



Appeal Decision

Site Visit made on 25 January 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2021

Appeal Ref: APP/R3325/W/20/3257687

Land at Barrow Lane, Charlton Musgrove, Wincanton BA9 8HW

- 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 Mr G Crabb against the decision of South Somerset District Council.
 - The application Ref 19/01976/FUL, dated 16 July 2019, was refused by notice dated 8 July 2020.
 - The development proposed is described as to develop a small vacant plot (which used to have a house on it) 1 dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would be in an appropriate location, having regard to development plan policies and access to key services; and
 - the effect of the proposed development on the character and appearance of the surrounding area, with particular regard to the preserved oak tree.

Reasons

Location

3. The appeal site is situated within Barrow which contains, amongst other aspects, a village hall, church and pub, and is served by a local bus service. Barrow is also relatively near to Charlton Musgrove and not far from Wincanton. Although the surrounding area has a rural character, the site is not isolated given the various nearby buildings, including Orchard Cottage to the south and St Johns Cottages on the opposite side of the highway.
4. With Barrow identified by the Council as a rural settlement, Policies SS1 and SS5 of the South Somerset Local Plan 2006 – 2028 (SSLP) – covering the Council's settlement strategy and the delivery of new housing respectively – indicate that Policy SS2 is applicable to the appeal scheme. Setting out that development in rural settlements will be strictly controlled, Policy SS2 limits development to, amongst other aspects, that which provides employment opportunities, creates or enhances community facilities and services to serve the settlement and/or meets identified housing need. It also sets out that housing development should only be permitted in rural settlements that have access to two or more key services.

5. The supporting text to the policy provides helpful detail on each of these aspects. Referring to employment development, it provides examples of employment opportunities such as starter units to support individuals or small companies, workshops, and businesses that require a rural location. In relation to creating or enhancing community facilities and services, examples of relevant proposals include local shops, community halls and pubs amongst other facilities. With regards to the matter of identified housing need, it sets out that housing proposals will need to fully explain how they contribute to meeting local need, and it identifies that this could be via delivering affordable housing, low cost market housing or a different form or type of housing which is in limited supply for locals. It also lists the key services that housing development are expected to have easy access to.
6. With the site being located within Barrow, future occupiers of the proposed development would have access to two or more key services as defined in the SSLP. With the future occupiers being likely to use local services and facilities in Barrow and the wider area, the development would also help to support the vitality of rural communities, consistent with the rural housing provisions in the National Planning Policy Framework (Framework). Furthermore, its construction would create some short-term construction employment for local firms/tradespeople and I note that the appellant intends to move into the proposed dwelling and employ a gardener to maintain the lawns and hedges.
7. Be that as it may, I have little substantive evidence which indicates that the appeal proposal would meet an identified housing need as required by SSLP Policy SS2. When regard is had to the details provided in the supporting text to the policy, neither can the proposal to provide a dwelling on the site reasonably be described as providing employment opportunities and/or creating or enhancing community facilities to serve the settlement. I also have little substantive evidence that the proposal is required to secure the current or future facilities and services in the settlement.
8. In coming to this view, I have taken account of the Officer Report's findings and recommendations and that a house is said to have previously been on the site. My attention has also been drawn to Charlton Musgrove being a feeder village to Wincanton and that Policy SS2 was acknowledged to be applicable to Charlton Musgrove for another planning permission. Be that as it may, these matters do not lead me to a different conclusion.
9. For the above reasons, I conclude that although the proposed development would have access to two or more key services, it would not be one of the acceptable development types in rural settlements. Accordingly, the appeal scheme would not be in an appropriate location, having regard to development plan policies, and would not accord with SSLP Policies SS1, SS2 and SS5.

Oak Tree

10. The appeal site consists of an undeveloped, vacant and somewhat overgrown plot. It is bounded by hedging and trees, particularly on its western edge, where the large, category A preserved oak tree is situated. The site therefore reflects and contributes to the rural character and verdant appearance of the surrounding area. Representing the highest of arboricultural values, the prominent oak tree also contributes significantly to the visual amenity of the locality and its canopy extends across a large part of the site.

