting. In addition, Paragraph 193 of the National Planning Policy Framework -2019- (the Framework) requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
15. The Green has the appearance of a quiet village green around a junction of principle routes in the middle of a village, fronted by small clusters of older buildings occupying prominent positions on the roadside at junctions and bends. The locality retains a sense of peace, verdancy and openness deriving from the informal planting. The bucolic setting of The Green and the surrounding buildings and its rural setting and relationship with the countryside is an important aspect of the character and appearance of the CA in the vicinity of the site.
16. The proposed development would gain vehicular and pedestrian access to the local highway network across The Green. This would open up some views of the wider landscape beyond the village which would be a benefit. However, the access as detailed in the Transport Statement would be a 6 metre wide road with a bellmouth and an accompanying footway, 2 metres wide, on the southern side only. Additionally, pedestrian and cycle access is proposed to the north. Unlike the existing informal and low key access, the proposed access for motor vehicles and pedestrians would, by its scale and engineered appearance, result in an urbanising form within the bucolic setting of The Green, out of

keeping with its informal, verdant character. This would seriously harm the significance of the CA.

17. The decision of the Inspector appointed to determine an application made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land (the Commons works) has been brought to my attention². That Inspector concluded that, whilst the works “will invariably have some visual impact on the Green”, the part of that application to form the access road and adjacent footway was acceptable with regard to the matters within his remit. Additionally, he determined that the works to provide the footway/cyclepath are unacceptable.
18. However, in determining this appeal I am mindful of the duties placed upon me by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Paragraph 196 of the Framework when considering a development proposal. I will return to these matters later.
19. The development of the new residential properties would have an enclosing effect on the character of the CA which goes against one of its characteristics. Accordingly, the proposal would harm the CA as, although all of the new dwellings, with the exception of that replacing the farmhouse, would be located outside of the CA, they would enclose the CA with further discordant urban form, eroding the rural setting of the Green and impact on views towards the CA from the public footpath which crosses the site along its eastern side.
20. The application is supported by a Heritage Asset Impact Statement (HAIS) and a Landscape and Visual Assessment (LVA). The HAIS identifies that development would have a negative impact on the setting of the CA. Moreover it identifies harm to the heritage assets that contribute to its character, and in particular the views of the wider landscape from within the Conservation Area and the listed buildings found there. The HAIS was, however, carried out on the basis that the existing structures within the site would be demolished, as was the case in the 2018 appeal scheme. The proposal before me retains the two barns and converts them to a workshop and an office. The other buildings would be demolished, and the dwelling house replaced.
21. The buildings for which demolition is proposed are of unremarkable appearance and, other than framing the village green, make a limited contribution to the character or appearance of the CA. The proposed dwelling that would replace the farmhouse would be of a similar scale, form and appearance to the existing and therefore would have a neutral impact upon the CA. The barn conversions would retain the existing buildings. The retained barns are prominent in the street scene. The southern barn would have an existing corrugated iron roof, on the façade facing the road, replaced with thatch. The proposal, in this respect, would retain the presence of the buildings on the street scene and their renovation would, in this regard, enhance the character and appearance of the CA. However, the re-use of the buildings would increase activity on that frontage of the CA, further undermining the peaceful bucolic setting.
22. I conclude that the proposal would harm the character and appearance of the Soulbury Conservation Area, contrary to policy GP.53 of the Aylesbury Vale District Local Plan -2004- (the Local Plan) which amongst other things seeks to preserve or enhance the special characteristics that led to the designation of

² Decision Ref: COM/3231832

the area as a Conservation Area, and protect the character or appearance of their settings or any associated views of the Conservation Area. However, the level of harm would be less than substantial.

