
Appeal Decision

Site visit made on 10 May 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday 10 June 2022

Appeal Ref: APP/D0121/W/21/3286674

Land Adjacent to The Grange, Smallway, Congresbury BS49 5AA

- 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 Mr M Richards against the decision of North Somerset Council.
 - The application Ref 21/P/2087/FUL, dated 19 July 2021, was refused by notice dated 13 September 2021.
 - The development proposed is erection of 3 no. open market linked dwelling houses and 1 no. self-build detached dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. New evidence comprising two recently emerging appeal decisions and related analyses were submitted by the parties at final comments stage. Such evidence is not normally permitted outside of the established timetable.
3. However, it would appear that the new evidence is material to the appeal and could not have been submitted earlier. Consequently, I have accepted the new evidence in accordance with case law¹ and the parties have been given an opportunity to comment on the potential implications of each.
4. Having sought a balanced set of views on each piece of new evidence, further opportunities to comment have not been considered necessary. Consequently, the Council's further rebuttal of the appellant's comments on the transport evidence was not accepted.
5. Whilst I note contentions about the lawful use of the land as a residential garden area, there is no lawful development certificate in front of me demonstrating that this is the case. Consequently, the appeal has been dealt with accordingly.

Main Issues

6. The main issues are:
 - (a) whether the site is in an appropriate location for housing;
 - (b) the effects of the proposal on the character and appearance of the area;
 - (c) the effects of the proposal on highway safety.

¹ Wainhomes (South West) Holdings Ltd v SSCLG [2013] EWHC 597 (Admin)

Reasons

Location

7. The site is located outside the defined settlement boundaries of Congresbury and in the countryside. Policy CS14 of the Core Strategy 2017 (CS) makes clear that development outside settlement boundaries will only be considered acceptable where a site is allocated in a local plan or where it comprises sustainable development which accords with the criteria set out in the relevant settlement policies. Consequently, because the site is in the countryside and without statutory allocation², Policy CS33 of the CS is relevant in this case.
8. Accordingly, the policy sets out that new residential development will be restricted to replacement dwellings, residential subdivision, residential conversion of buildings where alternative economic use is inappropriate, or dwellings for essential rural workers. Furthermore, affordable housing will be permitted within settlement boundaries or in the form of rural exceptions sites, adjacent to settlements.
9. The defined settlement boundary functions to provide a clear demarcation of the respective settlements and protect the countryside from urbanising effects. I have therefore applied it in this context. Moreover, the defined settlement boundary has been devised through a statutory process which has considered the qualities of the settlements and surrounding countryside. This has been endorsed through examination and it is therefore important to uphold and give significant weight.
10. I can appreciate that through the passage of time, patterns of development around settlements could change on the ground. As such, the context of the proposal's relationship with the defined settlement boundary may need to be assessed in a flexible manner, especially if things have changed markedly since it was first established.
11. However, there is no evidence that things have changed on the ground to the extent that the defined settlement boundary should carry less weight or that the pattern of development has changed in favour of the proposal. Whilst some residential development has been consented outside the defined settlement boundary of Congresbury, these sites were directly adjacent to it and did not generate harmful urban sprawl into the countryside.
12. The pattern of development in and around the site in this case is of much lower density and representative of its position within the countryside. It is not contiguous with the higher density development of the existing settlement and is not adjacent to the defined settlement boundary. Therefore, it is not reasonable to conclude that Policy CS32 of the CS should apply.
13. Overall, the proposal would deliver dwellings in the countryside, which would not meet any of the identified policy exceptions. Consequently, the proposal is inconsistent with the spatial strategy established within the development plan and would erode the countryside in spatial terms. It would therefore conflict with Policies CS14 and CS33 of the CS, which among other things seek to control inappropriate development in the countryside.

² The site may have been formally identified within a supporting document to the Congresbury Neighbourhood Plan 2019 but is not formally allocated.

Character and Appearance

14. The site is located within a strategic gap designated under Policy SA7 of the Sites and Policies Plan Site Allocations Plan (Part 2) 2018 (SAP). The policy includes three criteria, requiring development to avoid significant adverse effects on the undeveloped character of the gap, avoid harm to the separate identity and character of the settlements and their landscape setting. Policy CS19 of the CS shares similar criteria and objectives.
15. The site is an undeveloped parcel of land measuring around 48m in width and the frontage has been cleared of some vegetation. Consequently, views into and through the site are readily available from public land and it makes a noticeable contribution to the undeveloped character and openness of the strategic gap. Furthermore, the site is locally important in preserving the openness between residential development at the Grange to the north and the Chatter to the south.
16. The proposal would introduce four new dwellings at the site, along with hard landscaping and other domestic paraphernalia. Consequently, the openness of the site and its contribution to the strategic gap would be diminished. Furthermore, the proposal would generate development between the Grange and the Chatter, giving the impression of ribbon development, which would erode the countryside setting of Congresbury.
17. I accept that the modest scale of development means the proposal would not give an overriding impression of coalescence between the settlements. Furthermore, that the open or undeveloped character of the gap would not be significantly adversely affected.
18. However, it is clear that the land is locally important and retaining its open and undeveloped character protects from ribbon development. Consequently, the proposal would harm the landscape setting of Congresbury, and Policy SA7 of the SAP does not require such harm to be significant in order for conflict to arise.
19. I acknowledge the Council's concern about precedent setting, but I am mindful that each case should be determined on its own merits and there is no persuasive evidence before me demonstrating that there is a risk of piecemeal erosion of the gap. Consequently, I give this argument limited weight in my assessment.
20. Whilst I note the Council's contentions about land raising, I am not clear that the limited land raising that may be required would exacerbate matters to the extent being argued. Consequently, I also give this argument limited weight in my assessment.
21. Overall, despite giving some of the Council's contentions limited weight in my assessment, the proposal would still harm the character and appearance of the area and conflict with CS19 of the CS and SA7 of the SAP, which among other things seek to protect strategic gaps and only permit development where the landscape setting of the settlements would not be harmed.

Highway Safety

22. There is no persuasive evidence in front of me demonstrating that the requirements of the Design Manual for Roads and Bridges have been superseded by the various iterations of Manual for Streets, or that the Highway Code is an appropriate source of guidance for delivering safe junction design. Indeed, the Council references the scope of Manual for Streets 2, which is limited to 85th percentile speeds of 37mph.
23. In this context, on site observations cannot provide a reliable indication of 85th percentile speeds along the highway. Without speed surveys specific to the proposal, other evidence gathered from nearby development suggests that the 85th percentile speeds would be above 37mph at around 40mph.
24. Consequently, although I note the appellant's contention about anomalies between the guidance, it is clear that the proposal falls outside the scope of Manual for Streets 2 and the standards within the Design Manual for Roads and Bridges should be applied.
25. In a southerly direction, the proposal would fail to satisfy the 120m visibility splay requirements under the Design Manual for Roads and Bridges. Therefore, the proposal's 95m visibility splay would be deficient and vehicles leaving the site would represent a clear hazard.
26. Whilst I acknowledge the site has an existing access, there would be a relatively significant intensification of movements generated by the proposal. Consequently, notwithstanding the existing accident data and planning history of the site for which there is no extant planning permission or fallback position³, it is important that current guidance on visibility splays is applied robustly in the interests of maintaining safety.
27. Furthermore, the Council illustrate that neither the 95m nor the 120m visibility splay would be achievable in practice because the land it crosses appears to be outside of the appellant's control and not within the highway. There is no evidence that those in control of the land required to deliver the visibility splay would be amenable in principle to facilitating the development proposed.
28. Consequently, it would not be reasonable for me to consider attaching a Grampian style condition to secure such provision. This is because based on current evidence there would be no prospect at all of the condition being complied with or the development being implemented.
29. It would also appear the bus stop would disrupt visibility and there is no evidence of a mechanism, through legal agreement or otherwise with the relevant authority, to remove this obstruction and ensure that the visibility splay is effective.
30. I note the appellant's photographs and assertion that visibility would not be hindered. However, without technical drawings or land ownership plans demonstrating without doubt that sufficient visibility can be achieved, there is no definitive evidence with which to satisfy my concerns.

³ The planning history of the site is dealt with in other matters

31. In terms of whether or not a right turn into the site is necessary, the Council does not seem to question the appellant's position on the anticipated level of vehicle movements generated per day, but rather focusses on the exacerbating factor of congestion on the highway outside of Cadbury Garden Centre.
32. However, the Council has failed to substantiate the congestion at Cadbury Garden Centre. Consequently, it would be unreasonable for me to conclude that filtering opportunities or safety audits are necessary, especially in the absence of clear guidance on when such things should be sought.
33. Whilst the Council's reason for refusal refers to a lack of turning area within the site, the Council's statement also explains that the shared driveway has a single turning area to allow for vehicles to turn within the site before exiting onto the highway.
34. A turning area is also shown on the site plan submitted in support of the proposal, which appears to have been part of the application that was determined by the Council. Consequently, it is not wholly clear where this element of the reason for refusal stems from or that it is substantive.
35. Altogether, although concerns over filtering opportunities and turning areas have not been substantiated, my findings on the intensification of the access and lack of compliance with the Design Manual for Roads and Bridges, in conjunction with uncertainty around the deliverability of the visibility splay, lead me to the conclusion that the proposal would harm highway safety.
36. These findings are reinforced by a recent appeal decision⁴ relating to residential development of a similar quantum with an access onto a highway of a similar classification and speed, and so is a relevant material consideration.
37. The inspector found it necessary to achieve a 120m visibility splay in accordance with the Design Manual for Roads and Bridges and also raised questions about how it might be delivered on land outside of the appellant's control.
38. Overall, the proposal would have an unacceptable effect on highway safety and conflict with Policy DM24 of the Development Management Policies Sites and Policies Plan (Part 1) 2016 (DMP). Among other things, the policy sets out that development will be permitted provided it would not prejudice highway safety.
39. The first part of Paragraph 111 of the National Planning Policy Framework is clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Given the harm identified, it is reasonable to conclude that there would be an unacceptable impact on highway safety in this case.

