



Appeal Decision

Site Visit made on 12 April 2021

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/Y3940/W/19/3242889

Land at end of Bishops Drive, East Harnham, Salisbury, SP2 8NZ

- 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 Bishops Drive Woodland Limited against the decision of Wiltshire Council.
 - The application Ref 19/02434/OUT, dated 25 March 2019, was refused by notice dated 20 June 2019.
 - The development proposed is Outline Planning Application with all Matters Reserved for Development comprising 13 Intermediate Affordable Dwellings with access from Bishops Drive.
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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 despite the submission of a sketch layout plan and access being proposed from Bishops Drive. I have considered the appeal on the basis of outline proposals with all matters reserved for subsequent approval.
3. During the course of the appeal, the Council raised a new and relevant material consideration relating to the effects of the proposed development on the River Avon and River Test in terms of phosphates and nitrates entering into the catchment of each river as detailed in the evidence. The parties were given the opportunity to consider the matter further with the appeal being held in abeyance for a period of 3 months to allow matters to be clarified and potentially resolved. I am therefore satisfied that neither party has been prejudiced by these matters being treated as an additional main issue.

Main Issues

4. The main issues in this appeal are:
 - Whether the appeal site offers an acceptable location for the proposed development having regard to national and local planning policy;
 - The effects of the proposed development on protected trees and ecology;
 - Whether the living conditions of future occupiers would be adequately safeguarded from noise;
 - Whether the proposed development would secure acceptable foul and surface water provision;

- Whether the proposed development would provide adequate provision for affordable housing and other infrastructure; and
- The effects of the proposed development on European protected wildlife sites and sensitive river catchments.

Reasons

Suitable location

5. The appeal site lies outside but directly adjacent to the defined settlement boundary for Salisbury and would be accessed from a mature residential estate directly to the north. It is elevated above a local distributor road to the south and forms part of a mixed woodland belt that is a prominent feature when viewed from parts of Salisbury to the south in particular. This woodland feature enjoys the status of a TPO woodland.
6. Salisbury is defined as a Principal Settlement within Core Policy 1 of the Wiltshire Core Strategy (WCS)¹, which along with two other large towns will be the primary focus for development providing significant levels of jobs and homes. Over the Plan period, 2006 to 2026, some 6,600 homes will be provided within the Salisbury Community Area in accordance with WCS Policy 20.
7. WCS Core Policy 2 sets out the Council's Delivery Strategy for Wiltshire, aiming to deliver development in the most sustainable manner. The policy 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. The policy reinforces the point that the limits for development may only be altered through the identification of sites for development through later Site Allocations DPDs and neighbourhood plans.
8. Also of relevance is Core Policy 20, which deals specifically with the Salisbury Community Area and which states that development within this area should be in accordance with the Settlement Strategy set out in Core Policy 1. As the site is located outside of the development boundary, this is treated as development falling in the countryside.
9. The appellant has promoted the scheme on the basis of 100% affordable housing although no appropriate mechanism to ensure its delivery in the form of a legal obligation has been submitted. Notwithstanding, as Salisbury is a higher status settlement where it would be anticipated that sufficient affordable housing to meet the needs of the Salisbury Community Area would be accommodated on the larger allocated sites, the Council's Rural Exception Policy (Core Policy 44) would not apply or be necessary in terms of strategic affordable housing delivery.
10. That said, the appellants suggest that the Council is presently unable to demonstrate that it is meeting the affordable housing needs within the Salisbury Community Area and draws attention to the National Planning Policy Framework which advocates that local planning authorities should support the development of entry-level exception sites, unless the need for such homes is

¹ Wiltshire Core Strategy (2015)

already being met. The Council appears not to dispute the appellants' figures. I consider the issue of affordable housing later in my decision.

11. From what I have read, I find that the appeal site would not represent a suitable location for the proposed development and would be contrary to the overall settlement strategy as set out in WCS Core Policies 1, 2 and 20.

Protected Trees

12. The appeal site forms part of a prominent escarpment, which is heavily wooded containing a variety of mature and semi-mature trees that form a green backdrop to the dwellings on Bishops Drive. A previous appeal Inspector observed that the woodland "makes a substantial contribution to the attractive tree dominated skyline"². Despite the degeneration of this woodland, the feature still makes a considerable positive contribution from wider views of the skyline. On my site visit, even with the leaves not yet appearing on the trees and despite the varied quality of the trees observed, the belt of woodland served to soften views from the surrounding roads and add colour and visual interest to the suburban form of development in this part of Salisbury. The trees in the woodland area are protected by an area tree preservation order because of their public amenity value.
13. The proposed development would lead to the loss of half of the surveyed trees on approximately half of the surface area of the site. This would severely reduce the verdant nature of this part of the woodland. Although individually the trees are of mixed quality, their value lies in their combined visual impact, which would be disrupted by the removal of such a large amount of the woodland. Whilst a revised plan has been submitted, which indicates a lower number of broadleaf trees to be removed, this plan has not been the subject of public consultation. The appeal system should not be used to evolve planning proposals.
14. Replacement tree planting is proposed as part of the appeal proposal as well as the offer to effectively manage the woodland for which a draft Unilateral Undertaking has been submitted. I do not consider this would adequately compensate for the loss of the mature and semi-mature trees that are proposed to be removed from the site. Replacement trees would take a long time to grow to the same maturity as those trees shown to be removed, and given the extent of building and hard surfacing, and the relatively small size of the garden areas, there would be insufficient space to accommodate the number of trees of the size and height currently on the site. My attention has been drawn to the condition attached to the Felling Licence, which would in any event result in restocking.
15. I conclude that the loss of trees and other foliage on the site would significantly harm the character and appearance of the area, whilst the presence of such large trees in close proximity to the proposed houses would be likely to lead to pressures for their removal. Thus the proposal would conflict with saved policy C9 of the Salisbury District Local Plan and WCS Policies CP50, CP51, CP52 and CP57 which, amongst other criteria, restricts development which would result in the loss of trees, hedges or other features that contribute to the character of the landscape and where development is permitted, existing on-site green infrastructure is retained in order to enhance biodiversity.

² T/APP/5409/A/82/5258/G9

16. *Ecology*

17. The application was accompanied by an updated Ecological Appraisal following an earlier assessment in 2016 which confirmed the presence of badgers on the appeal site and also identified the site as providing a habitat suitable for bats and breeding birds. Badgers are a protected species under the Protection of Badgers Act 1992 and Bats under the Habitats Regulations 2017 (as amended). In view of their presence or likely presence on the site, any impact that the development may have on their respective habitats is a material consideration.
18. Whilst the appellants maintain that the level of coverage of the appeal site by non-native Western Red Cedar would suggest that it would not provide a suitable habitat for Bats, the close proximity of the River Avon and the additional connected woodland areas in this area would suggest that at the very least, the site would offer a suitable habitat for foraging and commuting by Bats. In the absence of specific surveys relating to Badgers and Bats it would not be clear whether the development could proceed without any impact or whether impact identified could be made acceptable through mitigation measures despite a limited number of measures being proposed. Such matters should be considered prior to planning permission being granted for development.
19. Accordingly, I find that the proposed development would conflict with WCS Core Policy 50 that requires amongst other things, for new development proposals to demonstrate how they protect nature conservation interests so that ecological features and sensitive wildlife species and habitats are not harmed while at the same time seeking opportunities to enhance biodiversity. Such policy is consistent with paragraphs 170 and 175 of the National Planning Policy Framework (the Framework).

