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# Appeal Decision

Site visit made on 21 March 2022

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 May 2022**

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**Appeal Ref: APP/K0425/W/21/3279273**

**Rectory Cottage, Ibstone Road, Ibstone HP14 3XZ**

- 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 Mr & Mrs N Storey against the decision of Buckinghamshire Council - West Area (Wycombe).
  - The application Ref 20/06891/OUT, dated 23 July 2020, was refused by notice dated 12 February 2021.
  - The development proposed is described as 'outline planning application for two detached dwellings and associated garaging with all matters other than access reserved for later consideration'.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Mr & Mrs N Storey against Buckinghamshire Council – West Area (Wycombe). This application is the subject of a separate Decision.

## Preliminary Matters

3. The original application was made in outline with only access to be determined at this stage. All other matters are reserved for future determination. I have had regard to the existing and proposed site plans and the indicative layout of the proposed development as shown in these drawings, but have regarded all elements of these drawings, except the access, as indicative.
4. From the submissions and some of the submitted drawings, it has been indicated that the appeal site is located on both Ibstone Road and Oxford Road. Both roads form the central road through the settlement. I have referred to the road on which the appeal site is located as Ibstone Road as that reflects the address given on the application form and set out in the banner heading above.

## Main Issues

5. The main issues are:
  - whether the appeal site is a suitable location for a residential development having regard to local and national planning policy for the delivery of housing;

- the effect of the proposed development on the character and appearance of the area, including the Chilterns Area of Outstanding Natural Beauty (AONB);
- the effect of the proposed development on trees; and
- the effect of the proposed development on protected species and biodiversity.

## **Reasons**

### *Suitable location*

6. The Council's strategy for the delivery of housing is set out under Policy CP2 of the Wycombe District Local Plan 2019 (the LP). This is based around a settlement hierarchy. The appeal site is located within the settlement of Ibstone which is identified as a Tier 6 settlement, a hamlet and one of the smallest settlements.
7. Policy CP3 sets out the settlement strategy and explains that within Tier 6 settlements, housing will be delivered through rural exception affordable housing schemes where the settlement has some local services. The supporting text to the policy explains that in the smaller villages and hamlets, significant development would not be sustainable due to the limited facilities and reliance on the private car for transport.
8. Policy DM44 sets out the types of development that will be permitted within the countryside outside of the Green Belt. In respect of housing development, it supports development that accords with a made neighbourhood plan, the construction of development within settlement boundaries, as rural exceptions housing, housing for rural workers, the conversion of existing buildings and the redevelopment of previously developed land.
9. Ibstone does not have a settlement boundary and there is no neighbourhood plan in place. The scheme proposes 2 market houses to be constructed on undeveloped land. As such, none of the circumstances set out under Policy DM44 would apply to the appeal proposal. The scheme would therefore be contrary to LP policies with regards to the location of development.
10. The appellants have argued that Policy DM44 applies an unduly restrictive approach within rural areas in that it does not permit residential development other than within identified settlement boundaries. In this respect, they consider it fails to support the approach to sustainable development in rural areas as set out under paragraph 79 of the National Planning Policy Framework (the Framework), which states that housing should be located where it will enhance or maintain the vitality of rural communities.
11. The supporting text of the Policy DM44 recognises that some new development can contribute positively to the vitality and sustainability of rural communities. I consider this reflects the approach advocated within national policy. However, through the types of housing and development included within the list set out under Policy DM44, this contribution to rural communities could be met without the need for other forms of development, such as proposed in the appeal before me. This also indicates that the policy provides flexibility for some limited residential development in certain circumstances. For this reason, I do not find the policy to be inconsistent with the Framework.

12. The appellants consider that the appeal site would comprise a 'natural infill plot' and would therefore accord with the LP. However, whilst certain infill development had previously been included within policy as an acceptable form of development, that was in a previous development plan which has now been superseded by the 2019 LP. The LP makes no specific allowance for infill development other than in the context of Green Belt development which would not be applicable here. Therefore, on the basis that the plan supports housing developments that reflect local needs, the absence of specifically allowing for infill development within the countryside outside the Green Belt does not make the policy inconsistent with the Framework. There is also nothing before me to suggest that if an appropriate infill development, of the type compliant with Policy DM44, were to be proposed within the lower tier settlements (such as Ibstone) it would not be permitted.
13. Moreover, the LP was adopted in August 2019 after the Framework which was published in February 2019. The LP would have been found sound against that version of the Framework. Whilst the Framework was subsequently revised in 2021, those parts of the Framework relating to rural housing have not changed. I do not therefore consider that the LP has been overtaken by a change in national policy. The policies within the LP are therefore not out of date and remain consistent with the Framework in relation to these matters.
14. The appellants have referred me to a recently approved scheme for housing development at Cholsey Grange, also in Ibstone, which they place considerable reliance upon to justify the location of the proposed development. They have obtained legal advice in support of their proposals which amongst other things explains how they consider the first Cholsey Grange decision should be taken into account and that Inspector's approach applied to the appeal scheme.
15. The Cholsey Grange proposals were subject to 2 appeals<sup>1</sup>, the first was dismissed on flooding grounds and the second was allowed.
16. The first appeal at Cholsey Grange was refused by the Council due to its conflict with the previous development plan policies which allowed for infill development. The Council considered the scheme did not amount to infill development and concluded that it was unacceptable for this reason and due to its adverse effect on the character and appearance of the area, including the AONB.
17. At the time of the appeal decision, the LP had been adopted and the Inspector therefore considered the appeal under the new Policy DM44. He determined that the development would not meet any of the exceptions set out in Policy DM44 and was therefore in conflict with the policy. However, he also acknowledged that the supporting text to that policy recognised that development in the countryside can positively contribute to the vitality and sustainability of rural communities. In this context, he accepted the Council's position that the development could provide beneficial support to limited local and public transport services in Ibstone.
18. As I have set out above, I find that development compliant with Policy DM44 would be sufficient to contribute to the vitality and sustainability of rural communities. In this regard, I therefore do not reach the same conclusions as the Cholsey Grange Inspector. However, in reaching a different conclusion, I

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<sup>1</sup> APP/K0425/W/19/3226658 and APP/K0425/W/20/3256435

am mindful that the Cholsey Grange Inspector was dealing with an appeal where the policy had changed between planning permission being refused and the appeal being determined. The evidence that would have been before him, and upon which his conclusions were based, would have reflected those circumstances. I also note that in that appeal, the overriding concern was that the location was inappropriate with regard to the character and appearance of the area, including the AONB. This is different to this appeal where the principle of development of the nature proposed has been objected to.

19. I recognise that the Council did not challenge the previous Inspector's findings by way of the High Court. However, caselaw<sup>2</sup> has established that where a party has won an appeal, a challenge to that decision on an issue of planning policy interpretation with which it disagrees, is unlikely to be considered by the Courts on the basis that it would be an academic dispute. It seems to me that the circumstances would be the same in relation to the Cholsey Grange appeal. This does not mean that the Council accepted the conclusions of the previous Inspector.
20. The Council in refusing that second scheme did so on the grounds of highway safety rather than the location of development. This was on the basis that its objections in terms of location had been overruled by the first appeal Inspector. The second appeal Inspector therefore did not specifically address the location of development. In the decision, the Inspector acknowledged that, in the previous appeal, the Inspector found that the proposal was in an appropriate location having regard to securing sustainable development and that he had no reason to disagree with that previous Inspector on this matter.
21. I am aware that the previous Inspector had found highway safety matters were acceptable. However, further evidence was submitted in relation to the second scheme which led to a decision contrary to the findings of the Inspector. No such evidence was forthcoming in relation to the location of development, and it therefore remained unchallenged.
22. Since the location was not a point of dispute in the second appeal, there was no requirement for the Inspector to address this matter in the decision. The decision was therefore silent on this matter. This does not mean that, had the location been in dispute, the second Inspector would have reached the same conclusions to those reached by the first.
23. I appreciate that there are some services within Ibstone including a primary school and a very limited bus service passes the site. I also recognise that growth in the settlement would help to support such services. Nevertheless, future occupants of the proposed development would be almost entirely reliant upon the use of private motor vehicles for their day-to-day needs. For all these reasons, I find that the Cholsey Grange appeals do not alter my findings in respect of the location of the proposed development in the appeal before me.
24. I note that some Inspectors have come to this conclusion, as in the case of the Bracken Cottage, Ibstone appeal<sup>3</sup> where it was found this would contribute to a pattern of development likely to cause environmental harm as a result of increased car journeys. On the other hand, both the first Cholsey Grange

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<sup>2</sup> Tewkesbury BC v SSHCLG [2019] EWHC 1775 (Admin)

<sup>3</sup> APP/K0425/W/19/3222794

Inspector and an Inspector in relation to development at Abbatsfield, Ibstone<sup>4</sup> concluded that development in this location could support local services. On balance, whilst I acknowledge the potential to support local services, I concur with the Bracken Cottage Inspector.

