



Appeal Decision

Site visit made on 1 September 2020

by David Carter BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2020

Appeal Ref: APP/K0425/W/20/3250325

Land to the rear of Windmill Cottages, Main Road, Lacey Green HP27 0QH

- 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 Millen (Millen Homes Ltd) against Buckinghamshire Council.
 - The application Ref 20/05131/OUT, is dated 21 January 2020.
 - The development proposed is 3 self-build/ custom-build plots on land to the north east of Main Road, Lacey Green.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was made in outline with all matters other than access reserved. An indicative plan showing the access from Main Road together with a potential layout of the three plots including the positioning of buildings was submitted with the planning application. This plan was subsequently revised to address comments regarding the access road and submitted to the Council on 10 February 2020, prior to the target date for determination. The indicative plan is helpful in that it clarifies the proposals for access but, in all other respects, I have given it no weight since the other matters are reserved.
3. The appeal is for non-determination and the Council have indicated that had it been in a position to do so the planning application would have been refused because: the proposal represents inappropriate development in the Green Belt, the proposal would have an unacceptable impact on the amenity of neighbouring properties due to the increased noise and disturbance, the proposed access arrangements for the site are not suitable for emergency or service vehicles, there is insufficient information regarding the risk of flooding and on protected species or their habitats, there is a failure to preserve or enhance biodiversity on the site and, a failure to deliver affordable housing.
4. The appellants final comments included a revised Unilateral Undertaking (UU) relating to the self-build/ custom-build plots. This resulted in the submission of a further revised version of the UU (amended on 24 September 2020) in respect of the self-build/ custom-build units taking account of the Council's comments. I have determined the appeal on the basis of the latest version of the UU.

5. On 1 April 2020, Wycombe District Council was replaced by Buckinghamshire Council. References to the Council contained in this document, refer to Buckinghamshire Council from 01 April 2020.

Main Issues

6. The main issues are:

- (i) whether the proposal would be inappropriate development within the Green Belt and,
- (ii) the effects of the proposal on the living conditions of occupiers of neighbouring properties through increased noise and disturbance and risk of crime from the proposed access and,
- (iii) the effects on highway safety in respect of access for emergency and service vehicles and,
- (iv) the effects of the proposal on flood risk and protected species and their habitats and,
- (v) the implications of the proposal for affordable housing and self-build/custom-build housing and,
- (vi) would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

7. The settlement of Lacey Green in its entirety falls within designated Green Belt. The Government's National Planning Policy Framework (the Framework) establishes (in paragraph 145) that new buildings within the Green Belt are inappropriate unless the proposed development falls under one of several identified exceptions. Under the provisions of Paragraph 145 g) limited infilling is allowed within the Green Belt providing it does not result in a greater impact on the openness of the Green Belt.
8. Policy DM42 of the Wycombe District Local Plan (2019) (LP) mirrors the approach in the Framework. The LP also sets out a definition of 'limited infilling' which is seen, at most, as one detached or one pair of semi-detached dwellings in an existing small gap between other buildings in the built-up area. The definition also requires that the siting would also be appropriate with regards to settlement pattern and the grain and morphology of the village. The appeal site would comprise 3 detached dwellings to be built on undeveloped backland behind 3 existing dwellings known as Windmill Cottages on Main Road and detached properties fronting onto Goodacres Lane. As such, it would be located close to the undeveloped edge of the settlement and would not fill an existing small gap between other buildings in the built-up area. Its development would be uncharacteristic of existing mainly single-depth development in the surrounding area. The appeal site and the rear garden of the house beyond the north-west boundary fall within the defined settlement boundary but this would not in itself signal that the land contained should be used for building. In coming to this view, I am aware that development to a depth of 3 dwellings including Walnut Tree House forms the north-eastern boundary to the site via a private access off Goodacres Lane. However, this is not typical of the pattern of development in the local area and does not create a gap between buildings in the built-up area.

9. Openness is an essential characteristic of the Green Belt. The appeal proposal would introduce built development of 3 detached dwellings onto this otherwise undeveloped site located close to the edge of Lacey Green. While I acknowledge the site is well screened from public views, this does not prevent the harm caused to openness. Occupiers of existing adjacent dwellings on Main Street and Goodacres Lane would be most significantly affected as they would experience the increased intensity of development and a reduction in the feeling of proximity to, and presence within, the countryside and Green Belt. Since the appeal proposal would adversely affect the openness of the Green Belt, I conclude it conflicts with the provisions of the Framework and, in particular paragraph 133.
10. Accordingly, the appeal proposal would be contrary to Policy DM42 of the LP and would represent inappropriate development which, by definition, would be harmful to the Green Belt.

Living conditions

11. In respect of living conditions, the outline nature of the planning application precludes detailed assessment of the proposals. The sharing of the current access to Windmill Cottages means that the usage of this accessway would be likely to double. Its location adjacent to the rear of properties on Goodacres Lane would increase the level and extent of noise disturbance, exacerbated by the loose gravel surface. There is also potential for easier unauthorised access into back gardens increasing the risk and fear of crime which the adopted Residential Design Guidelines (June 2017) seeks to avoid.
12. Therefore, there are aspects of the proposal that, in the absence of detail could be harmful to the living conditions of the occupants of neighbouring properties through noise and disturbance from the proposed accessway and by increasing the risk of crime through ease of access to the rear of properties on Goodacres Lane. These concerns run against the provisions of the Council's adopted Design Guide and, in the absence of detail proposals addressing these matters means the appeal proposal is contrary to LP Policy DM35 which seeks high quality design and a strong sense of place.

Highway safety

13. Access is not a reserved matter in relation to this appeal. The Highways Authority's (HA) initial comment on the proposal requested, amongst other things, that a revised plan be prepared to provide an access from Main Road with dimensions of 4.8m width for the first 10 m off the Main Road. This was for the specific purpose of allowing vehicles accessing and leaving along the access at the same time to pass without causing an obstruction on the main highway. A revised plan was prepared and submitted by the appellant although this was not formally accepted by the Council and it has been submitted as part of this appeal. This revised plan has not been subject to public consultation.
14. Notwithstanding this, the HA has maintained its objections to the appeal proposal specifically on the grounds that the means of access to the site does not demonstrate that emergency vehicles or refuse trucks could enter the site, turn around and leave in forward gear.
15. From the evidence it appears to me that the appellant has sought to address some of the concerns of the HA but, matters relating to access and egress by

larger service and emergency vehicles remain to be resolved and there may be third party objections to the revised plan. At this point, therefore, the uncertainties are sufficient to conclude that they could not be satisfactorily dealt with by way of conditions.

16. Accordingly, I find that the appeal proposals do not satisfactorily address matters relating to highway safety and, as such, are contrary to LP Policy DM35 which requires a high quality of design in respect of new development including its relationship to streets.

Flood risk

17. During the course of the planning application the appellant submitted information (report entitled FRA & SUDS / Drainage, Britscape Environmental Consultancy Ltd) concerning flood risk and surface water drainage. This was not formally accepted by the Council but, it has been submitted as part of this appeal. This report has not been subject to public consultation. The concluding section of the Britscape report acknowledges that the proposed drainage strategy in the study would be subject to the approval of the Lead Local Flood Authority (LLFA). However, the LLFA maintains its objection to the proposals on the basis that it has not been demonstrated that surface water drainage would be satisfactorily dealt with and, that the risk of flooding on the site or elsewhere could be increased as a result of the development. The LLFA indicate that these are matters that should be resolved at the planning application stage rather than by way of planning conditions.
18. The appeal site is located within Flood Zone 1, so the risks of flooding are relatively low. While the LLFA have acknowledged there may be a solution to managing surface water runoff, insufficient clarity has been provided by the appellant to support their case to the LLFA's satisfaction. This remains the case after the appellant successfully sought an assurance from Thames Water regarding the acceptability of a connection to the foul water sewer for some of the surface water run-off, in the event that was necessary. Consequently, the proposed arrangements for surface water drainage remain imprecise and thereby subject to a degree of uncertainty in the absence of an agreed sustainable drainage strategy.
19. Accordingly, I conclude that the appeal proposal has not adequately addressed the treatment of surface water drainage. As such, the appeal proposal conflicts with the provisions of LP Policy DM39 and paragraph 163 of the Framework. Policy DM39 sets out the approach to dealing with flood risk and provision of sustainable drainage as part of new developments.

Protected species and habitats

20. The appeal site, together with the land comprising Windmill Cottages previously formed the curtilage of a single dwelling known as Rose Villa. The appeal site formed part of the garden of that property and my understanding is that it has remained vacant and unused since the construction of Windmill Cottages around a decade ago, with, according to the appellant, regular cutting back of the undergrowth. On my site visit, I was not able to enter the appeal site such was the intensity of the undergrowth but, I was able to observe that more mature vegetation was mainly to be found along the site boundaries. However, the potential ecological value of the site including protected species is a matter highlighted in the response to the public consultation, including

references to bats and badgers. It has also been suggested this area could form part of the wider green infrastructure.

21. Given the overgrown and undeveloped nature of the appeal site and its location close to the countryside, it is reasonable that the site should have been subject to an ecological appraisal. Without the necessary understanding of the present situation it would not be appropriate to close off this issue by way of a condition, as suggested by the appellant.
22. Accordingly, I conclude that the appeal proposal fails to make adequate consideration of protected species and habitats and would therefore fail to satisfy the requirements of LP Policies DM14 and DM34. These policies set out the relationship of biodiversity with development and green infrastructure.

Housing

23. With respect to housing there are 2 aspects to consider, self-build/ custom build housing and affordable housing.
24. The appeal proposal is for 3 self-build/ custom build dwellings and a significant proportion of the appellant's evidence relates to this matter. The appellant has stated that the 3 plots would be offered to local individuals on the Council's Right to Build register and has submitted a signed Unilateral Undertaking (UU) as part of the appeal. The intention of this UU would be to secure the plots as self-build or custom build preventing the site or individual plots being built by a developer for market sale. The appellant asserts that the Council have failed in their duty to provide sufficient, serviced self-build/ custom build plots to meet needs on the local register.
25. Policy DM22 of the LP is concerned with housing mix and includes specific provision to require the provision of 5% of the capacity on sites over 100 dwellings to be made available as plots for custom/ self-build. The Council have indicated that since the LP was adopted in 2019 one such scheme securing the necessary provision has been approved and several others are in the pipeline. Of the large sites allocated in the LP in excess of 300 self-build dwellings should become available. In addition, in relation to smaller sites, the Council have produced data in their evidence of the numbers of dwellings exempt from CIL where self-build relief has been claimed.
26. It is not a legal requirement for the Council to include specific provision for self-build/ custom build housing as part of their development plan. Nonetheless, in the newly adopted LP for the Wycombe area such a policy is included and, this should enable the provision of a significant number of serviced plots. Accordingly, I would not agree with the suggestion that the Council has failed to take its obligation seriously. Notwithstanding this, I agree with the appellant that the lead-in time for development of major sites could delay the stream of serviced plots coming forward. Therefore, it follows that the provision of 3 serviced plots for self-build/ custom build dwellings would provide an important opportunity to help meet local demand, particularly those people who might have been on the register for some time.
27. The need for a S106 agreement is recognised in the LP (paragraph 6.17). Overall, the UU appears to cover the main requirements set out in LP paragraph 6.17. However, during the appeal process the UU has been updated twice and signed to take account of the Council Solicitor's comments.