Noise

20. The presence of the Salisbury Transmitting Station located some 40m to the south west of the appeal site has the potential to cause significant adverse impacts to the living conditions of future occupiers due to noise. The appellants commissioned a noise report which included mitigation measures, including the construction of a close boarded fence with a mass of approximately 7kg/m² around the rear garden area of the nearest homes to the broadcast site. The Council's Public Protection Officer suggested that the minimum mass of the acoustic fencing should be increased to 10kg/m² to provide adequate noise attenuation. Subject to a condition to this effect, the Council raises no further objection.
21. I am satisfied that in the event of my granting planning permission, a condition could reasonably be imposed which would require the implementation of the mitigation measures contained within the noise report together with the Council's suggested added caveat. Therefore, I conclude that the proposed development would comply with WCS Core Policy 57 that requires that the design of new developments demonstrate their compatibility with adjoining uses to avoid unacceptable impacts, including those arising from noise sources.

Drainage

22. A holding objection was lodged by the Council's Drainage Engineer on the basis that no details had been submitted in relation to foul or surface water drainage.

The appellants simply state that the appeal site lies adjacent to an existing housing estate that is serviced by mains drainage and that the matter could be dealt with by way of condition. No evidence is provided by the Council that identifies difficulties or challenges in delivering an acceptable foul and surface water drainage solution at the appeal site.

23. As the application sought outline planning permission with all matters reserved, whilst a level of detail could be expected relating to more fundamental matters of delivering the proposed scheme, such details should be proportionate in terms of the ability to deliver the proposal in principle. Furthermore, it is reasonable to expect that more detailed evidence be provided at the reserved matters stage. From what I have seen and read, there is little evidence to suggest that the appeal scheme could not be adequately serviced by the existing drainage system or that suitable surface water drainage measures could be delivered without increasing the risk of flooding on the site or elsewhere. Indeed, the Council's statement includes both a commentary that the proposal would be acceptable in principle and conditions are suggested which, in my view, would ensure that suitable arrangements are in place and appropriate measures delivered prior to development commencing. Moreover, this approach is favoured by the appellants, which also indicates to me that the suggested conditions would be acceptable to them.
24. Consequently, and in the light of any evidence to the contrary, a proportionate stance in the form of requiring drainage details by imposing appropriately worded conditions would be warranted. In the light of this, the proposed development would not be contrary to WCS Core Policy 57, which along with other criteria, requires that new developments provide levels of amenity that do not give rise to pollution.

Affordable housing and other infrastructure contributions

25. It is apparent from the evidence before me that different potential options for the basis of a legal agreement to secure affordable housing and financial contributions for waste and recycling facilities have been raised and given at least some consideration by the main parties. However, a completed legal agreement is not before me and the appellants have suggested that a planning condition could be imposed to secure the required affordable housing and other infrastructure.
26. The Planning Practice Guidance (the Guidance) sets out that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. However, for affordable housing to be provided effectively, arrangements would be required to be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and to ensure that it remains affordable to all initial and subsequent occupiers. The legal certainty provided by a planning obligation (either a unilateral undertaking or bilateral section 106 agreement) makes it the most fitting and appropriate way of ensuring that such arrangements are effective.
27. The Guidance indicates that only in exceptional circumstances will a negatively worded condition, requiring an agreement to be entered into before development can commence, be appropriate (typically with respect to complex development proposals where otherwise delivery would be at serious risk), and I do not find those exceptional circumstances to apply here.

28. In the absence of an appropriate mechanism to secure on-site provision, I find that the proposal does not make an adequate contribution towards affordable housing required due to the location of the site or the necessary financial contributions for waste and recycling facilities. The proposed development would therefore be contrary to WCS Core Policy 45 that seeks to provide homes that helps create mixed and balanced communities. It would also fail to meet the requirements of the Council's Waste Storage and Collection SPD in relation to waste and recycling.

Nature Conservation Sites

29. The Council raised an additional late issue following clarification of its position in relation to phosphates adversely affecting the River Avon Special Area of Conservation (SAC), in particular. The appeal site is close to the River Avon and within the catchment of the SAC. Since the determination of this planning application, Natural England (NE) advised that planning permission should not be granted for any additional development which will give rise to additional levels of phosphates entering the catchment system. However, the Council has been working with NE and a generic Appropriate Assessment under the Habitats Regulations has been concluded in respect of the likely impacts arising from planned development and genuine windfall sites. This has led to the Council agreeing a Memorandum of Understanding (MoU) with NE that it will require all developments permitted between March 2018 and March 2026 to be phosphorous neutral in perpetuity.
30. However, as this site does not form part of the Council's housing allocations and does not represent windfall, the proposed development cannot benefit from the generic Appropriate Assessment and its provisions and exceptions.
31. Accordingly, on the basis of the evidence before me I cannot be certain that the proposed development despite its relatively modest scale would not lead to likely significant effects either alone or in combination with other projects on the SAC. If I was minded to allow this appeal, I would need to undertake an Appropriate Assessment under the Conservation of Habitat and Species Regulations 2017 (as amended). (the Regulations).
32. It is clear that the Council has agreed a strategic solution, but this is limited to its planned housing growth. Whilst I recognise that this will cause difficulties for smaller unplanned schemes to demonstrate nutrient neutrality, this does not negate my duty, as competent authority under the Regulations to find that there would be no significant adverse effect on the integrity of the SAC before agreeing to the proposal.
33. The appellants recognise the issue but merely suggest that a condition be imposed in accordance with the MoU, which is clearly not possible given the unplanned nature of this appeal proposal. However, as I am dismissing this appeal for other substantive reasons, I have not carried out an Appropriate Assessment in this case and I need not consider this matter further.

Planning Balance

34. The Council accepts that it does not have a deliverable 5-year supply of housing land although the shortfall is modest. This has the effect of bringing paragraph 11(d) of the Framework into play. This means 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 of the Framework taken as a whole. The tilted balance is merely a mechanism which carries no weight in itself. Weight should be applied to the benefits and adverse impacts within the balance.

35. In terms of the benefits that would arise, the development would be reasonably located in a suburban setting close to services and facilities. The appeal development would help to support local services and would provide investment at the construction stage. As the development itself is modest in extent, I give this moderate weight to these social and economic benefits.
36. The levels of affordable housing delivery in the Salisbury Community Area are low and thus the delivery of 100% affordable housing on site is a benefit that carries significant weight and had I been in the position to allow the appeal, the appellants would have been given the opportunity to resolve this through a properly executed planning obligation, which presumably would have enabled the appellants to respond to the specific affordable housing requirements of the Council at the same time.
37. The submission of a draft UU that would facilitate the enhanced management of the woodland would represent a benefit to the local community and ensure the longevity of this prominent local landscape feature. However, the amount of tree felling that is proposed is a negative aspect of the scheme and I attach only modest weight to this benefit. Notwithstanding any intention to implement a scheme of ecological/biodiversity enhancement, to include replacement/new planting and the installation of bird and bat boxes, the enhancements ultimately delivered would realistically be anticipated to be modest across a site of this scale and, as such, attract limited weight.
38. Turning to the adverse impacts, the development would have a significant impact on this important landscape feature through the loss of a substantial number of trees and the likely pressures for yet further felling. Furthermore, the lack of up-to-date surveys with regard to protected species is a serious omission and prevents a full assessment of the scheme to take place. This brings the scheme into direct conflict with local development plan policies designed to protect and enhance biodiversity and which are reflected in the Framework. As such I afford these impacts significant weight.
39. Therefore, the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. There are no material considerations that would indicate that planning permission should be granted.

Conclusion

40. For the reasons given above I consider that the proposal would be in conflict with the development plan taken as a whole and that there are no material considerations that suggest to me that the overall development strategy set out in the WCS should be set aside, a view supported by the modest shortfall in the Council's 5-year housing land supply. I hereby dismiss this appeal.

Gareth W Thomas

INSPECTOR