



Appeal Decision

Hearing Held on 5 May 2021

Site visit made on 6 May 2021

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2021

Appeal Ref: APP/Q3305/W/20/3257000

Land to the north of Wookey Hole Road, Wells, Somerset

- 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 Land Allocations Ltd against the decision of Mendip District Council.
 - The application Ref 2019/2883/OTS, dated 4 November 2019, was refused by notice dated 15 May 2020.
 - The development proposed is residential development of up to 148 dwellings including means of access with all other matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development is taken from the Appeal Form which I consider to have an improved level of detail than that on the Application Form.
3. The appeal seeks outline permission with all matters reserved except for access. In so far as the submitted plans and drawings show details of matters other than the access, I have treated those as being purely illustrative.

Main Issues

4. The main issue is whether the proposed development would affect the character and appearance of the area, including the designated Mendip Hills Area of Outstanding Natural Beauty (AONB)

Reasons

Background Matters

5. The first reason for refusal from the Council states that the principle of development is considered unacceptable as the site is located outside the defined settlement of Wells. However, as discussed at the Hearing there is common ground that the Council cannot demonstrate a sufficient housing land supply. In this regard the Council acknowledge that the housing policies within the Development Plan would carry reduced weight. The Council have not included any housing policies with the first reason for refusal, which is focussed on the effect of the development on the landscape and the setting of the AONB. At the Hearing it was apparent that the Council did not intend there to be a

reason for refusal based on the location of the housing development being outside of the defined settlement boundary of Wells. As such, I have not regarded this matter as a main issue in the determination of this appeal.

6. In reason two of the Council Decision Notice it mentions that the hedgerow which would be partially lost to form the proposed access to the development is species rich. However, during discussions at the Hearing the Council Officers made clear that the ecological impact of the hedgerow could be addressed through conditions and the loss of hedgerow issue was a matter of visual impact primarily. Therefore, the ecological impacts of the loss of hedgerow is not a main issue with this appeal.

Character and appearance

7. The proposed dwellings would cover much of the site, which is approximately half of a large field to the edge of Wells. The field is on a slope downhill towards the south and Wookey Hole Road. There is built development near the site, such as the adjacent Underwood Business Park and the new housing development to the south of Wookey Hole Road. However, the site appears distinct from the built up areas of Wells, being that it is a large field and so visually relates well to the rural areas that appear to encircle much of this small city of Wells.
8. The appeal site lies within the Underwood Special Landscape Feature (SLF). This is a landscape of significant local value which extends across some of the rural landscape in this area on the edge of Wells, between the AONB and the built extent of the city. Under the 'Assessment of Special Landscape Features' Council document (2012) it describes the Underwood SLF as a prominent feature within the landscape and that it "*Forms a scenic backdrop to the city of Wells from the north and is important to its setting*".
9. From my observations on site I do agree that this large field is prominent in the landscape, given its sloping topography to the side of the Mendip Hills meaning that it is visible from various viewpoints. The openness of the field is also in contrast with the adjacent built up areas of Wells, which adds to its prominence. It therefore forms part of the rural setting of Wells, being part of the 'bowl' to which Wells is positioned, as described at the Hearing.
10. I do agree with the Council description of Underwood SLF as contained within their 'Assessment of Special Landscape Features' document. It is the openness and lack of built development that forms a distinctly rural edge to Wells, being part of the scenic landscape that forms much of the setting to this city. The importance of this landscape is heightened because of its sloping topography to the side of the Mendip Hills which makes this large field particularly visually prominent. This SLF and particularly the field which makes up this site also helps to form a rural landscape buffer between Wells and the edge of the AONB. As such, given the scenic qualities of the site, it provides a positive setting to the AONB.
11. To construct up to 148 dwellings on this site would alter the character of the site dramatically with its urbanising effect, with a substantial erosion of the openness which is a key positive feature of this site and its contribution to this scenic landscape. I recognise that the upper section of the site would be kept largely free from built development, but the new housing would be visible. The proposal could result in 148 new dwellings, which is a significant number and