Notwithstanding this, there would appear to be elements that remain in dispute. These include a point that the UU does not cover the whole of the site identified by the red line on the location plan (Drawing No LGPR002). The area excluded, I understand, is the land required to secure access to the site. While the appellants legal advice is it is not necessary to include the land required for access, this means there are interests affected by the UU who are not party to the agreement.

28. The appellant has referred me to other appeal decisions relating to self-build/ custom-build housing (including APP/W0530/W/19/3230103 and APP/G2435/W/18/3214451). While I do not have the detail relating to these proposals the circumstances were different to the current appeal. In the former appeal it was accepted that there was a shortage in the supply of self-build opportunities and, in the latter appeal the scheme was larger, for 30 dwellings, and the Inspector was persuaded of a shortfall of self-build opportunities. Accordingly, I have determined the current appeal on its merits.
29. On this matter, I conclude that the proposed UU would not be acceptable in its current form although, as indicated above, the provision of 3 self-build/ custom build plots would provide a useful contribution to supply. Since an appropriate legal agreement would be required in order to enable the development and it is not appropriate to cover that requirement by condition, it follows that the appeal proposal conflicts with LP Policy DM22 and its supporting text (paragraph 6.17).
30. Moving onto affordable housing, Policy DM24 of the LP sets out the circumstances in which affordable housing will be sought. In the Chilterns Area of Outstanding Natural Beauty (AONB) the threshold for consideration of affordable housing is lower than outside the designated area. Part 2 of the policy seeks contributions on sites where the capacity exceeds 6 dwellings and Part 3 of the policy seeks a contribution when the development site is demonstrably part of a larger developable area. The affordable housing requirements are set out in more depth in the Council's Planning Obligations Supplementary Planning Document adopted March 2013.
31. The appeal site forms part of the site formerly occupied by Rose Villa. Some 10 years ago, 3 dwellings (Windmill Cottages) were constructed on that part of the site facing Main Road and, in 2011 a further planning application (11/06941/FUL) on the current appeal site a proposal for 2 dwellings was turned down on appeal (APP/K0425/A/11/2164420), one of the reasons being lack of provision for affordable housing.
32. The appellant has indicated that the development of Windmill Cottages and the current proposal should be regarded as separate given the passage of time, that the appeal proposal is by a different company and that the local plan policy context has changed.
33. Taking the above into account it appears to me that the appeal site should continue to be regarded as part of the planning unit previously occupied by Rose Villa. This is the case because the planning application in 2011 indicated an intention to build more than the initial 3 dwellings on the wider planning unit and, the current proposal confirms that intent remains the case. The local plan policy context is clear and, it is important that the provision of affordable housing should not be curtailed as a result of site sub-division. The proposed

sharing of the access to Windmill Cottages also highlights how the appeal proposal remains closely tied to the earlier development.

34. Accordingly, and in respect of the provision of housing the appeal proposal is not acceptable because it makes no provision for affordable housing which, I understand, would normally be sought through a S106 agreement providing for an appropriate financial contribution towards provision within the AONB. As such the appeal proposal is contrary to the provisions of LP Policy DM24 which seeks to ensure the provision of affordable housing as part of new development.

Other Considerations and Green Belt Balance

35. The appeal site lies within the Chilterns AONB. The Council have indicated that the relationship of the site to Lacey Green and the scale of the development proposed means that there would not be a harmful impact on the wider landscape of the AONB. I have no reason to take a different view.
36. I acknowledge that the appeal proposal has important benefits. Uppermost would be the proposed provision of 3 self-build/ custom-build plots (subject to an acceptable UU and others include employment during the construction phase, the addition of dwellings to the housing supply and the support for local services that occupants of the housing would bring.
37. The appeal proposal would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be a loss of openness given the undeveloped nature and edge of settlement location of the appeal site.
38. Notwithstanding the benefits of the appeal proposal I find that these would not clearly outweigh the totality of harm which I have identified above and, this is the test that has to be met. Consequently, very special circumstances do not exist.

Conclusion

39. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

David Carter

INSPECTOR