Planning Balance

40. The Congresbury Neighbourhood Plan 2019 is now more than two years old. Consequently, the protections against engaging Paragraph 11 (d) of the Framework originally argued by the Council are no longer relevant. The appellant's position on five year housing land supply is noted as is the Council's position in relation to the implications of the updated housing delivery test results.

⁴ APP/D0121/W/21/3282499

41. However, it is not necessary to make a direct finding on five year housing land supply if the appellant's worst case scenario is adopted for the purposes of assessing the proposal, which would also align with the relevant appeal submitted as late evidence.
42. It is clear that an assessment undertaken on the basis of the appellant's worst case scenario, and where the Council's five year housing land supply was not protected, would trigger consideration of Paragraph 11 (d) of the Framework on the basis that policies relating to the provision of housing would be out of date.
43. There is no evidence that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Therefore, consideration needs to be given to whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
44. In this context, the proposal is for a relatively limited number of dwellings. Consequently, the benefits associated with addressing a shortfall in five year housing land supply and associated socio-economic benefits, such as those relating to construction, among other things, would also be limited.
45. Even if the shortfall in five year housing land supply was deemed substantial and capable of elevating the limited benefits to carrying moderate weight, the overall harm derived from the three main issues would be cumulatively significant, even when giving limited weight to housing policies and the settlement strategy established in the CS due to these being deemed out of date⁵.
46. Altogether, this means that the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development would not be engaged in favour of the proposal.

Other Matters

47. Whilst I note the planning history of the site, it is clear from the evidence submitted that the previous planning permission has lapsed⁶ and there has been a subsequent change in circumstances since then, particularly in relation to policies within the development plan.
48. Consequently, and altogether, the previous planning permission and other applications submitted at the site carry limited weight in favour of the proposal in this case and I have made my assessment based on current evidence.
49. The appellant cites a number of other applications⁷ in support of the proposal. However, it is clear from the evidence submitted by the Council that these other applications involved a different set of policy considerations or are materially different in nature or scale.

⁵ In accordance with some of the other appeal decisions cited by the appellant including APP/D0121/W/18/3212682, APP/D0121/W/21/3285343 and APP/D0121/W/21/3285624

⁶ And currently there is no lawful development certificate to demonstrate otherwise

⁷ 20/P/2144/FUL, 16/P/2982/O/, 18/P/3367/RM, 20/P/0861/F

50. For example, some of these other applications involved development that was not in a strategic gap, and some were allocated for residential development and adjoined the defined settlement boundary.
51. Those within strategic gaps appear to be of materially different scale with different matters being weighed in the planning balance. Consequently, these other applications have carried limited weight in favour of the proposal under the appeal.
52. The site's location relative to shops and services and access to these is not disputed by the Council, and indeed there may be compliance with Policy H1 of the Congresbury Neighbourhood Plan 2019 in this context. However, this is only one aspect of locational policy and does not mitigate the harm derived from eroding the countryside in spatial terms.
53. It has been determined that Paragraph 11 of the Framework explains in clear and complete terms the circumstances in which, and the way in which, the presumption in favour of sustainable development is intended to operate.
54. There is no other presumption in favour of sustainable development in the Framework either explicit or implicit. Consequently, it is not necessary to make a separate assessment of whether or not the proposal constitutes sustainable development, outside the tests contained in Paragraph 11 of the Framework.
55. I note the supporting text of Policy SA7 of the SAP acknowledges green belt policy. However, the site is not within a green belt, and such policy should not be applied in this case.

Conclusion

56. There is no presumption in favour of sustainable development, or other material considerations that indicate a decision should be taken otherwise than in accordance with the development plan, where there is conflict as a whole. Consequently, for the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR