
Appeal Decision

Site visit made on 23 November 2021

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Appeal Ref: APP/U3935/W/20/3263948

Land to the North of, Nightingale Lane, South Marston, Swindon SN3 4SR

- 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 Bower Mapson Homes Ltd against the decision of Swindon Borough Council.
 - The application Ref S/19/1245/KICO, dated 14 August 2019, was refused by notice dated 13 July 2020.
 - The development proposed is erection of 5 no dwellings, new public park and woodland and associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs have been made by Swindon Borough Council against Bower Mapson Homes and vice-versa. Those applications are the subject of separate Decisions.

Preliminary Matters

3. Amendments were made to the proposal prior to determination of the planning application. I have consequently used the description of the development used by the Council in their Decision Notice, and by the appellant on their appeal form, as it more accurately describes the final development proposed.

Main Issues

4. The main issues with regard to the proposed development are:
 - whether the site would be a suitable location for housing having regard to national and local planning policy;
 - the effect on the settings of the Grade I listed Church of St Mary Magdalen and the Grade II listed Church Farmhouse;
 - whether sufficient information has been submitted to demonstrate a suitable and sustainable drainage scheme can be achieved without increasing flood risk elsewhere;
 - the effect on biodiversity and protected species;

Reasons

Suitability of location

5. Policy SD2 of the Swindon Borough Local Plan 2026 (adopted 2015) (SBLP) sets out the development strategy for Swindon Borough. Under this policy, South Marston is allocated for 500 homes on greenfield sites and about 140 on brownfield sites. This expansion of South Marston is part of a wider mixed-use allocation, under SBLP Policy NC3, that includes a series of new villages on land to the east of the A419. SBLP Policy RA3 relates specifically to South Marston and requires, amongst other things, that development at South Marston shall be in accordance with Policy SD2. It also requires that the expansion of the village will be as part of the New Eastern Villages (NEV) strategic allocation and through allocated brownfield opportunities, as shown on the Policies Map.
6. The proposed dwellings would be located outside of, but adjacent to, the settlement boundary of South Marston as defined by the SBLP Policies Map. Policy SD2 supports development proposals in countryside locations outside of rural settlement boundaries subject to meeting one of a limited set of criteria, none of which apply to the current proposals. The appeal site is also located adjacent to the NEV strategic allocation, the northern edge of which is formed by Nightingale Lane (as shown on the SBLP Policies Map). The site does not, therefore, form part of the indicative 'non-coalescence area' as identified by the SBLP. An area of open land would remain between the proposed dwellings and the proposed area for housing at Rowborough. As such, I am not persuaded that the appeal proposal would compromise the principle of South Marston maintaining a separate identity through non-coalescence.
7. I have had regard to the Council's assertion that NP Policy 7 of The South Marston Neighbourhood Plan (SMNP) (made 2017) restricts new development being served from Nightingale Lane. I concur with the Inspector's finding in the recent appeal decision¹ (the recent appeal) on the same site, however, that given that NP Policy 7 is titled 'Rowborough traffic', its application relates solely to traffic proposed as part of the NEV allocation.
8. I acknowledge that facilities within South Marston including a church, primary school and recreation field can be accessed sustainably given they are situated within realistic walking distance of the appeal site. Nevertheless, the development plan provides a clear spatial strategy for the future distribution of development at South Marston and within its surrounding countryside. The site of the proposed dwellings, not least by virtue of being undeveloped and situated at the settlement's periphery, has rural qualities that allow it to be read and experienced as land falling outside the main built-up area of the village. Much of the site is outside of the defined settlement boundary and that area's spatial role as open countryside would be harmed by the encroachment of the proposal. The location of the proposal, therefore, would not accord with the spatial strategy for an expanded South Marston by virtue of its conflict with Policies SD2, NC3 and RA3 of the SBLP. In this regard, the proposal would also conflict with the Framework insofar as it requires the planning system to be genuinely plan-led.

¹ Appeal Ref: APP/U3935/W/19/3235217

Flood Risk

9. It is not in dispute between the main parties that the dwellings would be in an area categorised as Flood Zone 1 (lowest risk) for river and sea flooding. Furthermore, the Environment Agency map shows a very low risk of surface water flooding at the site of the dwellings. The map does show, however, that areas of Church Ground are at high and medium risk of surface water flooding.
10. The Council contends that the proposed drainage scheme fails to demonstrate that flood risk will not be increased by the development. The drainage scheme would collect runoff from the rear gardens of properties on Church Ground into a ditch. The runoff would be conveyed northwards to a pipe, at the northern boundary of Plot 3, that discharges into South Marston Brook. The appellant's drainage technical note² advises that the peak runoff rate from Church Ground towards the site for a 1 in 100 year (+40%) event would be 3.6 litres per second (l/s). The note also advises that the hydraulic table capacity of the proposed ditch would vary between 81 to 202 l/s, and that the chart capacity of the proposed 150mm diameter pipe varies between 16 to 27 l/s. The appellant's drainage consultant concludes, therefore, that the drainage scheme's capacity is significantly greater than the peak runoff rate from Church Ground. The Council has not provided any substantive evidence that would lead me to conclude these runoff rates are not accurate.
11. I acknowledge that blockage of the surface water conveyance system represents a residual risk. However, any such risk is minimal given the limited runoff rate, the spare capacity of the drainage scheme, and given that the drainage scheme is within controllable open space that would allow future maintenance to be secured by condition. As such, I conclude that sufficient information has been submitted to demonstrate a suitable and sustainable drainage scheme for the proposed development can be achieved without increasing flood risk elsewhere. The proposed development would, in these regards, accord with SBLP Policy EN6 and paragraph 159 of the Framework.

Biodiversity

12. The appellant's submitted Phase 1 Habitat Survey and Protected Species Survey Assessment³ (the report) advises that it is not a comprehensive analysis of the ecological interest of the site and that many protected species were unlikely to be noted, visible and/or identifiable during the walkover surveys that informed the report. The report goes on to advise that protected species surveys were not undertaken for the site and recommends phase 2 presence/absence surveys should be completed for Great crested newt, Otter, Water vole and White-clawed crayfish, to assess and set out any requirements for further mitigation before, during and after the actual development phase. The report concludes that the proposed landscaping significantly raises the potential for good biodiversity improvement.
13. The Planning Practice Guidance advises, however, that ecological surveys are necessary in advance of a planning application if there is a reasonable likelihood of a protected species being present and affected by development⁴. In the absence of the recommended Phase 2 species surveys, I cannot be

² PFA Consulting Technical Note (September 2020)

³ Bearwood Associates Ltd – Phase 1 Habitat Survey & Protected Species Survey Assessment (1 June 2019)

⁴ Paragraph: 018 Reference ID: 8-018-20190721 Revision date: 21 07 2019

certain that the proposals would not have an unacceptably harmful effect on ecology, habitats and biodiversity, or that any impacts on protected species could be adequately avoided or mitigated. Given the noted limitations of the Phase 1 Habitat Survey and Protected Species Survey Assessment, the use of a condition securing additional surveys would not be reasonable in this case. Whilst it may be possible to secure some biodiversity improvements through a landscape and ecological management plan secured by condition, without further Phase 2 surveys, insufficient information has been provided to adequately assess whether net biodiversity gain can be achieved.

14. I acknowledge that the Inspector for the recent appeal on the site found a condition would ensure delivery of the proposed landscaping and that that would secure net gains in biodiversity. However, the recent appeal decision did not address protected species, biodiversity, or refer to the limitations of the Phase 1 Survey in any detail. Whilst I appreciate the need for consistency in decision making, I am obliged to consider the presence of protected species and the extent to which they may be affected by the proposed development before planning permission is granted⁵.
15. For the above reasons, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to ecology, habitats and biodiversity interests, including protected species. This would be contrary to SBLP Policies SD1 and EN4, which taken together, amongst other things, require development to protect and enhance biodiversity and provide net local biodiversity gain. Furthermore, the proposal would be contrary to Paragraph 180(a) of the Framework which indicates that in the absence of avoidance, adequate mitigation, or compensation, of significant harm to biodiversity, planning permission should be refused.

Listed Buildings

16. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that special regard shall be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses. The site is within the setting of the Grade I listed Church of St Mary Magdalen (the Church) and the Grade II listed Church Farmhouse (the Farmhouse). Any impact on the settings of these listed buildings would not necessarily detract from their significance as designated heritage assets because that depends on the extent to which their settings contribute to their significance. Their settings are not designations in themselves. The Framework defines significance 'as the value of the asset because of its heritage interest.' This interest may be archaeological, architectural, artistic or historic. The setting is defined as the surroundings in which the asset is experienced, which may change as the asset and its surroundings evolve.
17. The Historic England listing describes the Church as a small medieval parish church with west tower. Architectural details mentioned in the listing include its rubble construction, stone tile roof, ashlar quoins and dressings. From the evidence before me, I find the significance of the church, in terms of its special architectural and historic interest, in part, derives from its age, character, open rural setting and well-preserved architectural features.

⁵ Circular 06/2005, paragraph 99; and the Natural Environment and Rural Communities Act 2006

18. The Council's refusal reasons do not identify harm to the setting of the Church and this matter is not assessed in the appellant's Heritage Statement of Case⁶ (Heritage Statement). In the recent decision for 8 dwellings on the same site, the Inspector found that the scheme would have a neutral effect on the setting of the Church. The current scheme is reduced in scale and would also be physically detached from the Church. There would be limited intervisibility between the dwellings and the Church due to the intervening existing residential development at Church Farm Lane. In the areas where the church would be most visible, the site would be left open. Whilst setting is not dependent upon what can be physically seen, there is no substantive evidence before me of important historic links between the Church and the site. Given the existing intervening housing between the proposed dwellings and the Church, there would not be an impact on the tranquillity of the setting of the Church. As such, I find the ability to experience and appreciate the significance of the Church would not be harmed by the proposal.
19. The Historic England listing describes the Farmhouse as being early C19 and two storeys. Architectural details mentioned in the listing include its painted brick, chamfered quoins, projecting pentice porch, hipped slate roof and a two-storey extension to the rear. The Heritage Statement advises that the special architectural and historic interest of the Farmhouse derives from its overall architectural composition as an amalgam of various periods of enlargement, representing a large domestic residence with vernacular detailing, sat within spacious gardens on the edge of the village. The Heritage Statement also advises that the wider agricultural landscape contributes to the Farmhouse's heritage significance and allows it to be read as a fine 'edge of village' historic dwelling. Whilst I agree that these aspects contribute to the heritage significance of the Farmhouse, I am not persuaded by the Heritage Statement that the historical association between the Farmhouse and the land within the appeal site is insufficient to make the relationship of heritage significance.
20. The historic ownership and functional links between the Farmhouse, the wider farmstead, and the field to the south are clearly evidenced within the Heritage Statement. There continues to be agricultural, open countryside to the east and south of the Farmhouse. I acknowledge that the historic ownership and functional links no longer remain, and that modern developments have encroached into the Farmhouse's surroundings. Nevertheless, the appellant advises that the field to the south is currently used for the grazing of animals (an agricultural use) and the public right of way (PROW) through that field provides clear views of the farmhouse. The field is, therefore, an important contributor to how the Farmhouse is experienced, and the open countryside surroundings contribute to the Farmhouse's legibility. The open agricultural land of the appeal site is evocative of the Farmhouse's historic rural setting and the site, therefore, continues to be important in understanding the agrarian origins of the Farmhouse, contributing positively to its heritage significance.
21. Even at the relatively low density of housing proposed, the appeal scheme would introduce a modern, urbanising form of development into the open agricultural setting to the south of the Farmhouse. I acknowledge that attention has been paid to the overall design of the dwellings, and that there are existing

⁶ Heritage Statement of Case (November 2020) – Cotswold Archaeology Project: CR0552

modern developments in the surrounding area. Furthermore, I note that significant areas of the appeal site would also be left undeveloped.