11. The appellant's updated Arboricultural Impact Assessment & Tree Protection Plan, dated 16 January 2020 (arboricultural report), and the amended plan (Drawing No 2890-01B) show the proposed dwelling and associated parking and turning area positioned well beyond the large canopy spread and root protection area of the preserved oak tree. Even if the tree's roots were to extend beyond the area shown in the arboricultural report, the degree of separation indicates that any potential incursion into the root area would be minor in relation to its overall extent. It seems to me that suitable construction methods and materials could also be secured by condition.
12. The report shows that tree protection fencing would be provided to prevent construction activity from encroaching into the tree's identified root protection area. It sets out that new services and soakaways could be routed to avoid the tree's root protection area. The conditions suggested by the Council's tree officer – who removed his objection based on the amended scheme that the Council made its decision on and which is now the subject of the appeal – would also ensure the proposed and any future construction works and landscaping of the site would be sufficiently controlled. Furthermore, a condition could secure details such as routing and installation methods of the new services and soakaways that would be required. Accordingly, the oak tree would not be harmed by construction of the proposed development.
13. Although the appellant's previous arboricultural report (dated 28 November 2019) has been superseded by the later version (dated 16 January 2020) and the proposed dwelling is no longer in the position shown in the superseded report, it nevertheless contains some helpful details in relation to shading from the oak tree. Some significant areas of shading are shown and I observed on my site visit that the oak tree's large canopy would clearly shade various parts of the site at various points during the day throughout the year.
14. However, the site would not be in shadow all the time. Given the position of the proposed dwelling (as shown in the amended plan and latest arboricultural report) and the degree of separation, neither would the oak tree result in significant shading of the dwelling nor represent a significant safety issue. The garden area immediately surrounding the dwelling would also not experience significant shading due to the oak tree and it seems to me that future occupiers would likely make most use of this part of the garden given its adjacency to the dwelling. With the parking area and main area of garden not being positioned under the tree's canopy, neither would those areas be subject to significant leaf litter, honeydew or other such nuisances. On this basis, and even accounting for future growth of the tree, the living conditions of future occupiers of the proposed dwelling would not be significantly affected by the presence of the oak tree. Accordingly, the appeal scheme would not risk its preservation through for example future requests to prune, lop or fell the tree.
15. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area, with particular regard to the protected oak tree. I therefore find that it accords with SSLP Policies EQ2, EQ5 and EQ6. Amongst other aspects, these protect against the loss of ancient or veteran trees and require development to preserve the character and appearance of the district and the local landscape's distinctiveness. The proposal would also be consistent with the provisions in the Framework in relation to achieving well-designed places and conserving and enhancing the natural environment. In coming to this view, I have taken into

account the uncertainty regarding ownership of the oak tree and that the Council's tree officer is said to have not visited the site.

Other matters

16. I recognise that Council Officers recommended approval and found that the proposed development would accord with various development plan policies. However, Council Members are not required to accept the professional advice of Officers so long as a case can be made for the contrary view. These matters are also not determinative as to the acceptability of the appeal proposal, which I have considered on its merits, based on the evidence before me.
17. Although not forming part of the Council's reasons for refusal, my attention has been drawn to the effect of the proposed development on the category C ash tree situated on the site's western boundary. The arboricultural report states that the tree (identified as T1) would need to be removed in order to construct the proposed development. The tree is also shown as scheduled for removal in the report's tree removal plan. Despite this, the evidence before me indicates that the tree is not within the ownership of the appellant, and I note that the appellant's appeal submissions set out that it is not their intention to fell, lop, prune or damage the ash tree. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it could not lead me to a different decision.
18. During the course of the appeal, the Council completed an assessment of housing land supply, *Five-Year Housing Land Supply Paper* (November 2020). Covering housing supply over the period 2020-2025, the report concludes that there is now a supply of housing land in the district equivalent to 6 years. The Council sets out that this means that the presumption in favour of sustainable development no longer applies to the appeal proposal and that SSLP Policy SS2 now carries significant weight.
19. Paragraph 74 of the Framework sets out how authorities, through either a recently adopted plan or in a subsequent annual position statement produced through engagement with relevant parties and considered by the Secretary of State, can demonstrate a five year supply (with appropriate buffer) of deliverable housing sites. In this instance, the submitted report has not been officially adopted and is currently awaiting public consultation before being formally submitted for examination as part of the Council's on-going local plan review. However, the Planning Practice Guidance indicates that there are also other ways in which authorities can demonstrate a five year housing land supply, including by using the latest available evidence, such as a Strategic Housing Land Availability Assessment, Housing and Economic Land Availability Assessment or an Authority Monitoring Report.
20. Amongst other aspects, I note that the report refers to the Housing and Employment Land Availability Assessment and that the sites within it have been identified in conjunction with the development industry. Accordingly, and with limited evidence to indicate otherwise or which question the validity of the report's data and findings, I am satisfied that it provides an up-to-date picture of housing land supply in the district. Consequently, the approach to decision making set out in paragraph 11d of the Framework and the latter part of SSLP Policy SD1 is now not applicable in this case and I consider that there is no reason, in this instance, why the development plan's policies that are most

important for the determination of this appeal should not be accorded very substantial weight.

Planning Balance

21. I have found that the development would not harm the preserved oak tree and would therefore not conflict with SSLP Policies EQ2, EQ5 and EQ6. However, because the proposed development would not be one of the acceptable development types allowed in rural settlements, I have found that it would not be in an appropriate location having regard to development plan policies. It would therefore not accord with SSLP Policies SS1, SS2 and SS5. Taking all of this into account, I find that the appeal proposal would be contrary to the development plan as a whole.
22. There would be some benefits associated with the proposed development, including the provision of an additional dwelling, which would provide a retirement home for the appellant whose existing house is too large for him and his wife. It would result in an increase in revenue from Council tax and the CIL contribution. There would be increased patronage of local services and facilities and it would create some employment, including for local companies during the construction phase and a gardener maintaining the lawns and hedges. The development would therefore help to support the vitality of the rural community.
23. It has been put to me that the appeal scheme would also help to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including by moving to a low carbon economy. With a traditional appearance and constructed of locally sourced materials, it is said that the proposed house has been designed in the local vernacular style of architecture and sited to front onto Barrow lane to reflect the main character of houses in the area. Furthermore, parking would accord with the Somerset parking strategy and there would be adequate visibility to the highway.
24. However, given the scale of the development, I am satisfied that the totality of its economic, social and environmental benefits would be relatively limited. The evidence before me also indicates that there is now a sufficient supply of housing land in the district. The conflict I have identified with the development plan, to which I accord substantial weight, is therefore not outweighed by these considerations and is sufficient for me to find against the proposal.

Conclusion

25. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR