
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: 3 September 2020

Appeal Ref: APP/Y3940/W/19/3242715

Land Adjacent to 1 Witt Road, Winterslow, Wiltshire SP5 1PL

- 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 Kents Oak Ltd against the decision of Wiltshire Council.
 - The application Ref 19/03930/OUT, dated 17 April 2019, was refused by notice dated 12 June 2019.
 - The development proposed is the erection of 3 detached dwellings, garages, parking and access following demolition of 3 existing buildings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Kents Oak Ltd against Wiltshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal seeks outline permission with all matters reserved except for access and layout. In so far as the submitted plans and drawings show details of matters other than the access and layout, I have treated those as being purely illustrative.
4. The Council Decision Notice included reasons for refusal (Nos. 2, 3 and 4) relating to a lack of detail with the planning application with regards flood risk, foul and surface water drainage as part of the proposed development. With the additional information submitted with this appeal, the Council have stated that they regard these reasons for refusal to be overcome. This is also based on a revised layout plan (Plan No Wilts11/07.08.19/Rev G), which replaces revision F which was submitted for the planning application.
5. The revisions include a repositioning of the dwelling at Plot 3 away from the western boundary of the site, where a drainage channel is to be installed as part of a surface water drainage scheme. Parking car ports would then be developed to the southern side, instead of the garages/car ports originally proposed to the side of the house at Plot 3. The car ports would be set to the southern boundary.
6. 'Layout' is not a reserved matter and so if allowed this would be set as the layout for any subsequent reserved matters. The repositioning of the house

would have little difference in terms of potential neighbour impact to living conditions. It would have the same approximate distance to the boundary with No 1 Witt Road to the north, whilst moving the originally proposed garaging for Plot 3 away from this boundary, for example. Moreover, whilst I note the concern that the occupants at No 1 has with overlooking impact, the scale and internal layout of the proposed dwellings are not part of this outline stage of the proposal, so it cannot be fully considered as to the potential living condition impact based on either the original or amended Plot 3 house position. Furthermore, the amended position of the carport is to the boundary with a field/paddock and would have little or no impact to interested parties in the area. On this basis, considering all aspects of the proposed amendments, I have accepted the revised layout plan as it would not prejudice the interests of any other party including those who live in the area in doing so. The Council have not raised an objection to the acceptance of this amended plan, though have withdrawn their flood risk/drainage objections on the basis of these amendments and other information.

7. With this revised plan and the other information received, having regard also to the comments from the Council that the drainage reasons for refusal have been overcome, this matter will not be a main issue for this appeal.
8. Since submission of the appeal the Council has confirmed that the proposal is affected by the issues of high levels of nutrients in the River Test. This site is within the catchment of the River Dun which feeds into the River Test. This then leads to the Solent, which is an internationally designated Special Area of Conservation (Solent Maritime SAC) and Special Protected Area (Solent and Southampton Water SPA). Given the importance of this issue, this will be covered as a main issue within this Decision. Both main parties have been given the opportunity to respond in detail on this issue.

Main Issues

9. The main issues are (1) the effect of the development on the highway network in the area of the site, including highway and pedestrian safety, and (2) the effect on European Nature Conservation Sites.

Reasons

Highway Safety

10. The proposed development of three dwellings is to be accessed off Witt Road, with a private drive within the site to access the individual new dwellings. The access is existing and the Council have not raised an issue with the adequacy with this aspect of the proposal. From my observations, this access off Witt Road onto the site is satisfactory in all regards, with most other properties along this road having some sort of access for off-street parking for example.
11. Parking would be provided within the site for the three dwellings. The parking provision would provide spaces for each dwelling and in this location would be sufficient. The Council have not objected to the parking provision as proposed.
12. Witt Road is a narrow rural road, which for much of its course does not allow for two vehicles to pass. There are also no footways for pedestrians who therefore have to walk in the road. The proposed development would result in additional traffic being generated on this road, but as there would only be three dwellings the increase in vehicle trips would be modest. Indeed, this is the

conclusions based on the appellant's data and trip calculations for such a development. Furthermore, the access to the site is towards the northern end of this cul-de-sac, near to the junction with The Common. Therefore, it is likely that traffic generated by the development would not affect the majority of the length of Witt Road, with most traffic from the development likely to be traveling to the junction rather than to the end of the cul-de-sac.

13. The proposal also includes some road widening at the site frontage which will provide some new space in the form of a layby for vehicles to pull in and let others pass, or to provide a refuge for pedestrians walking along this road if a large vehicle is passing along the carriageway. This is a clear benefit which is proposed as part of the development.
14. Witt Road is not to ideal highway standards, being narrow with no street lights for example, but this is not uncommon in rural villages. Furthermore, the lack of accidents recorded in recent years, together with the relatively low level of vehicular or pedestrian trips along Witt Road as demonstrated with the appellant's evidence and my own observations, indicates that this is not a busy or dangerous stretch of highway. It is my conclusion that the low level of additional vehicles likely as a result of the development would not result in this road becoming dangerous or indeed having any discernible impact to highway safety.
15. In terms of the junction of Witt Road with The Common, which traffic from the site would have to use, the Council states this is substandard. In terms of visibility, it was my observation when driving and walking from Witt Road onto The Common that I had decent levels of visibility, though did note the overhanging vegetation that did partially obscure the distance I could view along the road to see oncoming traffic.
16. The appellant has identified the growth of vegetation either side of the junction of Witt Road as impairing visibility within the necessary vision splays. This vegetation is stated to be on highway controlled verges, which is not disputed by the Council. However, the Council state that this vegetation is not realistically going to be cut back regularly.
17. Whilst I recognise that there may be limited resources to maintain vegetation at junctions, in this case the Council are stating that this junction has unsatisfactory levels of vision which thereby impinges on highway safety. From the evidence before me it is within the Council's powers to improve the vision and safety at this junction for both the existing occupants who live on Witt Road and the future occupants of new residential development. I therefore conclude that any lack of visibility due to the Council not maintaining verge vegetation is not sufficient reason for refusal as minor trimming could be undertaken which I would regard as being sufficient to achieve the necessary visibility splays as set out on the submitted junction plan 6176.002 Rev A.
18. Furthermore, the junction splays out to a 'bellmouth' which does allow two vehicles to pass, although the road does narrow just to the south of the junction along Witt Road. In this regard the proposed new layby would provide some benefit, allowing vehicles travelling towards the junction to pull in if the driver sees another vehicle entering Witt Road from The Common. The layby might not help in some cases, but it is a benefit. Furthermore, this is an existing situation with the increase in traffic as a result of the development being very minor.

19. There may be other potential development sites along Witt Road, but any future proposals would need to be considered at that time against adopted planning policy. As such, I do not regard this proposed development as setting an undesirable precedent with each case considered on its own merits.
20. Overall, the proposal would not have an unacceptable impact on highway safety, nor have residual cumulative impacts on the road network which would be severe. The proposal is therefore in accordance with the advice within the National Planning Policy Framework (the Framework). The proposal is also in accordance with Core Policy CP61 of the adopted Wiltshire Core Strategy, which requires development to be served by safe access to the highway network, amongst other things.

European Nature Conservation Sites

21. Advice from Natural England indicates that every permission for new dwellings in the catchment area of the rivers that lead to the Solent could result in increased nutrients entering the Solent and Southampton Water European Sites (the European Sites). This can cause eutrophication with an increased growth of plants and algae which, in turn affects oxygen and light levels within the water, thus affecting other important species and habitats.
22. Whilst the site is some distance from the Solent, the current advice indicates that it applies to all new planning applications for residential development within the catchment of rivers leading to these protected areas. Accordingly, the proposal could lead to likely significant effects on the European Sites and an appropriate assessment is required under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). This is conducted on a proportionate basis, with regard to the evidence provided by Natural England, the Council, and from the appellant.
23. The updated Natural England advice (June 2020) indicates that there are high levels of nitrogen and phosphorus input into the Solent and Southampton Water catchment, with sound evidence that these nutrients are causing eutrophication at the European Sites. Nutrient inputs are currently caused mostly by either agricultural sources or wastewater from existing housing, and it is possible that new housing growth would cause further deterioration through increased waste-water.
24. An appropriate assessment must be undertaken 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 residential developments, including those of a smaller scale, within the catchment should achieve 'nutrient neutrality'. If they do not, then additional nutrient loads could enter the water environment causing significant adverse effects on the European Sites and their particular features of interest.
25. The appellant has calculated that there would be some likely nitrogen generation from the proposed development, which is understandable being that it would be a net gain of three new houses on this site. Whilst a relatively minor development in scale, Natural England is not content that without mitigation there would be no significant adverse effects on the integrity of the European sites which would arise in combination with other plans or projects.

26. Natural England in their advice does provide some advice for small scale development to mitigate against any net increase in nitrogen from the site, such as the delivery of local ponds or planting of copse, for example. The appellant has also highlighted other options such as the purchasing of 'nitrogen credits' as a method of offsetting. There are also schemes in Hampshire and the Isle of Wight, for example, which offer off-site mitigation. There may well be other schemes coming forward to help address this issue in the near future. However, the appellant is suggesting the use of a 'Grampian' condition requiring a mitigation package addressing the additional nutrient input arising from the development. However, there is no certainty at this stage over the course of mitigation that would be taken.
27. Without detail of the mitigation package at this stage, there is a considerable amount of uncertainty as to the potential effectiveness of the mitigation available for this proposed development. There is no clear mitigation that is being proposed at this time by the appellant, though it is accepted that mitigation is required. Furthermore, whilst a Grampian condition could potentially prevent development occurring until suitable mitigation was confirmed, an appropriate assessment must consider detailed mitigation proposals at the decision stage.
28. There are no firm detailed proposals for mitigation before me and as such, following appropriate assessment, I cannot conclude that adverse effects on the integrity of these European Sites would not arise from the development, in combination with other developments within the Solent catchment areas.
29. For this reason, the proposal would therefore conflict with Wiltshire Core Strategy policies CP50 (Biodiversity and Geodiversity), which requires that development demonstrates how it will protect features of nature conservation, to maintain ecological value in the long term.

Other Matters

30. The Council has acknowledged that it cannot demonstrate a 5 year housing land supply. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development and that, under criterion d) where the policies which are most important for determining the application are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
31. However, any such approach must be considered against there being no application of policies of the Framework (defined by footnote 6) requiring that protect areas or assets of particular importance which would provide a clear reason for refusing the development proposed. For if they were to be, the tilted balance within paragraph 11 would not be engaged, so righting the planning balance.
32. This is the case here, where the policies of the Framework provide clear reasons for refusing the development due to the adverse impact likely to habitats sites as protected areas of particular importance. In any case, the potential harm to the SAC/European Sites would likely be significant and demonstrable, especially when considered in cumulation with other developments which affects this catchment. These benefits include such things as the provision of three new houses towards the local housing land supply on

what is a reasonably accessible site, together with the economic benefits through construction and support for local services and businesses through additional residents in the village. However, such benefits would be modest due to the small scale of development and the harm would clearly outweighing these benefits.

Conclusion

33. For the reasons given above, having regard to all matters raised, the appeal should be dismissed due to the potential adverse impacts to nature conservation areas.

S. Rennie

INSPECTOR