
Appeal Decision

Site visit made on 29 June 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2020

Appeal Ref: APP/Y3940/W/19/3242431

Haven Court, Marshmead Close, Clarendon, Salisbury SP5 3DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Gavin Barrett against the decision of Wiltshire Council.
 - The application Ref 19/08875/OUT, dated 11 September 2019, was refused by notice dated 4 November 2019.
 - The development proposed is to demolish the existing 11-bedroom House of Multiple Occupation (HMO), and to erect 5 dwellings with associated parking and access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of the existing 11-bedroom HMO, and to erect 5 dwellings with associated parking and access at Haven Court, Marshmead Close, Clarendon, Salisbury SP5 3DD, in accordance with the terms of the application, Ref 19/08875/OUT, dated 11 September 2019, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The appeal seeks outline permission with all matters reserved except for access. In so far as the submitted plans and drawings show details of matters other than the access, I have treated those as being purely illustrative.
3. With this case, following the information submitted with this appeal, the Council does not wish to defend the reasons for refusal which refer to both the effect of the development on local ecology (particularly the Clarendon Grange Meadow County Wildlife Site) and with regards to flood risk. These aspects of the proposal will not be considered as a main issue with this appeal, although I note the recommended conditions relating to these matters.
4. The Council at the appeal stage has also raised the matter of the potential impact of the proposed development on the River Avon Special Area of Conservation (SAC) catchment area, where there is an issue with the increase of phosphates (nutrients) in the river due in part to residential development. This is now a main issue to be considered with this appeal, with both Natural England and the appellant providing comments following the Council evidence on this matter.

Costs Application

5. An application for costs was made by Mr Gavin Barrett against Wiltshire Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues for this appeal is the effect of the proposed development on (1) the settlement hierarchy of the area in relation to the location of the site, (2) the character and appearance of the area, including the effect on existing trees, (3) the living conditions of neighbours, and (4) nature conservation sites.

Reasons

Location of proposed development

7. The site lies to the south east of Salisbury, near to the village of Alderbury. Between Salisbury and Alderbury there are several small groups of dwellings and some small businesses, although these are generally dispersed and discontinuous in what is an area of rural character. The site is accessed off Marshmead Close and is set within a group of several residential properties in an otherwise predominantly agricultural/rural area.
8. As confirmed by the Council, the site is outside of any defined settlement boundary and therefore, from a policy perspective, is in the countryside. Settlement boundaries form part of the settlement strategy, as set out in Core Policy 1 of the Wiltshire Core Strategy (CS). This settlement strategy is to identify the settlements where sustainable development can take place. The hierarchy is a strategic approach to ensuring that, over time, appropriate levels of development take place in suitable places, commensurate with the size, characteristics and role of individual settlements.
9. In this strategy, Salisbury is classed as a 'Principle Settlement' and Alderbury as a 'Large Village', but the site is outside of both of these settlements. In this regard, Core Policy 2 of the CS states that development will not be permitted outside of the limits as defined on the policy map, including the settlement boundaries. The recent adoption of the Wiltshire Housing DPD reinforces this, with no change to settlement boundaries which would include the site.
10. The extent of the settlement boundaries was established through a formal process of public consultation and debate with the CS. In this respect the Framework reflects planning law in requiring applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.
11. In this particular case, the site is not a long distance from the edge of Salisbury and some of the services within its settlement boundary, such as a supermarket. It would be a significant distance to walk, especially on a regular basis, but would be possible for some. There is also a bus stop outside the site, which I understand does provide some connection with Salisbury for example. However, there is very little available locally in this rural area without traveling to Salisbury for example.
12. Overall, this site is quite close to Salisbury, which could be within walking and cycling distance for some. Furthermore, there is a nearby bus stop. However,

the proposal would clearly conflict with the overall development strategy of the CS, in that it would not comply with the aim to “provide for the most sustainable pattern of development within Wiltshire which seeks to reduce the need to travel and help redress the imbalance between jobs and homes” (Core Policy 2 – para 4.18).

13. The proposal would therefore be contrary to Core Policies 1, 2 and 23, as it would introduce housing that does not comply with the Delivery Strategy for new homes in Wiltshire, which are part of an adopted Core Strategy for this County. The proposal would result in harm in achieving this development strategy. Nonetheless, the proposal would provide houses (a net gain of 4 if the existing HMO is considered a single dwelling) and I recognise that the Council cannot demonstrate a sufficient provision of housing land supply for this area. I shall come back to this matter with the later Planning Balance.

Character and Appearance

14. The proposal is in outline with all matters reserved except for access. As such, at this stage there is only illustrative details of the five houses proposed. Although in outline, the illustrative plan does show two dwellings towards the rear of the plot on what is currently the garden. Whilst this layout is not set at this outline stage it is likely that there would need to be some units towards the rear of the plot to enable there to be five dwellings in total.
15. Being towards the rear of the plot, the new dwellings would be constructed on what is currently undeveloped garden space. However, this would not result in a significant intrusion into the open countryside as all the dwellings would be within the existing domestic/residential plot. The dwellings towards the rear of the plot would be seen against the backdrop of existing dwellings in this row from many vantage points. It is also possible that further landscaping could soften the visual impact of this part of the development, with these dwellings unlikely to be overly prominent from views outside of the site from public areas. On this matter it is my opinion that although the development would increase the built volume on this plot and some loss of openness, it would not be harmful to the character and appearance of the area.
16. With regards to trees, there would be some tree removal as a consequence of the proposed development, as confirmed by the appellant. However, these trees which are central within the rear garden do not appear particularly mature or of any particular value to the wider character of the area. I also understand that there are no Tree Preservation Orders relating to these trees. There are other trees on or adjacent to the site, which could have some wildlife habitat value, but it should be achievable to obtain a layout where these other trees and their root systems are safeguarded. A condition requiring such detail at the reserved matters stage can be imposed to secure this.
17. The layout, with some of the dwellings towards the rear of the plot, would be the first of this ‘tandem’ type within this row, although I do note the similar arrangement of a recent development further west along Marshmead Close/A36 (Council Ref: 13/01469/FUL). The circumstances that led to planning permission for this development may be different from this appeal, but there would nonetheless be similarities in the layout. Furthermore, these small clusters of dwellings have no strong uniformity and the plot for this site is wider and longer than some of the others nearby. As such, the proposed layout would not appear harmful to the character of the area.

18. Overall, I recognise that this is a site within a rural landscape which provides the setting for Salisbury, but the proposal as depicted with the illustrative plans would conserve the character and appearance within this cluster of dwellings or the wider landscape. However, this is based on the evidence before me at this stage, where there are only illustrative plans. Therefore, at this stage the proposal is in accordance with Core Policies 50, 51 and 57 of the Wiltshire Core Strategy. These policies require development to conserve and where possible enhance landscape character and be of a high standard of design, amongst other things.
19. As it has been confirmed that the site is not within a Special Landscape Area, I do not regard policy C6 of the Salisbury District Local Plan as particularly relevant and I do not find that the proposal conflicts with this policy.

Living Conditions

20. As stated previously, as this is an outline application with only access not a reserved matter it is not possible with any certainty to establish whether there would be any direct impact to neighbour living conditions to a significant level as a result of the proposed houses. However, I recognise that it is likely that there would be two dwellings in the final layout which would be towards the rear of the site. This may result in windows that would face back towards the neighbouring houses to either side (known as Clarendon Marsh and Brook House). This is particularly the case for the first floor window in Bedroom No 4.
21. Whilst based on the indicative plans this could be an issue with regards the overlooking (perceived or real) of neighbouring properties, at this stage the layout and window positions could change with the reserved matters details. Therefore, I see no reason why the development cannot be sensitively designed to take into account the living conditions of neighbours to a satisfactory degree.
22. The proposed new access would be near to the boundary with Clarendon Marsh. The access drive leading to the central courtyard with parking is also shown to run near this boundary. Whilst this layout would result in some vehicles passing near to this boundary, considering the scale of the development it is unlikely that any disturbance to the neighbour at Clarendon Marsh would be frequent. I also note that the illustrative plan shows the driveway set off the boundary with some form of landscaping in between, which would also help mitigate the impact.
23. Overall, at this outline stage there seems to be no reason why a final design and layout for the development cannot be achieved without harm to the living conditions of neighbours to the site. Therefore, the proposal at this stage accords with Core Policy 57 of the Wiltshire Core Strategy, which requires development to have regard to the amenities of existing occupants, including the consideration of privacy and overshadowing, amongst other things.

Nature Conservation Sites

24. There was a bat survey submitted with the application and the Council were satisfied that the report sufficiently addressed the impact to bats roosting in the building. Following the submission of evidence with the appellant's Statement of Case the Council are satisfied that there would be no impact to the adjacent County Wildlife Site. Having considered the evidence before me I

am satisfied that the proposal would not have an adverse effect on local wildlife, subject to relevant conditions.

25. As raised with this appeal by the Council, there is an issue where phosphates are adversely affecting the River Avon Special Area of Conservation (SAC). The site is within the catchment of the River Avon SAC. Since the determination of this planning application Natural England (NE) has advised that planning permission should not be granted for any additional development which will give rise to additional levels of phosphate entering the River Avon catchment system.
26. The SAC is designated for its important species of wildlife that depend on good water quality that is typical of chalk rivers such as the Avon. This SAC is particularly vulnerable to the effects of pollutants including phosphate and nitrogen which may enter the river for example at sewage treatment works. In this case the development of five houses would connect with a sewage treatment works which discharges into the River Avon. The increase in dwellings could result in the increase in pollutants into this river which would adversely affect its quality which is important to wildlife species.
27. Therefore, an appropriate assessment must be undertaken so as to ensure there is no reasonable scientific doubt as to the effects of the proposal, in combination with other development. Natural England advise a precautionary approach whereby all new dwellings within the catchment should achieve 'phosphate neutrality'. If they do not, then additional nutrient loads could enter the water environment causing significant adverse effects on the SAC and their features of interest. As such, with this development, it is likely that the proposed development would have an adverse effect on the SAC, in combination with other developments for example.
28. It is permissible for me, at this stage, to have regard to any proposed avoidance or mitigation measures. In this case, the existing large HMO dwelling would already have some likely potential impact to the River Avon SAC through waste water discharge every day. The appellant has submitted a calculation of the net effect of the development with regards to the total phosphorus load based on the 11 bedroom HMO use currently on site compared to the proposed five dwellings. A further factor in this calculation is that a condition can be imposed on the development which the appellant has agreed to which would limit the water consumption to 110l/person/day, which is likely to be lower than the existing rate.
29. The result of this is that it is anticipated that the development would have less of a phosphorus impact to the River Avon SAC than existing. Although NE has questioned some of the calculations, they have agreed that the proposed development will achieve nutrient neutrality when taking into account the existing development on the site which is to be demolished in its entirety.
30. Taking all the evidence into account, as competent authority for the purposes of the Habitats Regulations, I am satisfied that the proposal would not have an adverse effect on the integrity of European protected sites. Consequently, the proposed development would not adversely affect the River Avon SAC and would not conflict with the Framework in this regard. For these reasons, the proposal would therefore accord with Wiltshire Core Strategy policies CP50 (Biodiversity and Geodiversity) and CP69 (River Avon SAC), which requires that

development demonstrates how it will protect features of nature conservation, to maintain ecological value in the long term.

Planning Balance

31. Paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development. In respect of paragraph 11 d) of the Framework with regard to decision-making, this means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (including applications involving housing where the Council cannot demonstrate a five year housing land supply), permission should be granted unless one of two criteria apply.
32. The first criterion is Framework paragraph 11 d) i, but this is not applicable in this instance as there are no policies in the Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development. Criterion 11 d) ii requires the decision-maker to consider whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
33. It is common ground between the main parties that the council cannot demonstrate a deliverable five year supply of housing and I have no reason to disagree with that view. Therefore, paragraph 11 d) ii is engaged. Although the shortfall does not appear to be substantial, the Council's policies that relate to the supply of housing are out-of-date. Although they are not out-of-date in terms of their consistency with the Framework, they are out of-date in respect of the housing land supply situation.
34. The proposed dwelling would be located outside the defined settlement boundary limits of Salisbury or any other settlement in the area and is therefore contrary to Core Policies 1, 2 and 23 of the Wiltshire Core Strategy. However, in the absence of a demonstrable five year housing land supply, I give this aspect of these policies limited weight. I also note that the site is adjacent to bus stops and not a substantial distance from Salisbury and various facilities and services, including a supermarket. Furthermore, whilst the HMO may be one dwelling, it is likely that the number of occupants would be comparable to those who would live in the 5 houses proposed. Therefore, whilst the site is outside of a defined settlement boundary it is reasonably accessible in sustainable terms.
35. There are also benefits, such as the proposal would make a modest contribution to the local economy during its construction phase and thereafter through the use of services and facilities in the area by its future occupants. In social terms the proposal would make a positive contribution towards the council's housing land supply, albeit by a small amount.
36. Overall, I give modest weight to the benefits. For the reasons set out above, particularly the level of accessibility of the site in general, there are no adverse impacts which would significantly and demonstrably outweigh the benefits. Therefore, the proposal benefits from the presumption in favour of sustainable development and should be allowed.

