
Appeal Decision

Site visit made on 15 March 2022

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Appeal Ref: APP/C3105/W/21/3274329

Land to Rear of Home Farm Close, Ambrosden OX25 2NP

- 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 Mr Collison against Cherwell District Council.
 - The application Ref 20/01762/OUT, is dated 15 September 2020.
 - The development proposed was originally described as: 'Outline consent including access for five dwellings.'
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of five dwellings with all matters reserved except for access, at Land to Rear of Home Farm Close, Ambrosden OX25 2NP, in accordance with the terms of application Ref: 20/01762/OUT, dated 15 September 2020, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Clive Collison against the decision made by Cherwell District Council. This application is the subject of a separate decision.

Procedural Matters

3. In allowing the appeal I have amended the description of development to remove the reference to the outline consent. I find this to be an unnecessary aspect of the description and therefore the alteration is in the interests of precision.
4. The appeal is the result of the Council failing to determine the application in the prescribed period of time. However, within the evidence before me, the Council have confirmed that had they made a decision on the proposal, it would have been to refuse the application. They have also provided the likely reason for refusal.

Main Issue

5. On the basis of the evidence before me, the main issue is whether the proposal makes effective use of land.

Reasons

6. The appeal site represents an undeveloped parcel of land located adjacent to two ongoing residential developments. Adjoining the site to the north is an

additional area of land that is also undeveloped. Due to the proximity of the appeal site to land that has planning permission, and land which may be brought forward for development, it is the Council's view that the broader area of land should be considered as one so as to provide the opportunity for the delivery of affordable housing as well as contributions towards other types of infrastructure.

7. The Council's view is fully understood. The sites have a clear visual and physical relationship, and such an approach would enable a broader assessment of the implications of development that would possibly facilitate the delivery of important affordable housing. However, the parcels of land are within separate ownership and a comprehensive form of development would not appear to be forthcoming.
8. The National Planning Policy Framework (the Framework) provides direct support for making effective use of land. Indeed, Paragraph 119 of the Framework confirms that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.
9. This is further amplified in Paragraph 121 which states that local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.
10. In addition, Paragraph 125 of the Framework states that area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. Part a) of this paragraph goes on to state that plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible, and part c) confirms that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework.
11. Accordingly, the Framework offers support for the Council's approach to this proposal, and the surrounding land. However, based on the evidence before me, the Council cannot rely on any specific policies that requires the comprehensive approach on undeveloped land that is being advocated. Policy BSC2 of the Cherwell Local Plan 2011 – 2031; Part 1 (2015) (LP) relates to the effective and efficient use of land but refers directly to previously developed land. Accordingly, it is not directly relevant to the appeal site and the adjacent land.
12. In addition, the Council have not sought to use compulsory purchase powers or produce any character assessments or masterplans to guide development towards a more comprehensive approach. Accordingly, the tools provided within the Framework have not been utilised.

13. I do not dispute that a more comprehensive approach would likely enable the delivery of affordable housing and other infrastructure in the village, as well as help to mitigate the impacts of growth. However, local policy does not specifically require such an approach and the sites are in different ownership. Consequently, in the absence of a clear policy framework, there is no reason for the sites to come forward at the same time. Accordingly, there is also no reason for the proposal to be subject to a legal agreement to secure specific mitigation or infrastructure requirements.
14. On the face of it, such a finding would appear to reward piecemeal development. However, despite the support offered by the Framework for the effective use of land, Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. Although the Framework could facilitate the Council's approach, to benefit from such support, the tools that are provided have to be used. The Framework is clear that the planning system should be genuinely plan-led, and on the basis of the evidence before me, local policy does not support the approach taken by the Council.
15. This may not provide the most sustainable outcome for development of the broader parcel of land but there can be no certainty that the adjacent site would be forthcoming for development, and I have to determine the proposal on its merits and on the basis of the evidence before me. In my judgement, the Framework by itself does not support the approach taken by the Council. Accordingly, in the absence of specific policies, I find that the Framework as a material consideration does not indicate a decision contrary to the development plan
16. Consequently, for the reasons identified above, I conclude that the proposal would make effective use of the appeal site. It would therefore comply with Policies BSC3, BSC10, BSC11, BSC12 and INF1 of the LP, advice in the Developer Contributions SPD (2018) and advice in the National Planning Policy Framework. Taken together, these establish the requirements for infrastructure and affordable housing provision as they relate to new development.

Other Matters

17. The proposal would introduce residential development on a currently undeveloped parcel of land, close to existing dwellings. Consequently, the existing dwellings would notice a clear change to the use and appearance of the site. However, the indicative layout provided demonstrates quite clearly that five dwellings could be located on the site without materially harming living conditions. For example, privacy levels could be adequately safeguarded, and sufficient space could be retained to protect existing levels of daylight and sunlight.
18. I also note concerns from local residents regarding highway safety and a likely increase in traffic. Despite this, the development proposed would be of a small scale and the Highway Authority have not objected to the proposal. Accordingly, I have no substantive or compelling evidence before me to suggest that highway safety would be compromised, and I am satisfied that the proposal would provide a safe and suitable access for all.

Conditions

19. In light of my findings set out above, conditions 1 – 4 are necessary in the interests of precision and clarity. Condition 5 is necessary to ensure that a satisfactory drainage scheme is implemented, and condition 6 is necessary in the interests of highway safety. Condition 7 is necessary due to the archaeological interest of the site, and conditions 8 and 9 are necessary to protect and enhance local biodiversity.
20. Where conditions require work to be carried out prior to the commencement of development, the appellant has agreed to these matters in writing.

Conclusion

21. For the reasons identified above, the appeal is allowed, and outline planning permission is granted.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

1. No development shall be commenced until full details of the appearance, landscaping, layout and scale (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of three years beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. Except where otherwise stipulated by conditions attached to this permission and unless otherwise agreed with the Local Planning Authority, the development shall be carried out strictly in accordance with the following documents and drawings: Site Location (3145 s2 002) and Proposed Site Plan (3145 s2 001 c) – in respect of the principle means of access only shown on this drawing.
5. As part of any reserved matters for layout for the development hereby approved, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of any building to which this scheme relates.
6. Prior to the commencement of the development hereby approved, full details of the means of vehicular access between the land and the highway, including position, layout, construction and drainage shall be submitted to and approved in writing by the Local Planning Authority. The means of access shall not be constructed other than in accordance with the approved details and shall be retained as such thereafter.
7. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority. Following the approval of the Written Scheme of Investigation, and prior to any demolition on the site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.

8. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include detailed measures to protect Great Crested Newts. The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.
9. As part of any reserved matters for layout for the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing the biodiversity of the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out prior to the first occupation of any dwelling and retained in accordance with the approved details.