Heritage assets – Listed buildings

23. In addition to the above, the proposal would be in proximity to two listed buildings (5 and 7 High Road). The significance of these buildings relates to their architectural and historic interest in regard to their age, architectural design, construction and character, which is representative of local vernacular and the fashion of the time, and the contribution that these buildings make, together with others nearby, as part of a group.
24. The appeal scheme would be positioned away from principle lines of sight encompassing the two listed buildings, which are already experienced within the context of existing buildings. Further, there appears to be sufficient land available within the development to allow planting to be provided to soften the development's presence in the backdrop of the listed buildings. Thus, the presence of the appeal scheme would not result in harm to the setting of the listed buildings.
25. Similarly, I have also considered the listed buildings on the opposite side of High Road and the longer distance views of the Church. However, due to the significant distance and the presence of intervening structures the development would not stand out or appear as a strident addition to the setting of these listed buildings and therefore an adverse impact on the way these buildings are experienced would not occur.
26. I conclude that the proposal would not harm the setting of the listed buildings and would not, therefore be contrary to the aims of those parts of the Framework that seek to conserve and enhance the historic environment.

Character and appearance of the landscape

27. The majority of the site lies outside any defined village development boundary. Therefore, in planning policy terms, it is located in the countryside. Given the largely undeveloped nature of the site, its position on the edge of the village and the open countryside to the east, the site has a rural feel to it.
28. There is no specific landscape designation affecting Soulbury. However, the application site lies within the 'Mursley-Soulbury Claylands' Landscape Character Area (LCA), within the 'Undulating Clay Plateau' Landscape Character Type.
29. The proposal would introduce an urban built form, albeit of low density, into the landscape. The LCA assessment of the 'Mursley-Soulbury Claylands' concludes that the condition of the LCA as a whole is 'Very good', with 'Moderate' sensitivity. Within the character area, the landscape has a distinctive rolling landform of steep switchback ridges, with a balance between arable land and grassland cover and the site lies within an area demonstrating such. The guidelines of the LCA 4.11 assessment seeks to 'conserve' and 'reinforce' the landscape characteristics of the LCA.
30. Taking into account the current nature of the site the development would have an undesirable urbanising effect on the local landscape and would result in the permanent loss of countryside. However, I note the view of the previous

Inspector that the level of harm which would arise would not be significant and I share this view because the proposal would be spacious in layout with a large central green space and, from further away, the site would be seen in context of the development surrounding the site that forms part of the existing settlement.

31. There would be closer views of the proposed development from the footpath crossing the site. The development of the site would partially enclose one side of the footpath. The boundaries of Plots 6, 7, 9 and 10 are adjacent to the private amenity spaces of the dwellings and, it is likely that a low level of visual permeability of these boundaries would be sought so that a degree of privacy would be provided for future occupiers. The provision of a visually less permeable boundary would be more enclosing of views from the footpath. Furthermore, the urbanising effect of the proposal would be apparent from the footpath. The proposal is, therefore, likely to harmfully alter the character of the area near the appeal site. Any landscaping to screen the development would be unlikely to reduce the effect of change to an acceptable level.
32. The development of the appeal site would not follow the generally linear pattern of the village. However, there are some cul-de-sacs off the main through roads of the village and the general cul-de-sac form would not be prominent because of its enclosure within the development. Therefore the layout would not be strident or result in harm to the character and appearance of the area.
33. Nevertheless, in conclusion, the proposal overall would lead to unacceptable harm to the rural character and appearance of the landscape contrary to Policy GP.35 of the Local Plan, which amongst other things seeks to protect the physical characteristics of the site and the surroundings and important public views. Similarly the proposal would be contrary to those parts of the Framework that seek to conserve and enhance the natural environment, recognising the intrinsic character and beauty of the countryside. The Local Plan policy is, therefore, consistent with the Framework and so conflict with the policy can be afforded significant weight.

Suitable location for fourteen additional dwellings

34. The Council acknowledge that the development plan policies in relation to the supply of housing land are now out of date and I have no reason to disagree with that view.
35. The Council's Settlement Hierarchy Assessment for the Vale of Aylesbury Local Plan to accompany Proposed Submission Plan -2017- (the SH) identifies Soulbury as a smaller village. The SH identifies these as less sustainable settlements which have poor access to services and facilities. The SH states that small scale minor development could be accommodated without causing any environmental harm and a level of growth is also likely to help maintain the existing community.
36. The settlement is served by two bus services, and therefore I share the view of the Council that the village has a moderate level of transport connectivity to larger service centres such as Leighton Buzzard.
37. The Framework recognises that sustainable transport solutions will vary between urban and rural areas and that rural housing development in smaller

settlements can enhance or maintain the vitality of rural communities. The appeal site is located within a small existing settlement and is not isolated. There are transport options available so that future occupants would not be solely reliant upon the private car. The proposal would provide moderate benefits in terms of providing short term employment in the construction industry and longer term support to local shops and businesses. There is no definition of "small scale" and I note that the previous Inspector considered that the proposal must be considered to be towards the upper boundary of what could be considered appropriate, a view with which I agree.

