
Appeal Decision

Site visit made on 8 December 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Appeal Ref: APP/H1705/W/20/3259407

Land adjoining Benmore, Frog Lane, Little London RG26 5EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Jayde Butler against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 20/00985/FUL, dated 16 April 2020, was refused by notice dated 25 June 2020.
 - The development proposed is erection of a detached dwelling and garage with new access following demolition of stable blocks and removal of enclosed manege.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development is taken from the appeal form and decision notice, since it more accurately describes the appeal scheme than that of the application form.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area, having regard to the location of the site within open countryside.

Reasons

4. The roughly rectangular shaped appeal site lies on the south side of Frog Lane, within countryside to the northeast of Little London. It is occupied by an enclosed manege, with stable blocks and yard to one side of the site. There are fields to the other side and to the rear of the site. The road frontage is defined by mature hedging and there is a detached dwelling on the opposite side of the road.
5. The first step in considering the appeal scheme is the development plan, which comprises the *Basingstoke and Deane Local Plan 2011 – 2029* (2016) (BDLP). Section 38(6) of the Act sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
6. The site lies outside of any designated Settlement Policy Boundary (SPB), and is therefore considered to be in the countryside for the purposes of BDLP Policy SS1. This policy sets out a spatial strategy for the location of new housing. As a general rule, it directs new housing to within the designated SPBs and allocated

- sites, and restricts new residential development in the countryside unless it accords with the exceptional criteria listed within BDLP Policy SS6, under which new housing in the countryside would be appropriate.
7. Given the characteristics of the appeal site and the scale and nature of the appeal scheme, criterion a), which relates to previously developed land (PDL) and criterion e), which relates to small-scale (4 dwellings or fewer) market housing, are most relevant to the proposal.
 8. The appellants consider that the appeal scheme accords with Policy SS6 a), which allows for new housing in the countryside where it is on PDL, provided that it does not result in an isolated form of development, is not of high environmental value, and the proposed use and scale of development is appropriate to the site's context. The appellants' case is based on the manege and associated adjacent stables and equestrian use of the land, which the appellants consider have become lawful by virtue of existing for more than 10 years.
 9. Annex 2 of the *National Planning Policy Framework 2019* (the Framework) describes PDL as "*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure*". It goes on to confirm that "*This excludes: land that is or was last occupied by agricultural or forestry buildings;*"
 10. The evidence before me is that the Council has not granted planning permission for the existing manege, stables, yard and equestrian use of the land, and neither has a certificate of lawfulness been sought under section 191 of the Town and Country Planning Act 1990 (the Act). As such, the Council considers the lawful use of the appeal site to be agricultural. Furthermore, the Council's opinion is that the evidence submitted by the appellants, whilst demonstrating that a rider training area and stables existed, is not sufficiently precise and unambiguous to prove, on the balance of probability, that the existing structures and equestrian use have existed for at least 10 years and would be immune from enforcement action.
 11. It is not for me, under a section 78 appeal, to determine whether or not the existing equestrian structures and use are lawful. To that end, it is open to the appellants to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal. With this in mind, on the basis of the evidence before me, I am unable to conclude that the appeal scheme would fall under criterion a) of Policy SS6.
 12. Having regard to criterion e) of the policy, such housing would need to be of a scale and type that would meet a locally agreed need as detailed in the Council's published guidance. This advises that applicants must demonstrate that the development would address a specific and clearly identified unmet local need having regard to number, size, type and tenure of dwellings. I have no cogent evidence before me that such a locally agreed need has been satisfactorily demonstrated. As such, I find that there are no exception circumstances under Policy SS6 that the development would meet.

13. However, the Council has made it clear that, as it cannot demonstrate a sufficient housing land supply, it has considered the BDLP policies relating to housing delivery to currently be out of date, and it has afforded limited weight to them in the decision making process. As such, the Council has applied the 'tilted balance' in accordance with paragraph 11 d) of the Framework.
14. I note the Council's conclusion on the principle of the location of the appeal site for new housing, having regard to paragraphs 78, 79 and 103 of the Framework, and the Braintree caselaw¹, and that that the Council's reason for refusal does not include conflict with BDLP Policies SS1 and SS6.
15. However, the Council has objected in respect of how the proposal would impact on the character and appearance of the area. The Council has confirmed that the site lies within the North Sherborne Landscape Character Area, which is characterised by open farmland, grassland and small wooded copses.
16. Frog Lane is a narrow, unlit country lane, with no pavements and with edges defined by trees and mature landscaping and grass verges. I find that the road has a predominantly rural character, with sporadic development of residential and agricultural properties along its edges, and large areas of undeveloped land, including agricultural and equestrian fields.
17. Notwithstanding the proximity of the site to an existing cluster of properties on the south side of the road, including Benmore, and Orchard and Froglane Farms, it comprises part of the wider, rustic landscape, being bounded by open fields to the rear and west side.
18. Whether as agricultural land, as asserted by the Council, or as equestrian land as currently in use, the appeal site makes a notable contribution to the attractive, open, rural land which provides an undeveloped buffer area between dispersed areas of woodland and clusters of built development, including the group of buildings to the east of the site and the ribbon development of residential properties further west along Silchester Road. The site also plays a role in enabling vistas across the wider landscape.
19. The proposal, by replacing the manege with a detached two storey house and large detached garage, together with the creation of an additional vehicular access and on-site parking and turning area, would urbanise the appeal site, extending built development into the open rural area and detrimentally eroding the intrinsic landscape character of the site.
20. The amount, size and height of proposed built development and its proximity to the site frontage, would be such that it would be likely to be visible in public views from Frog Lane, above the frontage hedging and from the vehicular access point. It would be visually intrusive within the rural landscape and would affect some views across open fields towards wooded areas, particularly during the times of the year when the boundary vegetation is naturally thinner.
21. The result would be a harmful erosion of the predominantly spacious and rural character of Frog Lane. The appellants' proposed tree and soft landscaping proposals are noted. Whilst the new planting could potentially provide a high degree of screening to the development, this would rely upon the implementation, and maintenance thereafter, of the landscaping scheme. Also, notwithstanding this, I am not persuaded that this would overcome the harm to