Conditions

37. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
38. I have attached the standard time limit condition for an outline application and a plans condition (where they include details of the access) as this provides certainty. I have also added a condition concerning materials to ensure a satisfactory appearance.
39. As a new access is proposed it is necessary and reasonable to impose conditions that for the first 5m back from the highway the new access road shall be appropriately surfaced and that the existing access be stopped up, in the interests of highway safety. However, there is no substantive evidence before me why this new access should not have a gate and, therefore, I have not included such a condition as recommended by the Council.
40. A condition requiring construction works to be only between certain hours of the day and not on Sundays or Bank Holidays is reasonable, given the proximity of neighbouring dwellings to the site.
41. In the interests of safeguarding local ecology and providing enhancements, the development should implement the mitigation and enhancements set out in the submitted Ecology Report.
42. There is also the need for full details of both foul and surface water drainage to be submitted, to ensure the site is adequately drained and also to avoid any increased risk of flooding.
43. As described previously, to mitigate any impact to the River Avon SAC the dwellings should be limited to a maximum water use of 110 litres per day. This will help to prevent increased phosphorous in this river.
44. There should be a tree protection plan, setting out which trees are to remain and how they are to be protected. Details of root protection zones should be included. This should be submitted with the reserved matters so it coincides with the detailed layout proposed. The tree protection measures should be in place for the duration of development. Any further landscaping details will need to be submitted with the relevant reserved matter.
45. Due to the potential for archaeological resource at the site a written scheme of investigation should be required by condition, with subsequent archaeological works as per the agreed details.
46. I have not imposed the recommended condition to remove permitted development rights for additions, extensions or additional windows, as at this outline stage it is not clear whether there are the exceptional circumstances that are reasonable to make this condition necessary.
47. Informatives are not included with appeal decisions, but I suggest that the recommended informatives relating to archaeology and highways works should be sent to the appellant for their attention by the Council.

Conclusion

48. For the reasons outlined above, and considering all other matters raised, the appeal should be allowed subject to the conditions set out in the schedule below.

S. Rennie

INSPECTOR

CONDITIONS SCHEDULE

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, though only in regard to any details of the access: 19/3239/SK01 E and Location Plan ref 19/3239/LOC1 A dated June 2019.
- 5) No development shall commence above slab level on site until samples of the materials listed to be used on the development have been provided for inspection on site and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) The development hereby permitted shall not be first occupied until the first five metres of the new access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.
- 7) No development shall commence on site until details of the proposed stopping up of the existing site access has been submitted to and approved in writing by the Local Planning Authority. That stopping up shall take place in accordance with the approved details within one month of the first occupation of any of the dwellings within this development. No later than one month after this first occupation, the sole means of vehicular access to the development shall be as shown on the plans and details hereby approved.
- 8) The development shall be implemented in accordance with Section 6: Mitigation and Enhancement (for bats, birds, hedgehogs and wet ditch) in the report by Eclipse Ecology, dated 9th Sept 2019. The proposed mitigation and enhancement measures hereby approved shall be implemented before there is any occupation of the dwellings and shall remain in place for the lifetime of the development.
- 9) No development shall commence on site until a scheme for the discharge of surface water from the site and access, including details of sustainable drainage systems and all third party approvals, has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage shall thereafter be constructed as per the agreed details.
- 10) The dwellings shall not be occupied until the Building Regulations Optional requirement of a maximum water use of 110 litres per day has been complied with.
- 11) To be submitted with the 'layout' reserved matters details, a tree survey and tree protection plan shall be submitted to and agreed in writing by the Local Planning Authority. The tree protection plan shall show the exact position of each tree/s to be retained, root protection areas for trees on and adjacent to

the site to be protected and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations";

Any protective fencing shall be erected in accordance with the approved details prior to the commencement of development. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.

After the protective fencing has been erected, it shall be maintained for the duration of the works and no vehicle, plant, temporary building or materials, including raising and or, lowering of ground levels, shall be allowed within the protected areas.

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance with British Standard 3998: 2010 "Tree Work – Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

12) No development shall commence within the area indicated (proposed development site) until

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and-
- The approved programme of archaeological work has been carried out in accordance with the approved details.

13) No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.

14) The five dwellings hereby permitted shall not be occupied until a scheme for sewage disposal has been completed, in accordance with details to be submitted to and approved in writing by the Local Planning Authority, prior to when the development commences.

END OF SCHEDULE

