

Appeal Decision

Hearing (Virtual) Held on 8 April 2021

Site Visit made on 20 April 2021

by Mr Andrew McGlone BSc(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/V3120/W/20/3261691

Land off Lower Road, Chilton, OX11 0RR

- 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 Summix (Chilton) Developments LLP against the decision of Vale of White Horse District Council.
 - The application Ref P20/V0857/O, dated 20 March 2020, was refused by notice dated 13 August 2020.
 - The development proposed is the provision of 6 serviced plots for self and custom-build dwellings, all matters reserved except access and layout.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future consideration, except for access and layout.
3. Due to discussions at the Hearing about suggested planning conditions, I asked both parties to review, discuss and agree the draft list of planning conditions having regard to the six tests set out in paragraph 55 of the National Planning Policy Framework (the Framework). If, having discussed the merits of the suggested conditions, agreement could not be reached, I invited written comments from either party to explain their respective position. I have had regard to the revised suggested planning conditions and the submissions made by each party in reaching my decision.

The plans, revisions and whether prejudice would be caused to interested parties

4. The planning application made to the Council included a proposed illustrative masterplan, an access plan and a site location plan¹. These plans were subsequently consulted upon. In response to this, the Highway Authority explained that any proposed access would need to link to adjacent pedestrian infrastructure to the west. As such, a new footway was sought but the effect of this on existing trees was highlighted.
5. Revised plans² were submitted on 6 July 2020 to the Council along with supporting technical information concerning trees and transport matters. The revised plans included a footpath to the west of the proposed access and a potential alternative footpath to the east. The footpath to the east largely falls

¹ Plan Ref: BIR.5094_03_03_Rev G, JNY8238-03 Rev A and BIR-5094_01 Rev A

² Plan Ref: BIR.5094_03_03_Rev H and BIR.5094_10

within the site edged red whereas the footpath to the west does not. Further comments were provided by the Highway Authority and the Forestry Team on the revisions and the Council proceeded to refuse planning permission based on the merits of the revised plans. Residents were not, however, despite the description of development being updated, re-consulted on the revised plans nor was the site edged red amended to reflect the proposed footpath.

6. The appellant company submitted evidence with the appeal to address the Council's third and fourth reasons for refusing planning permission. They also confirmed that the footpath to the east is no longer part of their proposal as the gradient that the link would need to overcome from the road would not be suitable for all. Instead, their submissions include a revised site location plan, illustrative masterplan, illustrative footpath proposals and several engineering drawings³ which relate to the footpath to the west. The former two plans alter the site edged red to include the western footpath. The illustrative footpath plan is more detailed than the revised scheme determined by the Council.
7. The appeal process should not be used to evolve a scheme, but there would be no material change to the scheme considered and refused by the Council. That said, residents are concerned about highway safety on Lower Road and they have not been given an opportunity to comment on any proposed footpaths or the amended site edged red. They were informed of the appeal and given the opportunity to comment further should they have wished to, but the consultation letter does not draw residents' attention to the amended plans or the detail submitted about the footpath which they were not consulted upon by the Council after the scheme was revised. In the interests of fairness and natural justice, I consider interested parties would be prejudiced by the consideration of the proposed footpath. The main parties' common position about the Council's third and fourth reasons for refusing planning permission based on the information submitted as part of the appeal does not change this.
8. Thus, I have considered the appeal based on the plans originally submitted to the Council. I will explore the merits of the scheme having regard to these plans and the points put to me about the proposal's effect in the main issues.

Main Issues

9. The main issues in this case are: (a) whether the development would accord with development plan policies relating to the location of development in the District, including the provision of self-build and custom-build dwellings; (b) whether the proposed development would conserve and enhance the North Wessex Downs Area of Outstanding Natural Beauty (AONB); and (c) the effect of the proposed access arrangements, having regard to protected trees, hedgerows and accessibility.

Reasons

Location of development and self-build and custom-build dwellings

10. Chilton is identified as a Smaller Village in Policy CP3 of the Local Plan 2031 Part 1 Strategic Sites and Policies (Local Plan). Smaller Village's have a low level of services and facilities, where any development should be modest and proportionate in scale and primarily be to meet local needs. The market town

³ Plan Ref: BIR.5094_Rev B, Plan Ref: BIR.5094_03_03_Rev J, BIR.5094_38-B and Statement of Common Ground, Paragraph 2.9

of Wantage, accessible by a local bus service, offers a wider range of facilities and services while Harwell Oxford Science Centre is situated around 1.5 miles to the north-west of the site and provides employment opportunities in addition to a small parade of shops which includes a newsagents, bank and a nursery.

11. The appeal site is a paddock which adjoins the settlement of Chilton. The site is not isolated. Residential properties to the south of Lower Road extend to the south and west of the appeal site and are read as being part of the village. However, this does not necessarily mean that the site ought to be developed to mirror that extent. The village hall and playing fields are to the north of the site. To the west of the appeal site, is further paddock. Beyond here and Lower Road, are allotments. The site is enclosed by a mixture of hedgerows, hedgerow trees and a linear tree belt to the north. Whilst the site's boundaries are not delineated on the ground to the north and west, it is enclosed to the south and east by the existing pattern of the settlement.
12. The character of the village varies in terms of the age, style and finish of properties, but also in terms of the layout, as the settlement pattern is not wholly linear, though this is a strong component of Chilton. However, the proposed dwellings, while of a lower density, would be laid out in a manner that would not resonate with the tighter grain, and thus, character of the village which is evident on Main Street and Lower Road near to the site. The site also lies outside of the proposed settlement boundary of the Chilton Neighbourhood Development Plan, but this is emerging and yet to be examined. Even so, the site is visually understood as being on the edge of, but outside of the village. This is reinforced by the frontage development on High Street backing onto the site, by the tree belt that separates the wider parcel of land with the village hall and playing fields to the north, and the allotments to the west which are not uncommonly found at the edge of village settlements. As such, despite the presence of the A34, the site lies in the open countryside.
13. The modest and proportionate scale of the proposal and any potential for it to meet local needs does not change this. Even if I am wrong about the site's location, the proposal would not be infill development as paddock would remain to the west. Policy CP4 states that development in open countryside will not be appropriate unless specifically supported by other relevant policies as set out in the Development Plan or national policy. The focus in this case is Policy DP1 of the Local Plan 2031 Part 2 Detailed Policies and Additional Sites (Local Plan 2) which supports the provision of plots for sale to self and custom builders.

Self-build and custom build housing

14. The Council has a duty under the Self Build and Custom Housing Act 2015 (as amended by the Housing and Planning Act) ('the Act') to keep a register of persons who are interested in acquiring a self-build or custom-build plot, and to also grant enough suitable development permissions for serviced plots to meet this demand. Framework paragraph 61 is supportive of this type of housing.
15. There is no dispute between the main parties about the number of persons who have been added to the register in each base period since December 2015. The demand for each base period must be met by 30 October 3 years after the end of that period.
16. For the purposes of meeting the demand, the Act defines a development permission is suitable if it is a permission in respect of development that could include self-build or custom housebuilding. The Planning Practice Guidance (the

Guidance) outlines examples of how authorities could determine whether an application, permission or development is for self-build or custom housebuilding⁴.

17. The Council accepts that it has not granted enough suitable planning permissions to address the demand arising from the first two base periods (70 and 109 entries respectively) which was to be met by 30 October in 2019 and 2020. It is continuing to assess whether other planning permissions have been granted which could count towards the first, second or third base periods. This work is ongoing, and I must reach my decision based on the current situation.
18. Notwithstanding the demand established by the register, the Council speculates on what the 'actual' demand is for this type of housing if they were to apply a local eligibility test and financial solvency test. This is an academic exercise as neither test has been subject to public consultation as advised by the Guidance. The Council confirmed at the Hearing that it does not operate a two-part register. In any event, information from the various sources identified by the appellant company could point to a potentially higher level of demand compared to that established by the register.
19. Regardless, the proposal would contribute towards meeting the demand arising from the third base period (80 entries). As of 24 February 2021, the Council confirmed that 7 suitable permissions have been granted. This figure was unchanged at the time of the Hearing. The Council has until 30 October 2021 to meet this demand and fulfil its duty for the third base period, but the Council recognised that it would, based on current progress, not be likely to meet the demand for the third base period. I am aware of an appeal at Steventon⁵ for 7 self-build and custom build houses and as part of that Hearing there was anecdotal evidence of a further proposal on another site in the District, but even if all these were granted planning permission, there would still a good number of suitable permissions to grant and there is no evidence to suggest that there are other schemes either being considered or likely to be considered or determined by the Council before the end of October.
20. A planning condition would secure this type of housing. Hence, the proposal would contribute towards addressing the demand arising from the third base period. This provision would be of a substantial benefit given the period of time left for the Council to meet the demand for the third base period.
21. Discussion at the Hearing centred on how the under delivery of self-build and custom build houses against the established demand from the first two base periods should be dealt with. The number of suitable permissions granted by the Council for these base periods varies between the main parties with either 47 (appellant) or 53 (Council) suitable permissions granted for the first base period, and either 24 (appellant) or 25 (Council) for the second base period.
22. Legislation, planning policy or guidance does not set out how any under supply of this type of housing should be dealt with. However, not accounting for past under delivery would seem to be, when considered in the context of the duties placed on local authorities in the Act, Framework paragraph 61, Local Plan 2 Policy DP1 and Government's encouragement for this type of housing, illogical. Approaches to unmet demand, which is a relevant consideration, have been

⁴ Paragraph: 038 Reference ID: 57-038-20210508

⁵ Appeal Ref: APP/V3120/W/20/3265465

considered in several appeal decisions⁶. However, if I did take it into account, the substantial weight that I set out above would not change due to the proposal's scale. Nevertheless, the unmet demand would only confirm the weight that I have given to the provision of this type of housing.

23. The main parties agree that the development plan is not out-of-date as the Council can demonstrate a five-year supply of deliverable housing sites. A different stance is taken by the appellant in the Steventon case, so I address the point out of consistency. Local Plan Policies CP3 and CP4 appear to be fulfilling their purposes based on the level of housing supply in the District. These policies must be read alongside other policies in the development plan, such as Policy DP1. Jointly, these policies support self-build or custom build housing schemes or with elements thereof if in line with the settlement hierarchy and the strategy for housing delivery. There is not a specific exception to the Council's strategy that allows this type of housing to come forward in the open countryside. But, evidently the mechanics of policy or the application of it are not yielding the number of suitable permissions required. However, the position could change once further robust work is completed by the Council. Given this and considering how Policies CP3, CP4 and DP1 can operate together, I am content that they are not out-of-date.

Conclusion on this main issue

24. The provision of self-build and custom-build dwellings would accord with Local Plan 2 Policy DP1. However, it does not 'specifically support' development of this type of housing in the open countryside which is the wording used in Local Plan Policy CP4. This leads me to conclude that the development would not accord with Local Plan Policies CP3 and CP4 and Local Plan 2 Policy DP1 which, when taken together, relate to the location of development in the District, including the provision of self-build and custom-build dwellings. This is the approach set out in the explanatory text to Local Plan 2 Policy DP1.

North Wessex Downs Area of Outstanding Natural Beauty

25. Chilton, including the appeal site is located within the AONB. Framework paragraph 172 explains that great weight should be given to conserving and enhancing landscape and scenic beauty in an AONB. This is the primary purpose behind the AONB designation. Framework paragraph 172 goes onto to say that the scale and extent of development within AONB's should be limited even though I agree with the main parties that the appeal scheme would not be 'major development'. Local Plan CP44 is consistent with the Framework in giving high priority to the conservation and enhancement of the natural beauty of the landscape and resisting harmful development.
26. The AONB Integrated Landscape Character Assessment locates Chilton within the Downs Plain and Scarp landscape character type, characterised by a large scale, open arable landscape. The appeal site and Chilton do not seem to make a significant contribution to this character type. From the wider landscape, Chilton has a wooded setting which is mainly experienced from elevated views surrounding the village. Consequently, the proposal would have a negligible impact when viewed from long distance views.
27. Chilton lies within the Hendred Plain character area and the appeal site shares some of its identified characteristics of undulating landscape, shelter belt

⁶ Appeal Decision Refs: APP/G2435/W/18/3214451; APP/W0530/W/19/3230103; and APP/C1570/W/19/3234530