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

the intrinsic rural character of this part of the countryside which would arise from the expansion of permanent residential built development onto the appeal site.

22. In addition to the new dwelling, the large detached garage, access drive and parking and turning area, would further domesticate the rural site. It is also reasonable to expect that the proposed residential use of the site would include features such as further ornamental plantings, domestic paraphernalia, garden buildings and structures. This would further reduce the open rural character of the site.
23. I am not persuaded by the appellants' assertion that benefits to the character and appearance of the area would result from the removal of the existing manege and stables. Such structures are of a functional design and represent common features of a rural location.
24. Similarly, the existence of other equestrian uses and structures elsewhere in Frog Lane and Silchester Road does not alter my conclusions in respect of the appeal scheme. I do not find that they have changed the character and appearance of the surrounding countryside to an extent that justifies the further expansion of residential development along Frog Lane.
25. For the above reasons, I therefore conclude that the appeal scheme would harm the character and appearance of the area, having regard to the location of the site within open countryside. As such, it would conflict with Policies EM1 and EM10 of the BDLP, which, amongst other things, require new development to be of a high quality, respond positively to the local context, and respect, enhance, and not be detrimental to, the character or visual amenity of the landscape likely to be affected.
26. For similar reasons, the appeal scheme would be contrary to Chapters 12 and 15 of the Framework, which, respectively, require well-designed places and the conservation and enhancement of the natural environment.

Planning Balance

27. The Council has confirmed that, notwithstanding the addition of a 5% buffer in accordance with the Housing Delivery Test 2019 published in February 2020, it cannot demonstrate a 5 year supply of deliverable housing sites as required by the Framework. It has confirmed that, following the latest Housing Delivery Test, it is able to demonstrate 4.86 years of deliverable housing land supply. As such, there is an undisputed undersupply of deliverable housing sites within the Borough.
28. 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 that are most important for determining the application are out of date, planning permission should be granted unless: i) the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason

for refusing the development. Given the lack of a 5 year housing land supply, paragraph 11 d) of the Framework is engaged.

29. There would be benefits arising from the proposal. An additional dwelling would make a very modest contribution towards addressing the housing supply deficit, and could be built-out relatively quickly, having regard to paragraph 68 of the Framework. It would deliver economic benefits during the construction period. Additional expenditure by new residents would help support the services in nearby settlements. The dwelling could incorporate sustainable aspects, and the appellants have confirmed that the proposal would include net biodiversity gains. However, as the appeal scheme is only for one dwelling, these benefits would be modest.
30. Having regard to the policy principle of the location, I concur with the Council's view that, whilst the proposed development does not accord with BDLP Policies SS1 and SS6, the proposed dwelling would not be in an isolated location, having regard to the proximity of the site to a group of dwellings and farmsteads in Frog Lane, and to the services and facilities and public transport connections within the settlement of Little London. In the planning balance, I consider that the issue of the conflict with Policies SS1 and SS6, in relation to the new house being outside of a settlement boundary, as an issue where any harm does not significantly or demonstrably outweigh the benefits.
31. The Council has raised no objection to the appeal scheme in respect of matters including dwelling design, biodiversity, highway safety, traffic generation, neighbour living conditions, drainage, flooding and pollution. On the basis of the evidence before me, neither do I. In terms of the planning balance, I find that a lack of identified harm in respect of the above matters would comprise a neutral factor.
32. However, for the reasons set out above, I conclude that the appeal scheme would have a harmful effect upon the rural character and appearance of the area. This would conflict with the requirements of the Framework to achieve well-designed places and to conserve and enhance the natural environment, recognising the intrinsic character and beauty of the countryside. Having given careful consideration to the balance of factors, I consider that, when assessed against the policies of the Framework taken as a whole, this harm would significantly and demonstrably outweigh the benefits of the proposed development. Therefore, the presumption in favour of sustainable development in paragraph 11(d)(ii) does not apply in these circumstances.

Other Matters

33. I acknowledge that the proposal represents an amended scheme from that refused under planning application Ref 19/03190/FUL, including changes to the siting of the house, garage and access, a reduction in the amount of hardstanding and the inclusion of a proposed planting and maintenance schedule. However, this does not alter my findings in respect of the current proposal.
34. I have noted that no third party objections have been received from neighbours. However, this does not affect my conclusions in respect of the main issue.

Conclusion

35. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR