



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: 21 June 2022

Appeal Ref: APP/Q3305/W/21/3287786

Land at Frome Road, Norton St Philip BA2 7NW

- 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 B Walden of Springleaze Trading Limited against the decision of Mendip District Council.
 - The application Ref 2020/2180/OTA, dated 23 October 2020, was refused by notice dated 26 May 2021.
 - The development proposed is outline planning permission (all matters reserved) for a residential development of up to 30 dwellings (including 10 affordable dwellings), formation of access, ancillary public open space, and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading has been taken from the Council's decision notice and the appeal forms because it more accurately describes the number of dwellings proposed. The application was submitted in outline with all matters reserved. The quantum of development is clear from the description and any site plans dealing with those matters reserved have been treated indicatively under the appeal.
3. New evidence relating to designated and non-designated heritage assets was submitted at the start of the appeal. It does not fundamentally change the nature of the proposal, whilst the Council and other interested parties will have had an opportunity to comment. Altogether, the new evidence has been accepted on this basis and the Council subsequently confirmed that its first reason for refusal has been addressed.
4. New evidence relating to a Section 106 Unilateral Undertaking (the UU) was submitted during the course of the appeal, and this was accepted as a potentially legally binding document. The Council¹ subsequently confirmed that in combination with the use of planning conditions the UU addresses its fourth reason for refusal. However, it is still necessary to determine whether the UU's affordable housing planning obligations meet the relevant tests. This is in order to weigh any potential benefits in the planning balance.

¹ in conjunction with the highway authority

5. New evidence relating to further investigation of surface water drainage feasibility was submitted at the start of the appeal. It does not fundamentally change the nature of the proposal, whilst the Council and other interested parties will have had an opportunity to comment. Altogether, the new evidence has been accepted on this basis. However, the new evidence submitted did not fully satisfy the Council² and the third reason for refusal is being upheld under the appeal.
6. Additional new evidence relating to further investigation of surface water drainage feasibility was also submitted at final comments stage. Whilst it does not fundamentally change the nature of the proposal, new evidence submitted at this stage would prejudice the ability of other parties to comment in accordance with the established appeal timetable.
7. It is appreciated that the appellant made efforts to provide the new evidence to the Council before their statement of case. However, it falls outside of the established appeal timetable, nonetheless. Furthermore, despite the appellant's efforts with the Council, I also need to be mindful of potential prejudice to other interested parties. In this context, the appeal timetable must be strictly adhered to, and the new evidence cannot be accepted.
8. There were some additional email exchanges provided with the final comments that were not originally submitted with the appeal. However, these merely help provide context around the latest disputed position³ on the evidence submitted at the start of the appeal, do not prejudice either side of the dispute, and have been accepted accordingly in order to reach a fully informed decision.
9. The Local Plan Part II (Sites and Policies) 2021 was adopted following the Council's decision on the original application. Any implications for the appeal raised by the parties have been duly considered.
10. I note a judicial review has been lodged against the plan and granted leave to proceed on all 4 grounds of challenge. Whilst the grounds specifically relate to housing allocations pertinent to this appeal, there is no persuasive evidence before me demonstrating that the plan should not carry full weight in my assessment of the proposal pending the outcome of the judicial review.

Main Issues

11. The main issues are:

- (a) whether the site is in an appropriate location for housing, including effects on the character and appearance of the area;
- (b) whether the proposal is acceptable in relation to surface water drainage; and
- (c) whether affordable housing planning obligations are necessary and suitably provided.

² In conjunction with the Lead Local Flood Authority (LLFA)

³ Between the LLFA and the appellant but where the LLFA and the Council have a shared interest

Reasons

Location and Character and Appearance

12. The appellant's position is that the principle of development is not in dispute and that the Council deems it a sustainable location for housing. I appreciate that the Council's officer report and appeal statement are not necessarily definitive on this. However, the Council's reason for refusal relates to the urban encroachment of housing into the countryside in a location where development of this nature is strictly controlled.
13. This clearly paraphrases and relates to the provisions of Policies CP1 and CP4 of the Mendip District Local Plan Part 1: Strategy and Policies 2014 (LPP1). Consequently, it is necessary to assess the proposal in this context to determine whether the principle of development and the location of the site are acceptable, in addition to matters of character and appearance.
14. The site is located to the south east of Norton St Philip, which is designated as a primary village under Policy CP1 of the LPP1. The site is outside the defined settlement boundary and in the countryside⁴ and Policy CP1 (1c.) of the LPP1 sets out that such development should be strictly and exceptionally controlled in accordance with Policy CP4 of the LPP1. This policy includes criteria permitting development that benefits economic activity or extends the range of facilities available to the local communities and reflects the last provision contained within Policy CP1 (3.) of the LPP1.
15. The proposal is market housing with an element of affordable housing, and despite contentions it is well located to shops and services, is not a form of development that accords with the exceptions identified in Policy CP4 of the LPP1. There are no persuasive arguments demonstrating that the act of being directly adjacent to the defined settlement boundary makes the proposal an exception. Consequently, the proposal would not be justified in eroding the spatial extent of the countryside beyond the defined settlement limits.
16. In terms of effects on the ground, the site is undeveloped and part of a field network that encloses the south eastern extent of Norton St Philip. Low density residential development along Frome Road, and adjacent to the site, signals a transition in the pattern of development from the main built up area of the village into the countryside. Whilst these fields might be unremarkable, together they still make a significant contribution to the transitional landscape setting.
17. It is stated that the area is designated within Character Area C2 of the 'Cotswold Edge' within the Landscape Assessment of Mendip District 1997. Among other things, this recognises the predominance of arable fields, which are notable in this case due to the nature of the site and the setting of the periphery of the village. This reinforces my previous assessment.

⁴ It is not 'in' the village for the purposes of Policy CP1 (1bi.) of the LPP1

18. Whilst there is inherent flexibility in an outline proposal, and the layout among other things is indicative, in fundamental terms there would be an appreciable quantum and higher density of residential development delivered beyond the main built up area of the village. Consequently, the open rural character and appearance of the countryside and transitional lower density development along Frome Road would be eroded by the proposal.
19. There may be opportunities to introduce additional landscaping measures, such as more planting, and to optimise the placement of open space through reserved matters. This, in conjunction with existing hedgerow boundaries, may go some way to mitigating the prominence of the proposal.
20. However, it is likely that some views into the site would still be possible when travelling along Frome Road or Tellisford Lane. Consequently, the fundamental change in character would be perceptible when travelling through the transitional zone between the main built up area of the village and the countryside. Views of existing dwellings above hedgerows are readily apparent, and consequently it is likely that the proposal would have a similar degree of prominence, but on a larger scale.
21. I acknowledge that Policy NSP1 of the Local Plan Part II (Sites and Policies) 2021 (LPP2) may indicate that housing could be accommodated on the edge of settlements. However, I am mindful that it came forward as an allocation within the development plan, deemed a necessary and sustainable expansion of the village. As the proposal in this instance is not being delivered as an allocation within the development plan, it falls to be considered in accordance with policy that restricts such development in the countryside.
22. Whilst the residential development along Frome Road and Tellisford Lane varies somewhat in character and appearance, detailed matters of design are not before me, and it is not necessary for me to make such an assessment of context in this case.
23. Overall, the proposal would not be in an appropriate location for housing and would harm the character and appearance of the area. Therefore, it would not accord with Policies CP1, CP4, DP1, DP4 and DP7 of the LPP1, which among other things strictly and exceptionally control development in the countryside and ensure proposals contribute positively to the maintenance and enhancement of local identity and distinctiveness across the district.
24. Policies CP1 and CP4 were not originally cited within the Council's reason for refusal. However, as reasoned at the beginning of the main issue, the Council cited urban encroachment of housing into the countryside in a location where development of this nature is strictly controlled, and this is clearly derived from these policies, which have been cited and assessed accordingly.
25. Policies 3 and 4 of the Norton St Philip Neighbourhood Plan were cited in the Council's reason for refusal. However, the status of the plan is unclear following judicial review and the policies within it have not been determinative under the appeal. Policy DP3 of the LPP1 was also cited in the Council's reason for refusal but relates to heritage. Given this is a matter no longer in dispute, the policy has not been determinative under the appeal and has not been cited. I address the weight that can be given to relevant policies in my planning balance later in the decision.