- planting and equestrian activity. The site abuts Chilton, which means that the visual effect of the appeal scheme would be experienced locally in this context. Lower Road connects a number of public rights of way that allow movement between the village and the wider AONB.
28. The appeal scheme is for a different type of housing, for a lower number of units and the layout is not the same as that which was dismissed at appeal in 2016⁷. The appeal site may be a small component of the AONB, but it was expressed in this decision that a localised experience of the site 'does not imply that the site is unimportant to the AONB. The site is an attractive, open area that forms part of the immediate setting of the western edge of Chilton and enhances its local character.' Both landscape experts agreed that the baseline has not changed from 2016.
29. As I set out earlier, the layout of the proposed dwellings, while of a lower density, would not resonate with the tighter grain, and thus, character of the village near to the site. The individual design of each of the dwellings, the scale of the development and the use of a design code would mitigate this to some extent, as would the retention of existing boundaries and further planting, though the latter would take some time to establish. Even so, the proposed layout would have a suburban feel that would not sit comfortably as an extension to the village given that the site acts as a transition between the built form and the rural countryside. Despite the localised effect, the proposal would be out of keeping and it would affect two of the characteristics of the character area of an undulating landscape and equestrian activity.
30. By forming a new access from Lower Road an initial adverse impact would be felt due to the removal of around 28 metres of hedgerow. The access would create a new visual break in what is otherwise a consistent stretch of trees and hedgerow. Despite the driveways on Lower Road of a comparable width to the proposed access, the new access would be a new urban feature.
31. I note the conclusion of the appellant's Landscape and Visual Impact Assessment and the Council's assessment. However, in my own view, the proposed development would be likely to lead to a large localised magnitude of change to this attractive, open area that is part of the immediate setting of the western edge of Chilton which enhances its local character.
32. Unlike the previous appeal scheme, T5 is proposed for retention. By not removing any soil from or needing to regrade the verge will help achieve this, though the access would be formed partly into its root protection area. Even so, I consider that it could potentially be retained. New landscaping within the site, and near to or next to the proposed access could mitigate the loss of the hedgerow and potential loss of T5 if it were to be affected by the new access. It would also soften the development to some extent and help it respond to the character of the area. Over time this would develop, but the proposal would still likely amount to a moderate adverse effect which would be a harmful visual impact to the landscape's character. Planting would be highly unlikely to mitigate this impact. Hence, the proposal would not conserve and enhance the land which positively contributes to the landscape character and setting of Chilton and by extension the AONB.
33. I conclude that the proposed development would not conserve and enhance the

⁷ Appeal Decision Ref: APP/V3120/W/16/3153209

AONB which means that conflict would occur with Local Plan Policies CP37 and CP44 and Framework paragraph 172. Jointly these seek high quality designed development that responds positively to the site and its surroundings with a high priority given to conservation and enhancement of the natural beauty of the AONB.

Effect of proposed access arrangements

Footpath provision

34. The scheme originally submitted to the Council did not include any footpath provision either along Lower Road or within the site or adjoining land. However, development either on the appeal site or the wider parcel of land that the site forms part of has been proposed through various schemes. In these schemes, each scheme has included a foot/cycle path running behind the trees and hedgerow that line Lower Road to provide a link between the existing footway provision to the east and west of the site.
35. The Highway Authority's stance about a new footway is consistent with earlier schemes. While the appellant company did revise their proposals to show a footpath to the west, they stated at the Hearing that the footway to the west was not part of their original scheme and that I may need to consider whether it is necessary or not if I did not accept the revised plans.
36. The section of Lower Road extending across the site's frontage is narrow and has no footway. The road is used by pedestrians, including children attending the nearby primary school, cyclists, horse riders, and a variety of vehicles including buses. The road is a country lane and while the road offers good visibility in either direction, is subject of a 30 mph speed limit and does not seem to be heavily trafficked, I recognise the potential conflict that could arise between different road users and the effect this could have on their safety. A link parallel to and bypassing the narrow part of the road would remove this potential conflict. However, previous schemes were for a different number of dwellings spread across the entire parcel of land that would have resulted in a considerably greater number of movements by vehicles or other road users than the 6 dwellings now proposed.
37. A partial footpath link would mean that vulnerable road users would still need to share Lower Road for a section that dips slightly between the proposed access and existing footway around the junction of Lower Road and Thorningdown when travelling in a easterly or westerly direction. The scale of the proposal would result in an increase in vehicle movements, but not to an extent that I consider they would dominate Lower Road at the expense of other modes of transport or cause Lower Road to not provide for safe movement. Hence, notwithstanding my view about a comprehensive foot/cycle link, the need for a footpath to the west that does not resolve the potential conflicts on Lower Road is not there.
38. There was considerable debate between the main parties at the Hearing about the use of a Grampian condition to secure the western footpath. However, such a condition would not be necessary for the reasons set out.

Effect of footpaths on trees and hedgerow

39. Despite the Council's concerns relating to the effect of the footpaths to the east and west of the access on existing trees and hedgerow, no such issues would

occur based on the proposal originally submitted and consulted upon.

Effect of the proposed access on trees and hedgerow

40. The proposed access from Lower Road into the site has not changed since the appellant company's original submission. This can, based on the technical responses submitted by the appellant company, be formed without incurring into the roof protection areas of any protected trees that extend along Lower Road. Nor would the access affect the stems of these trees either from its construction or the formation of visibility splays in either direction which would not rely on the removal of any highway verge either. However, the construction of the access would result in the loss of a section of hedgerow and potential loss of T5 to the east of the access. These could be mitigated by suitable replacement planting being brought forward at reserved matters stage and controlled through a planning condition.

Conclusion on this main issue

41. I conclude that the proposal would accord with Local Plan Policies CP37 and CP44 which, among other things, seek new development to be of high-quality design, well connected to provide safe and convenient ease of movement by all users and to integrate it into the landscape character of the area.

Other Matters

42. The communal areas of the appeal site not set aside for individual plots would be formed first to enable each plot to be sold as a service plot. They would not be areas of public open space even though a large part of the site includes a new attenuation pond. I note the Council's concerns about how foul and surface water drainage is managed and maintained between the communal areas being finished, up to the final plot being occupied and in the long term so that they function effectively. However, based on the evidence before me, I am of the view that they could be addressed through planning conditions.
43. Various other planning conditions have been discussed and agreed between the main parties as part of the appeal, and while these have been drafted having regard to the six tests, they do not overcome the harm that I have identified in respect of the first two main issues.

Conclusion

44. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
45. The proposal would accord with the Government's objective to significantly boost the supply of housing and it would widen the type and size of housing in the area. This would be a limited social benefit. Specifically, the proposal would help meet the demand for self-build and custom-build housing. The provision of this type of housing is a social benefit that carries substantial weight for the reasons set out above. Even so, the proposal would still conflict with the District's strategic approach to the delivery of housing as it does not 'specifically support' development of this type of housing in the open countryside. The statutory duty of the Act to meet the demand for this type of house and the Framework's support for a range of house sizes, types and tenures do not outweigh this significant conflict.

46. I attach significant weight to the scheme's conflict with policies relating to the AONB due to great weight that should be afforded to conserving and enhancing the landscape and scenic beauty of this designation. Future occupiers would be likely to use and support local services, local facilities and local businesses, albeit the village has a low level of services and facilities. The development of each house should also create opportunities for local builders, tradesmen and builder's merchants leading to local employment opportunities. The proposal would offer social and economic support the wellbeing of the community, but they would not outweigh the conflict that the scheme would cause with the aims of conservation and enhancement of the AONB. No harm would be caused by the proposed access arrangements.
47. Having regard to the merits of this case, I conclude that these considerations, including the provisions of the Framework, do not outweigh the scheme's conflict with the development plan as a whole. Nor do they indicate that I should take a decision other than in accordance with the development plan.
48. For the reasons set out above, I conclude that the appeal is dismissed.

Mr Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Hunt
Jeremy Peachey
Andy Moger
Richard Brown
Oliver Brown
Stuart Wand
Andy Warren

Howes Percival
Pegasus Group
Tetlow King
Richard Brown Planning
Richard Brown Planning
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FOR THE LOCAL PLANNING AUTHORITY:

Celina Colquhoun	39 Essex
Tracy Smith	South Oxfordshire and Vale of White Horse District Councils
Ryan Hunt	South Oxfordshire and Vale of White Horse District Councils
Joe Smith	South Oxfordshire and Vale of White Horse District Councils
Clare Roberts	South Oxfordshire and Vale of White Horse District Councils
Luke Veillet	South Oxfordshire and Vale of White Horse District Councils
Martin Deans	South Oxfordshire and Vale of White Horse District Councils
Peter Radmall	Landscape Consultant
Alex Tait	39 Essex

INTERESTED PARTIES:

Alan Liddle
Martin Edwards
Chris Broad, Chair, Chilton Parish Council
Andre Botha, Albright Dene Ltd

DOCUMENTS:

- 1 - Policy DP1 of Local Plan 2031 Part 2 Detailed Policies and Additional Sites
- 2 - Appeal Note, Ref: 4129-6311-1213
- 3 - Draft s106 – Open Space
- 4 - Chilton Draft Conditions Schedule
- 5 - Supplementary Note, Vale of White Horse District Council

PLANS:

BIR.5094_03_03_Rev J
BIR.5094_38-C
BIR.5094_Rev B