38. I therefore consider that the site is not located in such an unsustainable location to justify withholding of planning permission on this basis.
39. I conclude that the appeal site is a suitable location for fourteen additional dwellings and is therefore in accordance with those parts of the Framework that seek to promote sustainable development in rural areas where it will enhance or maintain the vitality of rural communities.

Access

40. The appeal site lies to the east of High Road, set back from the running edge of the carriageway, which is also the limit of the public highway. There is no segregated footway provision on the east side of High Road and The Green. However there is a wide grassed area across the frontage to the main part of the appeal site. There is a footway on the west side of High Road, although this is set back from the road at the junction with Stewkley Road.
41. The application was accompanied by a Transport Statement intended to address the concerns identified by the previous Inspector relating to the width of the access, geometry and location of the junction with the public highway, and pedestrian provision. The previous Inspector had little information before him regarding these matters.
42. Paragraph 108 of the Framework requires that safe and suitable access to the site can be achieved for all users. The proposal would use an augmented existing informal access for vehicles and pedestrians to enter and leave the site. Another existing informal route to the north would be improved to provide additional pedestrian and cycle access. The works associated with these were the subject of the Commons Works application.
43. The vehicular access would be sufficiently wide to allow two vehicles, including HCVs, to pass³ and would provide a segregated footway to minimise conflict between pedestrians and vehicles in the vicinity of the junction.
44. The crossroads junction proposed would force conflict between users of the junction to occur within a small area. No assessment has been made of the quantum of traffic passing through the local road junction. However, whilst the proposal would result in an intensification of use of the access, the total number of vehicles using the access overall would remain small. Further, as the proposal does not provide a through route for vehicles, the number of vehicles crossing the junction from Stewkley Road into the site would be likely to be small and therefore this aspect of the proposal would be acceptable.

³ Manual for Streets Figure 7.1

45. No manoeuvring diagrams have been provided to show that larger vehicles, including refuse vehicles would be able to enter the site and turn to allow exit in forward gear. Albeit that a turning head has been provided at the inner end of the cul-de-sac, I have no evidence before me to demonstrate that such a manoeuvre would be practicable and that larger vehicles would not, as a result, reverse back into the crossroads. Such manoeuvring would increase harmful risk of collision at the junction.
46. The proposal makes provision within public highway for pedestrians to cross from the footway on High Road to the proposed footway at the main entrance leading into the site. However, no continuous footway is provided to the northern entrance from the local area, which would be likely to result in pedestrians walking within the carriageway on the through road, increasing the risk of collision which would be harmful. Further, I note that the Inspector determining the Commons works application concluded that the part of those works to provide the footway/cycleway are unacceptable and so delivery of this part of the scheme would not be feasible in the form proposed.
47. Taking all of the above issues into account it has not been demonstrated to my satisfaction that a safe and suitable access to the site can be achieved for all users and therefore the proposal would be contrary to the transportation aims of the Framework.

Biodiversity

48. The application was supported by a preliminary ecological assessment (PEA) supplemented by an updated PEA and a DNA test. The preliminary PEA sets out potential concerns in relation to the loss of roosting sites for nesting birds, bats and a Barn Owl (relating to the existing buildings), together with potential construction related concerns relating to badgers, hedgehogs and reptiles. The supplementary PEA sets out similar concerns, but also identifies concerns in regard to Great Crested Newts and the proximity of a badger sett to the site.
49. Were I minded to grant planning permission the majority of concerns could be dealt with by the inclusion of suitably worded planning conditions requiring the provision of alternative roosting sites and controlling the method of construction of the works. However, Great Crested Newts are a European Protected Species and I must be satisfied that the impact upon them is suitably addressed. I note the recommendation in the supplementary PEA for further survey work to ascertain the likely presence/absence of the species.
50. The previous Inspector considered that, given the low density nature of the proposed development a biodiversity enhancement area could be provided on the site, and this could be controlled via a suitably worded planning condition. No biodiversity enhancement area is shown on the plans before me, and the majority of land is shown as being within the proposed plots. On the basis of the information before me I cannot be sure that a suitable habitat could be provided or maintained following occupation of the dwellings. Thus it has not been demonstrated that a satisfactory strategy to protect the European Protected Species could be delivered, even were a planning condition to be imposed.
51. I therefore find that the proposal would result in harm to the biodiversity of the area. This would be contrary to the aims of those parts of the Framework that seek to protect habitats and biodiversity.

52. Although attracting limited weight the proposal would also be contrary to the provisions of Policy NE1 of the emerging Local Plan in as much as this requires that sufficient information must be provided to assess the significance of the impact against the importance of the protected site and the species which depend upon it, including the area around the protected site.

Provision for affordable housing, sport and leisure, education and transport provision

53. There is no dispute between the parties that, for the development to proceed, it would have been necessary for the applicant and the Local Planning Authority to enter into a Section 106 Agreement to secure affordable housing provision, and financial contributions towards off site sport and leisure facilities, education and transport provision.
54. There is guidance contained within the Local Plan Supplementary Planning Guidance - Sport and Leisure Facilities (2004) (the Sport and Leisure SPD) clarifying the need and methodology for developer contributions to address deficits in provision.
55. The appellant submitted a completed Unilateral Undertaking (UU) dated 19th July 2019 which makes provision for such contributions. The Council has had the opportunity to comment.
56. I therefore conclude that the proposal makes adequate provision for affordable housing, sport and leisure, education and transport and complies with the requirements of Policies GP.2, GP.86, GP.88 and GP.94 of the Local Plan in as much as these require that development make provision for affordable housing, outdoor play space and community facilities. Similarly the proposal would accord with those aims of the Framework that seek development to offset its impact upon infrastructure and services through appropriate contributions.
57. The proposal would also be compliant with the guidance contained within the Sport and Leisure SPD.

Other Matters

58. The statutory duties in Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are a matter of considerable importance and weight. As a consequence of the siting of the appeal scheme it would have a harmful impact on the CA. However, due to the location and scale of the proposal within the wider context, this harm would be less than substantial. Paragraph 196 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.
59. The proposal would deliver an additional fourteen dwellings, of which 30% would be affordable homes, available to supplement housing delivery. The appellant has queried whether the Council is able to demonstrate a five year housing land supply.
60. Even if I were to conclude that the Council were currently unable to demonstrate a five year housing land supply the contribution made by the proposal would be moderate. The proposal would provide economic support to local businesses and services. These are public benefits which, in view of the effects of measures taken to address the spread of Covid 19 virus on

housebuilding and the economy, both nationally and locally, carry increased weight.

61. The proposed development would also renovate and return to use two buildings within the CA, securing their future. Notwithstanding the economic effects of the Covid-19 virus these are public benefits which, taken together and due to the scale of the development, attract moderate weight.
62. The proposal would, through the UU make financial contributions towards the provision of local sport and leisure facilities, education and transport. However, these contributions would be made to offset the additional demand from the proposal. Therefore the provision of the additional resources would have a neutral effect upon my deliberations.
63. On the evidence before me I therefore conclude that the public benefit would not outweigh the less than substantial harm identified to the character and appearance of the CA.
64. The Local Plan pre-dates the Framework and so policies within it should be assessed and given weight in terms of their consistency with the aims of the Framework. My attention has been drawn to an appeal decision (Ref APP/J0405/W/18/3214024) in this regard. However, I have identified harm to a designated heritage asset that is not outweighed by the public benefits of the proposal. Accordingly, given my findings in respect of Paragraphs 194 and 196 of the Framework, there are clear reasons for refusing the development.

Conclusion

65. For the reasons given above the appeal is dismissed.

I Dyer

INSPECTOR