Surface Water Drainage

26. The Council submitted correspondence from the LLFA which appears to have been superseded by more recent correspondence provided by the appellant.
27. It is contended by the appellant that the most recent correspondence confirms that some of the LLFA's concerns about the feasibility of the surface water drainage system have been addressed by the new evidence accepted at the start of the appeal.
28. I note the LLFA did not object to the principle of infiltration in its correspondence on 24 November 2021. However, they did not agree that a solution was altogether feasible, and it appears they still had some unresolved concerns as of 30 November 2021.
29. The appellant sought to address these concerns in response on 16 December 2021, citing the new evidence submitted with the appeal. However, correspondence from the LLFA on 1 February 2022 made clear that further evidence demonstrating the feasibility of the surface water drainage solution was still necessary.
30. I acknowledge the appellant's contention that the LLFA may have changed its stance on some of its concerns, but there is no evidence to demonstrate that its latest stance in the most recent correspondence is unreasonable or that it should not be duly considered.
31. Furthermore, I acknowledge the appellant has sought to submit additional new evidence to satisfy the LLFA in this respect, but for the reasons given within my procedural matters at the start of the decision, such new evidence cannot be accepted at this point.
32. The implication of this is that the LLFA's concerns remain extant and relate to lack of evidence demonstrating the feasibility of attenuation storage to mitigate slow rates of infiltration, and lack of evidence demonstrating that infiltration is feasible in the context of ground water levels.
33. I note the LLFA recognises ground water was not found within the trial pits, but that more detailed ground water level monitoring is necessary because there is a possibility that higher ground water levels could be encountered in winter months.
34. Furthermore, the LLFA state that ground conditions may vary, meaning that a small area may only be able to infiltrate and not the full extent of any infiltration feature.
35. Consequently, the nature of the trial pits and the time of year that they were monitored, means that the existing evidence on ground water levels and the feasibility of infiltration is inconclusive.
36. Altogether, it is clear to me that the feasibility of the proposal's surface water drainage solution is still unproven, and on the balance of probabilities the risk of surface water flooding persists.

37. There is a need to consider the use of planning conditions that might otherwise make the proposal acceptable. However, it would not be appropriate to condition matters that are fundamental to determining whether something is feasible or not. This is because there would be too much uncertainty about whether the condition could ever be complied with, or whether the planning permission could ever be implemented.
38. I am also mindful of the need to consider the flexibility inherent in an outline proposal and potential solutions at reserved matters. However, based on the evidence in front of me, the dispute is not something that can be completely mitigated by reducing the number of dwellings at reserved matters stage, or other such flexible options available to the appellant.
39. Overall, the proposal would not be acceptable in relation to surface water drainage and would conflict with Policy DP23 of the LPP1. Among other things, this policy seeks to ensure development incorporates appropriate water management measures to reduce surface water run-off and ensure that it does not increase flood risks elsewhere.

Affordable Housing Planning Obligations

40. In accordance with Paragraph 57 of the Framework and pursuant to the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, among other things.
41. The proposal would provide 30% affordable housing provision, secured by planning obligation in the submitted UU, and would be necessary, directly, fairly, and reasonably related in scale and kind pursuant to Policy DP11 of the LPP1.
42. Among other things, the policy sets the level of affordable housing provision to inform the Council's negotiations towards meeting the district's housing need from all housing proposals, whilst ensuring it is secured in perpetuity.

Planning Balance

43. Based on my findings under the main issues I consider that the proposal is in conflict with the development plan as a whole. Given the cumulative nature of the harm derived from this conflict, there is significant weight against the proposal.
44. It is common ground that the Council cannot demonstrate a five year housing land supply. Consequently, the housing policies within the development plan are out of date and this triggers Paragraph 11 (d) of the Framework. However, it has been established that housing policies deemed out of date should still be weighed in the planning balance.
45. Consequently, notwithstanding the lack of five year housing land supply across the Council's jurisdiction more broadly, I am mindful that under the LPP2 there is a relatively large allocation for housing within Norton St Philip⁵.