22. Nevertheless, the sense of openness and the rural character of the area to the south of the Farmhouse would be very much diminished by the scheme, leading to a reduced appreciation of its agricultural origins. Given the bulk of the dwellings and their proximity to the PROW, the loss of open agricultural setting would be particularly apparent in views of the Farmhouse when travelling along the PROW. The development would, therefore, harmfully change the experience and nature of views of the Farmhouse, eroding the ability to understand and appreciate the agrarian origins of the Farmhouse and its historic relationship with its immediate surroundings. These impacts of the development would have a harmful effect on the setting and significance of the Farmhouse. That harm would be less than substantial.

The Heritage Balance

23. Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal. I attribute great weight⁷ and importance to the conservation of designated heritage assets, understanding that heritage assets are an irreplaceable resource. As such, I give great weight to the identified harm to the setting and significance of the Farmhouse.
24. The PPG⁸ advises that, 'public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework'.
25. Amongst the benefits of the proposals would be the provision of a mix of 5 homes in a borough where there is not a five year supply of deliverable housing. The appellant states that the dwellings would be built out quickly and I have no reason to doubt that would be the case. The Framework⁹ is clear that the Government's objective is to significantly boost the supply of homes to meet peoples' housing needs. The proposal would provide a high-quality environment for future residents and good access to local services and facilities. However, given the small number of houses proposed, the benefit of increased housing supply carries only moderate weight.
26. The proposal would also result in some economic and social benefits, including through its construction and as a result of an increase in spending, and patronage of facilities, in the local area. Given the limited scale of the scheme, and that the village is already allocated for significant growth, these benefits attract very limited weight.
27. The development would include significant areas of public open space for use as an informal country park and planted woodland. Improvements are also proposed to the PROW through the site to make it more accessible to a wider range of users. I acknowledge that these aspects of the development would promote health and well-being within the wider community in accordance with Framework paragraph 92. However, given there is an existing PROW through the undeveloped site, I afford only limited weight to the additional benefits of the scheme in these regards.

⁷ Framework paragraph 199

⁸ Paragraph: 020 Reference ID: 18a-020-20190723 - Revision date: 23 07 2019

⁹ Framework Paragraph 60

28. For the reasons noted above, there is insufficient evidence to demonstrate that the proposal would result in a net bio-diversity gain. The appellant has also highlighted that the proposal would attract New Homes Bonus (NHB). However, as Section 70 of the Town and Country Planning Act 1990 (as amended) does not refer to this as "local finance considerations", I give very little weight to the development attracting the NHB.
29. The public benefits of the scheme, even if taken together, do not outweigh the great weight given to the less than substantial harm to the setting and significance of the Farmhouse. The proposals would, therefore, be contrary to SBLP Policy EN10 which requires, amongst other things, development affecting heritage assets to conserve and, where appropriate, enhance their significance and setting. The development would also be contrary to Chapter 16 of the Framework which requires heritage to be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

Planning Balance

30. Both parties accept that it is not possible for the Council to demonstrate a five year housing land supply at present. Paragraph 11 states that, in instances where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development. Footnote 8 of the Framework specifies that designated heritage assets are included within such protected assets. Given my findings with regards to the harm to the setting and significance of the Grade II Listed Church Farmhouse, the Framework therefore provides a clear reason for refusing the proposal, and the so-called tilted balance does not apply in this case.
31. The location of the proposal would not accord with the spatial strategy for an expanded South Marston as set out by Policies SD2, NC3 and RA3 of the SBLP. I acknowledge that conflict with these policies attracts reduced weight given the Council's current housing land supply position. Nevertheless, even if I were to afford conflict with these policies very limited weight, the great weight afforded to the harm to the Farmhouse would outweigh the benefits of the scheme noted above, even before weight is given to the conflict with biodiversity policies.
32. The proposal would, therefore, conflict with the development plan, when read as a whole, and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

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

S D Castle

INSPECTOR