25. I conclude that the appeal site would not be a suitable location for a residential development having regard to local and national planning policy for the delivery of housing. It would therefore conflict with Policies CP1, CP2, CP3, CP4, DM21, DM33 and DM44 of the LP. In addition to the requirements of these policies referred to above, these policies seek sustainable development, new housing on windfall sites within settlement boundaries and for development to be located to provide direct and convenient access to jobs, services and facilities via sustainable transport modes and reducing reliance on single occupancy car trips. It would also not accord with the Framework which seeks sustainable development in rural areas.
26. References to Policy CP12 of the LP which relates to climate change have been referred to in submissions but not cited within the decision notice. I have not therefore concluded against this policy.

#### *Character and appearance*

27. Ibstone is a small rural settlement, characterised by distinct clusters of linear development along both Ibstone Road and Oxford Road, separated from each other by areas of open countryside. This sporadic pattern of development is a characteristic feature of the settlement, recognised by various Inspectors over the years including in an appeal<sup>5</sup> dating back to 1981 at the same site as well as more recently in the Abbatsfield appeal. This pattern of development contributes to the rural character of the settlement.
28. The appeal site is a rectangular area of undeveloped and open land which lies between Rectory Cottage and a small field separating it from Box Tree Cottage, alternatively referred to as Namas, to the north. There is no development along the opposite side of the road, and the site together with the adjacent field, therefore serves to reinforce the characteristic separation between development clusters.
29. There is evidence that the site had previously contained a number of trees which would accord with its previous use as an orchard. Many trees have been cleared from the site frontage to the road, leaving substantial stumps, and only a couple of trees now remain along the site boundaries which are otherwise enclosed by hedgerows.
30. The site lies adjacent to the formal garden serving Rectory Cottage, from which there is an access. However, it is distinctly different in character, appearing as a small rural field with no evidence of formal planting or other domestic paraphernalia which would make it more akin to a residential garden.
31. The indicative plans show 2 large, detached dwellings of one and a half storeys, each with a detached garage and gravelled driveway to the front. The addition of these buildings would extend the linear pattern of development leading to a more continuous form of development. This would undermine the more spacious and clustered pattern of development characteristic of the settlement.

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<sup>4</sup> APP/K0425/W/16/3162468

<sup>5</sup> T/APP/5136/A/81/6513/09

Furthermore, since both houses are indicated to be taller than the adjacent bungalow at Rectory cottage and less spacious within their plots, they would appear as a denser form of development. This would have an urbanising effect which would be harmful to the rural character along Ibstone Road.

32. I acknowledge that the proposed houses would have access to a garden size and layout consistent with others within the settlement. However, this would not overcome the harm that would arise from development within this gap separating the different clusters of development and the harm to the rural character that would arise.
33. The trees along the road frontage would have enclosed the site, affording limited views into it. The appellants have argued that these, together with the vegetated frontage on the opposite side of the road, would have enclosed the road and therefore cannot be considered to provide an important visual gap. In my view, a gap in this context represents a break in built development, whether as open land or as an area of substantial vegetation, such as might have been provided by the site in its previously wooded state.
34. Furthermore, due to the significant reduction in vegetation along the site frontage, unlike other development along the road where many properties are screened from view by mature boundary vegetation, the proposed houses would be visually more prominent. This would add to the harm I have identified.
35. I appreciate that there is a linear pattern of development along Ibstone Road and examples of development having been permitted relatively recently which has resulted in some infilling. This includes for a dwelling at Abbatsfield where infill development was allowed on appeal between Cherry Tree and Green Acres. I note that the Inspector in allowing the appeal for a house at Abbatsfield, observed that the site was positioned within a group of houses within the settlement, flanked by houses on both sides. As such, it does not compare to the appeal site which is open land with only one house adjacent, Rectory Cottage, and open fields behind, to one side and opposite.
36. I turn now to consider the effect of the proposal on the AONB. The Chilterns AONB Management Plan 2019-2024 sets out that the AONB is a landscape of remarkable beauty and distinctive character with a unique interaction of geological, ecological and cultural heritage features. It was designed to protect its special qualities including the steep chalk escarpment with flower-rich downland, woodlands, commons, tranquil valleys, ancient routes, villages with brick and flint houses, chalk streams and a rich historic environment of hillforts and chalk figures.
37. The settlement of Ibstone lies within the AONB which sits upon a ridge line, visible in long distance views from the surrounding landscape to the east. The existing form of the settlement, with gaps in development, contributes to the quality of the area, making the built form less visually intrusive within the rural landscape in which it lies.
38. Due to the presence of trees enclosing the field on the opposite side of the road and the absence of development, the appeal site is not visually prominent in longer distance views from the surrounding AONB. It does however contribute to the AONB and how it is perceived in more local views, notably along Ibstone Road. Furthermore, following the extensive tree and vegetation removal from

the site and its front boundary, which has opened up the site, I consider the undeveloped character of the site more directly contributes to the AONB. This contribution would be diminished by the development of 2 houses with garages and other domestication of the site.