⁵ Policy NSP1: Land off Mackley Lane

46. Indeed, it is also common ground that the inspector who examined LPP2 considered that there is a need in Norton St Philip, for the allocation of additional dwellings as a necessary and sustainable contribution towards the provision of dwellings in the north-east part of the district.
47. Furthermore, I note that Policy CP2 of the LPP1 sets out that Norton St Philip experienced planning permissions for housing between 2006 and 2019 that was around three times higher than the minimum level of proportionate housing growth that was identified.
48. Consequently, whilst there may be a residual need in the north-east region of the district more broadly, it is not clear that there is a particular need in Norton St Philip, or that it could continue to sustain additional housing growth in meeting the residual need in the north-east region.
49. Altogether, it is reasonable to conclude that local housing needs would be suitably addressed in the locality of the site despite the prevailing lack of five year housing land supply, even if this is deemed substantial due to the extent of shortfall.
50. I give limited weight to the appellant's contentions about non-compliance with Policy LP1 of the LPP2. This is because, while the policy commits the Council to commence a review within 2 months, there is a period of three years with which to submit a successor development plan for examination.
51. The inference is that LPP1 and LPP2 are sufficient for decision making within that period. Indeed, the LPP2 allocates considerably more housing in order to future proof the existing development plan pending the successor development plan's adoption.
52. Similarly, arguments relating to the Council's potential subsummation into a wider unitary authority, and the implications for a successor development plan therein, are speculative at this stage and can only be attributed limited weight. In any event, there is nothing to say that a unitary authority led review could not achieve the aims of Policy LP1 of LPP2.
53. At its maximum potential scale, the proposed quantum of housing at the site, including affordable housing, would be appreciable. Nonetheless, in my view, the weight of the socio-economic benefits would be moderate.
54. Ordinarily, in the context of a substantial shortfall in five year housing land supply, I would be open to increasing this weight so that it was significant in the planning balance. Similarly, I would be open to decreasing the weight associated with housing policy and spatial strategy conflict.
55. However, it is important to acknowledge that local housing needs are being met by the existing spatial strategy, including the number of planning permissions granted towards proportionate housing growth between 2006 and 2019 and the allocations within the very recently adopted LPP2. For these reasons I cannot see that such changes in weight would be justified in this case.

56. Other potential benefits including but not limited to those relating to biodiversity enhancements have not been robustly quantified, and I am unable to give them any more than limited weight in the planning balance.
57. For example, it is contended that additional children living on the site will support the viability of the local village school, however there is no readily identifiable underpinning context demonstrating that the school is currently operating with viability concerns.
58. Furthermore, whilst the appellant is pursuing enhancements to biodiversity it is not readily identifiable that there would be a measurable net gain in biodiversity habitat or the degree to which this should be considered a benefit.
59. Overall, the adverse impacts would be significant, and the benefits would be moderate. Consequently, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development is not engaged.

Other Matters

60. In accordance with my statutory duties under Section 66(1) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, based on the heritage evidence submitted by the appellant, the Council's officer report and comments from relevant consultees, it can be concluded that due to significant distances and intervening landscape features, there is no interface between the proposal and the setting of any designated heritage assets in the locality. This includes Norton St Philip Conservation Area, Grade I listed building of The George or Grade II listed buildings of Chatley House and Chatley Farmhouse. Consequently, their heritage significance would be preserved.
61. Outside of affordable housing, the remaining planning obligations within the UU have been taken as mitigation that do not weigh in favour of the proposal as benefits. Whilst I note public open space may have been considered as a benefit, there is no evidence that there is a wider public benefit to the existing community. For example, it would appear to mitigate the needs of the occupants of the additional dwellings. Consequently, it is not necessary to make a finding on whether the remaining planning obligations meet the tests.

Conclusion

62. For the reasons given, the presumption in favour of sustainable development is not engaged and there are no material considerations indicating that a decision should be taken otherwise than in accordance with the development plan, where there is conflict as a whole. For the reasons given, the appeal is therefore dismissed.

Liam Page

INSPECTOR