

Appeal Decision

Site visit made on 11 May 2021

by Rory Cridland LLB(Hons), Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 June 2021

Appeal Ref: APP/Y3940/W/20/3257967

Land to the east of Wagtails, Southampton Road, Alderbury, SP5 3AF

- 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 1215 Heritage Homes against Wiltshire Council.
 - The application Ref 19/11206/OUT, is dated 22 November 2019.
 - The development proposed is for the erection of up to 32 dwellings with all matters reserved (except access).
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for Costs

2. An application for costs was made by 1215 Heritage Homes against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application is made in outline with all matters except access reserved. I have therefore treated all plans as indicative except where they relate to access.
4. The Council initially raised concerns with the effect of the proposed development on the River Solent SAC. However, during the course of the appeal, it was confirmed that the appeal site discharges into the River Avon catchment and the Council confirmed in its written evidence its concerns regarding nitrate levels in the River Solent were no longer relevant to this appeal. This was also confirmed by Natural England. I have therefore not considered the effect of the proposed development on the River Solent SAC in my reasoning below.

Background and Main Issues

5. The appeal is against a failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. The Council has, however, confirmed in its written evidence that, had it been in a position to determine the application, it would have refused permission for reasons relating to the acceptability of the location and the effect of the proposed development on protected habitats, biodiversity and highway safety.
6. Accordingly, I consider the main issues are:

- (i) whether the appeal site offers an acceptable location for the proposed development having regard to national and local planning policy;
- (ii) the effect of the proposed development on biodiversity;
- (iii) the effect of the proposed development on highway safety; and
- (iv) the effect of the proposal on protected habitats.

Reasons

Location

7. The appeal site is located outside the defined settlement boundary of Alderbury, and is surrounded by existing residential development on three sides. Core Policy 1 of the Wiltshire Core Strategy (WCS)¹ identifies Alderbury as a large village, where development is restricted to that which is needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities. Alderbury's settlement boundary was recently extended as part of the Wiltshire Housing Site Allocations Plan 2020 (WHSAP).
8. WCS Core Policy 2 restricts development outside the defined settlement boundaries other than in a limited number of circumstances. These include where they relate to additional employment land, military establishments, tourism, rural exception sites, specialist accommodation or support rural life. Likewise, WCS Policy CP23 sets out the spatial strategy for the Southern Wiltshire Community Area and reinforces that development within the area should be in accordance with the overarching strategy set out in WCS Core Policies 1 and 2.
9. As the explanatory text to WCS Core Policy 1 makes clear, whilst a limited level of development will be supported at the large villages in order to help retain their viability, development will predominantly take the form of small housing (involving less than 10 dwellings) and employment sites within the settlement boundaries. The erection of up to 32 dwellings in this location would represent a much larger scheme than envisaged by WCS Core Policy 1. Furthermore, with nothing to indicate that the proposal would fall within any of the defined circumstances set out in WCS Core Policy 2, its location outside the defined settlement boundary would also be in conflict with both WCS Core Policy 2 and Policy CP23.
10. I understand that outline planning permission has been granted for the erection of up to 50 dwellings (and associated matters) along the site's north eastern boundary². I acknowledge that, if built, this would result in the appeal site being surrounded by development on all four sides.
11. However, I noted during my site visit that no substantive works have commenced. If the development goes ahead as currently envisaged, then I agree the appeal site could be considered to be infill. However, at the present time, that remains to be seen. It is not unknown for large schemes to change, before or during implementation, and until the development has progressed further, it seems to me that nothing is yet certain. For the time being, I do not

¹ Wiltshire Core Strategy (2015).

² Planning permission ref: 17/04001/OUT.

consider this nearby permitted development is sufficient to overcome the objections identified above

12. Accordingly, I find the appeal site does not offer an acceptable location for the proposed development and would be contrary to the overall strategy set out in WCS Core Policies 1, 2 and CP23.

Ecology

13. The appeal site forms part of an area of land located to the rear of Southampton Road. Although it does not benefit from any national or local designation and is mostly devoid of trees, it is common ground between the parties that, prior to the application being submitted, a large number of trees were removed from the site.
14. WCS Policies CP50, CP52 and CP57 require, amongst other things, development to seek opportunities to enhance biodiversity and ensure that where development is permitted, existing on-site green infrastructure is retained in order to enhance biodiversity. Likewise, Saved Policy C9 of the Salisbury District Local Plan (SDLP) restricts new development which would result in the loss of trees, hedges or other features that contribute to the character of the landscape other than where provision is made for replacement planting and the creation of new landscape features.
15. WCS Policy CP50 also makes clear that major development in particular must include measures to deliver biodiversity gains through opportunities to restore, enhance and create valuable habitats, ecological networks and ecosystem services. Furthermore, Paragraph 170 of the National Planning Policy Framework ("the Framework") advises that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity.
16. The Council has raised a number of concerns regarding the sufficiency of the information provided on how the proposed development would affect biodiversity. Those concerns are well founded. As the Planning Practice Guidance (PPG) makes clear³, the existing biodiversity value of a development site will need to be assessed at the point that planning permission is applied for. However, in order to adequately assess the effects of a proposal on biodiversity, it is important that applications contain adequate, up-to-date information to allow for the effective evaluation of the impacts. This should include relevant site surveys and desk-based studies to inform the baseline position.
17. Although the application is supported by an Ecology Statement, it presents a summary of the findings set out in various reports and surveys commissioned previously. These surveys and reports are of varying detail and quality and some are now of considerable age. They do not, in my judgement, provide an adequate assessment of the current baseline ecological value of the site. As a result, their usefulness is limited, and I afford them limited weight
18. In the absence of any up to date information which would allow for an adequate assessment of the effects of the proposal on biodiversity, I concur with the Council that the application would be contrary to WCS Policies CP50,

³ Paragraph: 026, Reference ID: 8-026-2019072.

CP52 and CP57, Saved Policy C9 of the SDLP as well as paragraph 170 of the Framework.

19. Turning then to the Council's concerns regarding the removal of trees, the PPG also indicates that any deliberate harm to biodiversity value which has taken place in the recent past might be a relevant factor in considering whether there are grounds for this to be discounted in assessing the underlying value of the site. While I note the appellant asserts that the felling was not unlawful, it is nevertheless clear that the habitat, and the biodiversity it can support, has altered significantly. In order to ensure that there is no net loss in biodiversity, I consider it necessary to understand the impact that the recent removal of the trees has had on the baseline biodiversity value of the site as well as the current biodiversity value it offers. Without this information, I cannot be certain that the proposal would not result in an overall net loss of biodiversity,
20. Consequently, I find the proposal does not demonstrate how it would help enhance biodiversity, or result in a biodiversity net gain. As such, it would be contrary to WCS Policies CP50, CP52 and CP57, Saved Policy C9 of the SDLP as well as the guidance set out in the Framework.

Highway Safety

21. The Council has also raised concerns with the increased volume of traffic generated by the proposed development and its impact on other road users and the character of the surrounding area.
22. However, no robust evidence has been provided which would indicate that the additional traffic generated by the proposal would have any material impact. No concerns have been raised by the Highway Authority and there is nothing before me which would demonstrate that the proposed development would result in unacceptably high levels of congestion or would be detrimental to highway safety. Similarly, there is nothing to suggest that the traffic generated would negatively impact on the character of the surrounding area.
23. As such, I find no conflict with WCS Policies CP57 or CP64. These policies seek to ensure, amongst other things, that all developments make a positive contribution to the character of Wiltshire and are located and designed to reduce the need to travel by car and to encourage the use of sustainable transport alternatives.

Planning Obligations

24. As part of this appeal, the appellant submitted a duly executed section 106 agreement (the "Agreement") which includes a number of planning obligations intended to make the proposed development acceptable in planning terms. These include the provision of affordable housing, as well as financial contributions in relation to early years and secondary education, off-site public open space provision, off-site youth and adult leisure space and waste and recycling. In addition, it secures the provision and ongoing management of an on-site play area.
25. However, other than those which relate to affordable housing, the obligations contained within the Agreement are intended to mitigate the effects of the proposed development. As I am dismissing for other reasons, I do not consider it necessary to consider these obligations in any further detail.

26. However, the obligations in respect of affordable housing provide a potential benefit which may weigh in favour of the proposal and I note that WCS Policy CP43 requires an affordable housing provision of at least 40%, provision for which is made within the Agreement. I am satisfied that the affordable housing obligation is directly related to the development, is reasonably related in scale and kind and is necessary to make the development acceptable in planning terms. As such, I consider it meets the relevant tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and provides some support in favour of the proposal. I consider this matter further below.

Planning Balance

27. The Council accepts that it does not have a deliverable 5 year supply of housing land. Paragraph 11(d) of the Framework advises that in such circumstances, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
28. The proposal would result in the erection of up to 32 dwellings. Although relatively modest, this would make a meaningful contribution to the area's supply of housing and I afford it considerable weight.
29. As discussed above, the appellant has also submitted an Agreement which includes obligations in respect of affordable housing for which there is an identified need. This would be of considerable public benefit and I also afford this considerable weight.
30. In addition, the proposal would provide a number of other benefits including its contribution to the local economy as well as providing some support for local services. Individually, these benefits are small, however, cumulatively they provide some support in favour of the proposal and I afford them a moderate amount of weight.
31. However, although I have found that the proposal would not be detrimental to highway safety, I have nevertheless found that it would be contrary to WCS Core Policies 1, 2 and CP23. These policies set out the overall strategy for development during the plan period and are fundamental to its operation.
32. In general, I do not consider that the overall development strategy set out in the WCS should be easily set aside. Furthermore, in view of the relatively modest shortfall in 5 year housing land supply, (coupled with the recent confirmation of the settlement boundary in the WHSAP), I see no reason that these policies should not continue to be effective. As such, I afford them significant weight.
33. Furthermore, the limited information on the existing biodiversity value of the site, coupled with the lack of detail on the impact on biodiversity that has resulted from the removal of the trees, make it difficult to fully assess the effect of the proposal on biodiversity and are in conflict with the aims of the WCS and Saved Policy C9 of the SDLP. It is also contrary to the guidance set out in the Framework. This is, in my view, a significant omission and I afford it substantial weight.

34. Consequently, while I acknowledge the proposal has a number of benefits, I consider they are significantly and demonstrably outweighed by the adverse impacts identified above.

Other Matters

35. Waste water from the appeal site discharges into the River Avon catchment where Natural England has advised that a plan or project for new residential development within the catchment will have a likely significant effect on the River Avon Special Area of Conservation (SAC), the River Avon Sites of Special Scientific Interest (SSSIs) and the Avon Valley Ramsar due to elevated phosphate levels in the River Avon. Furthermore, it advises that planning permission should not be granted before the competent authority has completed an Appropriate Assessment in order to assess the implications of the proposal for the designated sites in question.
36. In furtherance of this, the Council has agreed a mitigation strategy with Natural England to enable planning permission to be granted for certain proposals where they fall within the scheme.
37. While I note the various arguments advanced as to whether or not the proposal should benefit from this strategic solution⁴, as I am dismissing the appeal for other reasons, I do not consider it necessary to reach a conclusion on these matters. I have therefore not considered them further.
38. The appellant has drawn my attention to a number of other nearby sites upon which planning permission has been granted and which they consider are material in the determination of this application. However, even though I do not have the full details of those developments, in view of the concerns I have expressed above, the circumstances are unlikely to be identical.
39. In reaching my decision I have had regard to the other appeal decisions referred to by the appellant⁵. However, these do not affect my reasoning.

Conclusion

40. For the reasons set out above, and having had regard to all other matters raised, I consider that the proposal would be in conflict with the development plan as a whole and that there are no material considerations which would justify a departure. As such, I conclude that the appeal should be dismissed, and planning permission refused.

Rory Cridland

INSPECTOR

⁴ As well as those in respect of funding through the Community Infrastructure Levy.

⁵ APP/Y3940/W/18/3200041; APP/Y3940/W/20/3245400.