39. The proposal would result in a more continuous form of development which would be visually prominent in views along Ibstone Road. This would erode the rural and open character of the area and would not conserve the AONB. The cumulative effect over time of this type of development, closing up the gaps between clusters of development along Ibstone Road, if repeated often would be to the detriment of the landscape of the AONB.
40. I have been referred to an appeal decision<sup>6</sup> for development at Land to the rear of the Old Red Lion, High Street, Great Missenden as a similar type of site. This is also within the Chilterns AONB. In this case, the Inspector considered that the enclosure of the site by existing buildings and mature trees made little contribution to the AONB, with little influence beyond its boundaries.
41. I acknowledge that a site enclosed by trees and buildings may in some circumstances make a limited contribution to the landscape in which it lies. However, the trees have been cleared from the site and it is very open on its eastern, northern and western boundaries, with only its southern boundary which adjoins Rectory Cottage being more enclosed. The site is therefore very visible from the surrounding area, including the road and a public footpath which runs to the north and west of the site, to which I have found it makes a positive contribution. The circumstances of the appeal site are therefore materially different to the Great Missenden scheme.
42. I appreciate that the Inspector in the Great Missenden scheme referred to that site making no material contribution to the AONB in longer views. I have found the same in respect of the appeal proposal. However, this does not nullify the harm to the AONB that I have found in more local views. The Great Missenden scheme does not lead me to any different conclusions on the appeal scheme in relation to its effect on the AONB.
43. The Cholsey Grange Inspector concluded that the scheme would not harm the AONB. However, the positions of the respective developments are materially different with Cholsey Grange located between development on a private road with limited access and to which there would be very limited views from within the surrounding landscape. The appeal scheme, by contrast, would be located on Ibstone Road where it would be visually prominent, with limited boundary vegetation screening it from public viewpoints including from the surrounding landscape.
44. I appreciate that the appeal scheme would be better assimilated into the settlement given its position on the main road when compared with the Cholsey Grange scheme. However, this does not alter my findings that the appeal scheme, in this prominent location along the main road, would be harmful to the character and appearance of the area for the reasons I have set out.
45. I have also had regard to the locations of both Abbatsfield and Keepers Cottage, both which are set back behind the linear development along the road. However, both these developments were for replacement dwellings. It

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<sup>6</sup> APP/X0415/W/18/3202026

has been suggested that these have been successfully assimilated into the settlement location with no harm to the AONB. Whilst this may be the case, I have no information about the dwellings they replaced and whether these were an improvement. I can therefore only give this very limited weight.

46. In accordance with paragraph 176 of the Framework, I have attached great weight to conserving and enhancing landscape and scenic beauty in the AONB which has the highest status of protection.
47. I conclude that the proposed development would be harmful to the character and appearance of the area, including the Chilterns AONB. It would therefore conflict with Policies CP9, CP10, DM30, DM32 and DM35 of the LP which together seek to create a sense of place, requiring development to take the opportunities for improving the character of the area, to conserve and where possible enhance the natural beauty of the Chilterns AONB, protecting it from harmful development, and to protect and reinforce the positive key characteristics of the receiving landscape and existing settlement patterns. It would also not accord with the Framework which seeks development sympathetic to local character, the protection and enhancement of valued landscapes and for great weight to be given to conserving and enhancing AONBs.

#### *The effect on trees*

48. There are a limited number of trees remaining on the site although a substantial number of sizeable stumps along the road frontage. The appellants have confirmed that several trees were removed as they were dead, in poor health or damaged. At the time of their removal, they were not subject to any protection. Since then, the Council has imposed a Tree Preservation Order<sup>7</sup> which covers a group of trees adjacent to the site's northern boundary. The group of trees includes 2 field maples and 1 oak tree. The trees are of a reasonable size, visible from the road and surrounding area and make a positive contribution to the verdant and natural character of the area. I observed on site that the tree canopies overhang the site quite extensively.
49. The submitted information includes a tree survey plan which provides details of the tree diameters. It does not provide information about the age, category, condition or likely crown spreads of the trees. It also does not identify all the tree species. This information would enable a more accurate assessment as to the likely effects of the proposed development on these protected trees.
50. The appellants have stated that the proposed development would not encroach into the root protection areas (RPAs) of the retained trees. They have based this on a root protection area (RPA) calculated as an area equivalent to a circle within a radius 12 times the stem diameter for each tree which is an accepted method of calculation.
51. The proposal is only in outline and the final layout remains to be determined. The indicative layout shows that in the case of Plot 2, the proposed building would encroach into the canopy, but not the RPA, of one of the protected trees. Whilst I appreciate that the scale and position of this proposed dwelling would be determined at a later stage, the space within the site to accommodate 2 detached houses side by side with a detached garage, adequate garden space

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<sup>7</sup> Tree Preservation Order No 09/2019

and a front driveway would limit the extent to which the proposed house could be positioned away from the protected trees.

52. It seems to me that the proposal would necessitate some crown reduction or other works to at least one of the protected trees. However, with only limited information about the trees, the effect of the proposed development on them cannot be fully assessed. In these circumstances, I am not satisfied that it has been demonstrated that the trees would not be harmed by the proposal.
53. The appellants have suggested that a condition could be imposed to secure any tree protection during the construction period. In some circumstances, such an approach would be acceptable. However, as it seems that the proposed development itself would be likely to be positioned very close to the tree and its RPA, it may not be possible to provide the tree protection whilst enabling the construction to take place. The imposition of a condition would not be reasonable in these circumstances.
54. For this reason, I conclude that the proposed development would harm protected trees. It would therefore conflict with Policies CP10 and DM34 of the LP which together seek to both protect trees to be retained through site layout and during construction and protect the natural environment. It would also not accord with the Framework which seeks the retention of existing trees wherever possible.

#### *Protected species and biodiversity*

55. Paragraph 99 of Government Circular 06/2005: Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system (the Circular), states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it, '...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'.
56. The Council has advised that the appeal site is located in relatively close proximity to Local Wildlife Sites, Ancient Woodlands and Biological Notification Sites. In this regard, it could be part of a stepping stone in a mosaic landscape of high ecological value. The Council's ecology officer has also indicated that the site may have been an unrecorded Traditional Orchard which is a priority habitat, although this has not been confirmed. No detailed information relating to the ecological value of the site or an assessment of the proposals potential effects on the site was provided at the application stage. As part of the appeal, a preliminary ecology appraisal report was submitted.
57. This report sets out that the site supports dense bracken and herb-poor semi-improved grasslands. It identifies that low numbers of slow worms are potentially present, which are a protected species. However, there is no evidence of surveys of this protected group of species having been undertaken nor any information about potential mitigation for any loss of habitat supporting this species.
58. The Environment Act 2021 is not in force and the 10% biodiversity net gain that will be required through that legislation cannot be required at this stage.

Nevertheless, Policy CP10 of the LP requires a net gain in biodiversity within individual development proposals.

59. In the absence of sufficient survey work to establish a baseline or proposals for mitigation, it is not possible to accurately assess the potential biodiversity impact of the proposal nor to calculate any biodiversity net gain. This does not accord with the approach advocated within the Circular nor with local plan policies.
60. Furthermore, given the Council's concerns about the potential extent of harm and loss of habitat, the biodiversity net gain may not be able to be fully accommodated on the site which may therefore require some kind of financial contributions for biodiversity offsetting. This would need to be secured through a section 106 agreement under the Town and Country Planning Act 1990 (as amended). Such an agreement would need to be secured as part of the outline permission. No such agreement has been made.
61. On the basis of the submitted information, I am unable to conclude that the proposal would not adversely affect biodiversity or that it would deliver a net gain in biodiversity. It would therefore conflict with Policies CP10 and DM34 of the LP and Policies DM11, DM13 and DM14 of the Delivery and Site Allocations Plan for Town Centres and Managing Development 2013. Together these policies require development to protect and enhance biodiversity to ensure a net gain in biodiversity within individual development proposals, requiring an ecological survey where potential biodiversity interest is identified on a site. It would also not comply with the Framework which requires development to minimise impacts on and provide net gains for biodiversity.

### **Other Matter**

62. The appellants have raised a number of concerns about the Council's handling of the planning application and events post-dating its refusal. However, these are procedural matters which do not affect my assessment of the merits of the case.

### **Conclusion**

63. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

*Rachael Pipkin*

INSPECTOR