- would also require roadways and other formal infrastructure as part of the development, much of which would be visible from outside of the site.
12. The appellant has submitted a Landscape and Visual Assessment (LVIA). A particularly important viewpoint (VP) within the LVIA is No 7, from the B3139 looking north-east. From this view the extent of the field, its openness, and its position as part of the rural setting of Wells is readily visible. Indeed, there are also other viewpoints from this wider area on this side of Wells which have similar views of the site, where the field and its contribution to the landscape is clearly apparent. There would also be some views from closer to the site where the new housing would be evident, which I observed on site, such as from Lime Kiln Way and Wookey Hole Road (especially after the formation of a new access with visibility splay onto this road, opening up views to the proposed housing).
 13. While the LVIA suggests there would be some lesser level of adverse visual and character impact, it places much of its reasoning on the planting mitigation as a reason why the development is acceptable in the landscape when viewed from VP7 and elsewhere. However, although there would be substantial planting and the upper section of the site would not be developed, the housing would be clearly evident and would have a significant visual impact. The existing and proposed vegetation would soften the visual impact of the development, but the adverse impacts of the extent of the new housing on what is currently an open field would not be sufficiently mitigated by planting, even when it has matured. Any landscape gains would be significantly outweighed by the proposal's overall adverse landscape and character impacts.
 14. The proposed housing would be adjacent to other built development, such as the new housing to the south and the business/industrial park to the east. However, the development would be more prominent than the adjacent housing to the south as it is on a sloping site and therefore more visible within the landscape, whereas the adjacent housing is on flatter lower level land. Furthermore, the scale of the development is such that it would cover a significant area of land, compared to other built development along this area of hillside to the north of Wookey Hole Road, such as the adjacent business park. A key aspect of this site is that it is an undeveloped open field, which forms a visually pleasing rural landscape setting to Wells. As such, the fact that it is adjacent to the edge of Wells does not weigh in favour of the development as this rural setting would be diminished.
 15. The development would urbanise a significant part of the Underwood SLF, which forms an important part of the rural landscape setting of Wells. The site does form a scenic backdrop to the city of Wells and is an important area of the landscape for this reason, which is a specific quality of this SLF. Even though all of this large field is not all within the site and would remain undeveloped, the scale of development on a significant part of this prominent field and the loss of the key attribute of its openness to the housing development would be significantly harmful to the landscape setting of Wells and the qualities behind the Underwood SLF designation.
 16. Furthermore, the site is within close proximity to the designated Mendip Hills Area of Outstanding Natural Beauty (AONB) roughly 40m to the north of the site. As set out within the National Planning Policy Framework (the Framework), great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. Being that the site is part of a rural

- landscape adjacent to the AONB, I would regard the site to be within the setting of this important valued landscape. Planning Practice Guidance states that there should be consideration of the setting of an AONB, when development is proposed outside of but close to an AONB. Development of this field for housing would significantly erode this scenic rural character and this open transitional gap between the extent of the AONB and the edge of Wells.
17. As such, the setting of the AONB would be diminished in its quality from existing which would result in some adverse impact to the qualities of the AONB itself. However, the development would be focussed towards the lower sections of the site, away from the AONB boundary. Also, from views within the AONB the development would be seen with other housing developments within its background. This mitigates some of the impact so that the harm to the setting of the AONB is limited. Nonetheless, the development would not conserve nor enhance the natural beauty of the Mendip Hills AONB.
 18. The development would also result in the loss of a stretch of approximately 25m of hedgerow along Wookey Hole Road to form an access. This is an established hedgerow in a prominent location adjacent to Wookey Hole Road. However, whilst this section of hedgerow is positive within this setting, there would be over 400m of replacement hedgerow proposed within the housing development. In my view, the proposed planting, particularly the native hedgerow, would sufficiently mitigate the loss of the existing hedgerow to form the access. The loss of hedgerow would not result in the proposal being contrary to policies DP1 and DP5 of the Mendip District Council Local Plan.
 19. Notwithstanding the hedgerow loss issue, the proposal would be harmful to the landscape setting of Wells, the AONB setting, and also the Underwood SLF. Whilst the proposal is in outline form, a proposal for up to 148 dwellings would result in this erosion of the openness and rural setting leading to landscape harm. For these reasons the proposal would be contrary to Policy DP4 of the adopted Mendip District Council Local Plan 2014, which requires that proposals in areas adjacent to the AONB will not compromise the setting of the designated area; and for proposals which lie within or which would affect the setting of Special Landscape Features to have regard to their impacts upon their specific qualities, amongst other things.
 20. Furthermore, the proposal does not accord with the National Planning Policy Framework policies, especially those within Chapter 15 (Conserving and enhancing the natural environment).

Other Matter

Ecological sites

21. The Ramsar Site is designated for its internationally important wetland features including its invertebrate species within the wetland ditches. Paragraph 176 of the Framework states that Ramsar areas should be given the same protection as habitats sites. In this regard, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) states that before deciding to grant planning permission for a project which is likely to have a significant effect on a Ramsar site, a competent authority must make an Appropriate Assessment of the implications of the plan or project for that site in view of its conservation objectives.

22. Natural England (NE) have confirmed that this proposal has the potential to add to nutrient loads (phosphorous) within the catchment of the Somerset Levels & Moors Ramsar Site, and therefore it may require mitigation and will be subject to a Habitats Regulations Assessment (HRA).
23. NE have stated that the features of interest for the Somerset Levels and Moors Ramsar Site are considered at risk from the effects of eutrophication caused by excessive phosphates. Wastewater from the development would be discharged via sewage treatment works into rivers. This water would be enriched by nutrients, including phosphates. These nutrients could be directly or indirectly transmitted into the wetlands covered by the Ramsar site via the catchment. From the evidence submitted the site (along with much of the District) is within the catchment area where wastewater from the development would be transmitted to the Ramsar wetlands. In this context, there is clear potential for the development to have a likely significant negative effect on the integrity of the Ramsar site, whether alone or in combination with other plans or projects within this large catchment area. I have not been made aware of any current strategic mitigation and no site-specific measures have been proposed.
24. The appellant has suggested the use of a 'Grampian' condition requiring a mitigation package addressing any additional nutrient output arising from the development. However, there is no certainty at this stage over the course of mitigation that would be taken. Without details of a mitigation package at this stage or any other evidence that could persuade me that the development would not affect the Ramsar site, then there is a considerable amount of uncertainty remaining and I must take a cautionary approach.
25. Given the failure of the appeal scheme to provide any form of suitable mitigation, allowing the appeal would be contrary to the Habitats Regulations. It would also be contrary to paragraph 175(a) of the Framework, which states that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.

Planning Balance

26. For this appeal there is common ground that the Council cannot demonstrate a five year housing land supply. Paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development. In respect of paragraph 11 d) of the Framework with regard to decision-making, this means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (including applications involving housing where the Council cannot demonstrate a five year housing land supply), permission should be granted unless certain criteria apply.
27. The first criterion is contained within Framework paragraph 11 d) i, which is in situations where policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, then the tilted balance will not apply.
28. In view of my findings in relation to ecological matters, paragraph 177 of the Framework indicates that in this case the presumption in favour of sustainable development does not apply. Furthermore, Footnote 6 of the Framework specifies that the harm I have identified in relation to habitats sites (in this case being the Somerset Levels and Moors Ramsar) forms a clear reason for

refusal of permission. Consequently the 'tilted balance' set out in paragraph 11 of the Framework is not applicable in this instance.

29. There are some benefits with the proposed scheme, such as the provision of affordable and market housing in a relatively accessible location, biodiversity enhancements, and economic benefits for example. There are also the provisions of the submitted legal agreement, such as the open space provision. However, notwithstanding any benefits of the proposal that might arise, there is a clear reason for refusing planning permission relating to the Ramsar, as set out with paragraph 175(a) of the Framework as explained above.

Conclusion

30. For the reasons given above the appeal should be dismissed.

Mr Steven Rennie

INSPECTOR

APPEARANCES

For the Appellant:

Mr Joe O'Sullivan BSC (HONS) PGDIP URP MRTPI AAH Planning
Mr Oliver Brown BA (HONS) DIP LA CMLI
Mr Stephen Moss BEng (Hons) CEng MICE MCIHT
Ms Sue Charlton MCIEEM

For the Council:

Ms Anna Penn BSc (Hons) MA MRTPI Mendip District Council
Mr Simon Trafford BA (Hons) DipTP MRTPI Mendip District Council
Mr Charles Potterton BA and Diploma in Landscape Potterton Associates Ltd
Ms Leanne Butt BSC (HONS) PGDIP URP MRTPI Somerset Ecological Services

For Wells City Council:

Mr Adrian I'Anson Chair of Wells City Council Planning Committee
Mr Marcel Hayden St Cuthbert (Out) Parish Council
Mr Tony Hathway St Cuthbert (Out) Parish Council

Interested Parties:

Mr Dan Foster Salmon Planning
Mr Ivor Tetley Neighbour to site