



Appeal Decision

Site visit made on 22 September 2022

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal Ref: APP/J0405/W/22/3297056

121 Wendover Road, Stoke Mandeville, AYLESBURY, HP22 5TD

- 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 planning permission.
 - The appeal is made by Ground Construction Limited against Buckinghamshire Council.
 - The application Ref 21/01344/APP is dated 25 March 2021.
 - The development proposed is demolition of the existing dwelling on site, and the erection of nine dwellings, associated access and landscaping.
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Decision

1. The appeal is dismissed and planning permission for demolition of the existing dwelling on site, and the erection of nine dwellings, associated access and landscaping is refused.

Application for costs

2. An application for costs was made by the Appellant against Buckinghamshire Council, which is the subject of a separate decision.

Preliminary Matters

3. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, I note the assessment and putative reasons for refusal submitted in the Council's statement and I have treated those reasons as the basis of the decision the Council would have made, had it been empowered to do so. The Council is principally concerned by the effect of the proposed development on the spatial strategy for housing, the Chiltern Beechwoods Special Area of Conservation, the character and appearance of the locality, the living conditions of nearby residents, parking provision, affordable housing, housing tenure and mix, developer contributions, biodiversity net gain, surface water drainage, and protected and retained trees. I have drawn on the Council's concerns, together with other evidence before me, to inform the main issues in this appeal.
4. The appellant has drawn my attention to various requirements of planning policy and guidance which have changed since the application was made to the Council, including in relation to affordable housing, parking, and habitats mitigation. While this may be the case, the appeal must be determined in accordance with the development plan and considering any other relevant policy and guidance in force at the time of my decision.

Main Issues

5. The main issues are:

- Whether the site is a suitable location for the proposed development having regard to the spatial strategy for the distribution of housing; and

The effects of the proposed development on:

- The Chiltern Beechwoods Special Area of Conservation;
- The character and appearance of the area, including with regard to trees;
- The living conditions of occupiers of 123 Wendover Road, with particular regard to privacy;
- Housing mix;
- Parking provision; and
- Surface water drainage.

Reasons

Spatial strategy

6. The site lies within the built-up area of Stoke Mandeville, which is identified as a 'Larger Village' by Policy S3 of the VALP. Policy S2 of the VALP sets out that the primary focus for growth in the district is Aylesbury, and Buckingham, Winslow, Wendover and Haddenham, supported by growth at other locations including the Larger Villages. The parties agree that the location of the site is suitable for residential development in principle and, given the VALP's spatial strategy for the amount and distribution of growth, I find no reason to conclude otherwise in terms of the general principle.
7. At Larger Villages, Policy S2 requires housing growth to be at a scale in keeping with local character. The development would result in 9 four and five-bedroom houses (including some units shown on the plans as three bedrooms plus a first-floor study) on a site occupied by a single modest-sized bungalow, which is now essentially derelict, situated on a generous garden plot. This part of Wendover Road has built development along both sides, much of which is residential. Not all houses front onto the road, and I saw several examples nearby of residential side roads, accessed from the main Wendover Road and from Station Road and leading to houses set behind the main roads. Arnold Close, which is situated adjacent to the appeal site and from which the appeal development would be accessed, is one example leading from Wendover Road and comprising of around ten late-20th Century dwellings.
8. In this context, the overall scale of the proposed 9-dwelling development would be in keeping with the prevailing character and pattern of development locally, and its rearward extent would be similar with the rear boundary of the site being in line with the rear garden boundaries of several houses in Arnold Close. The site would be contained between Arnold Close and the existing garden areas of adjacent houses on Wendover Road and Station Road.
9. Accordingly, the site would be a suitable location for the proposed development having regard to the spatial strategy for the distribution of housing and the

development would not conflict with Policies S2 and S3 of the VALP, which together set out the spatial strategy for the scale and distribution of growth, the associated settlement hierarchy, and expectations for cohesive housing development.

Chiltern Beechwoods SAC

10. The site lies within, albeit close to the extremity of, the 12.6km zone of influence around the Chilterns Beechwoods Special Area of Conservation (CBSAC). Natural England has identified emerging evidence of significant recreational pressures on the CBSAC, particularly on the Ashridge Commons and Woods Site of Special Scientific Interest component therein. The CBSAC, which was designated principally due to the European-level importance of its beech forests, dry grasslands and scrublands, is also a regionally significant 'honeypot' destination for recreation. It has been identified that increased recreational pressure at the CBSAC - chiefly from human and dog activity including trampling, path expansion, den building, mountain biking, dog fouling, and bank erosion - will result in increased adverse recreational impacts on the integrity of the CBSAC.
11. Development with potential to give rise to likely significant effects on the CBSAC requires assessment against the requirements of the Conservation of Habitats and Species Regulations 2017. In March 2022, Natural England essentially identified that new development resulting in a net increase in dwellings within the zone of influence would need to avoid adverse impacts on the integrity of the CBSAC or provide mitigation. The proposed development would result in a net increase of 8 dwellings within the identified zone of influence. Taking the precautionary approach, the development would be expected to contribute to recreational pressure on the CBSAC, thereby resulting in a likely significant effect on the integrity of the designated habitats site, for which mitigation would be required. Being situated towards the edge of the zone of influence in this instance is not sufficient justification to simply 'screen out' the development.
12. No strategic mitigation strategy is before me. Neither is any bespoke, site-specific, form of mitigation for consideration, nor any suitable mechanism to secure any such mitigation. While a signed S106 Unilateral Undertaking (UU), dated 6 September 2022, has been provided to the appeal, it does not include provisions in relation to habitats mitigation. As competent authority, in the absence of both an appropriate mitigation strategy and a mechanism to secure mitigation in relation to the proposed residential development, I cannot be satisfied that the development would not result in a likely significant effect on the integrity of the CBSAC. The appeal must therefore be dismissed and planning permission refused.
13. The development would conflict with Policy NE1 of the Vale of Aylesbury Local Plan 2013-2033 adopted September 2021 (the VALP), which among other things seeks to ensure that where likely significant adverse effects on the CBSAC cannot be avoided, they are fully mitigated.

Character and appearance including trees

14. The vicinity area is principally residential in character, composed of a wide variety of generally traditional styles of dwellings, which mainly originate from the 20th Century, interspersed with various businesses, and bisected by the

Wendover Road, one of the main routes to/from Aylesbury. There is a mix including bungalows and two storey dwellings, some with dormers and rooflights indicating additional accommodation in the roof space. Whilst not present at all properties, a variety of trees and hedges generally provide green relief in the street scene and plot sizes vary considerably, with some houses set in substantial-sized gardens and others notably less so. The site, whilst not particularly prominent, is open to clear public view from Wendover Road including the bus stop area in front.

15. The overall scale and extent of the development would be similar to some residential roads nearby, such as Arnold Close, and Plots 1 and 2 would be set back from the Wendover Road to a similar degree to existing houses nearby thereby providing a degree of continuity in the street scene. However, the frontage would be dominated by vehicle access and parking areas, with limited scope for planting. Similarly, the frontages of Plots 3-7 would be set very close to the access road, with very limited scope for planting and at odds in terms of both character and appearance with the more spacious frontages that are typical of the locality.
16. This would contribute to a generally cramped character to the development, particularly in the mid-section of the site and, whilst not unduly small, the rear garden areas would be generally limited relative to the typical established provision in the locality, particularly at Plot 9 and at Plots 4 and 5 where the gardens would be significantly dominated by a mature apple tree (T1) that, while not of high quality, is subject to a Tree Preservation Order (TPO), of moderate arboricultural value, in fair condition, and worthy of retention and protection. While many protected trees sit within residential gardens, the limited garden space outside the canopy in this instance could result in undue pressures for the future survival and retention of the tree.
17. While evidence on the site suggests it previously featured many more trees, it is not clear when these were felled. The principal standing individual trees within the site at the time of my visit were three fruit trees, including T1, that are subject to TPOs. Other remaining trees and hedges are situated at or very close to the boundaries. The Arboricultural Impact Assessment (AIA) identifies various sections of hedge and individual trees that would be removed to facilitate the development, including a section of hedge at the point of access from Arnold Close and tree T7, a plum, identified as the only Category B (moderate arboricultural value) tree proposed to be removed to make way for the on-site access road.
18. The AIA indicates that various replacement trees, including feature tree planting, and boundary planting would be provided as part of a detailed landscaping scheme. However, no such plan is provided, and it is unclear how this would be accommodated into the proposed layout which, as already noted, has limited scope for significant planting. The further loss of trees and hedges, without adequate replacements, would have an adverse effect on the character and appearance of the locality, where trees and hedges are a significant, and cumulatively important, positive attribute of the established character and street scene.
19. VALP Policy D3 sets out expectations for non-allocated sites such as this, including at Larger Villages. While it does not specifically define 'small scale development' or 'infilling', the particular circumstances of the site, having

formerly been occupied by a single dwelling albeit in generous grounds, can for the purposes of this appeal be considered to comprise a small scale area of land within a built up settlement area. In the context of variable plot widths, its scale is not out of character for the locality and thus I consider the development would also constitute the infilling of a small gap in the developed frontage at this location.

20. Nevertheless, for the reasons above, the scale and spacing of the proposed dwellings within the site would not be in keeping with nearby dwellings or the character of the surroundings. Furthermore, while the development would consolidate the existing settlement pattern, due to its cramped nature it would not do so without a significant degree of harm to the prevailing settlement character.
21. The proposed design of the dwellings would not directly reflect typical traditional styles nearby, particularly in terms of the roof profiles of Plots 4, 5 and 6. However, given the mixed styles and materials nearby, including varied roof forms, I am not persuaded that the design and height of the proposed dwellings would be harmfully out of keeping, subject to the detail of materials which could have been subject to condition were the appeal allowed.
22. Overall, the development would harm the character and appearance of the area. It would therefore conflict with Policy D3 for the reasons set out above. It would also conflict with VALP Policy BE2 criterion a in relation to the scale and context of the site and its setting, Policy NE2 criterion d which among other things expects careful consideration of spacing and plot size, and Policy NE8 which among other things requires that where the loss of trees is considered acceptable there should be adequate replacement.

Living conditions

23. 123 Wendover Road has a long side elevation facing the appeal site, which includes several windows and a door, and the garden of 123 runs alongside the appeal site for a significant distance. The new house at Plot 1 would be situated immediately adjacent to the common boundary and close to the house at No. 123. As a result, there would be some potential for overlooking from the rear bedroom windows at Plot 1 towards 123, particularly the garden area. However, given the side-by-side relationship between the two houses and the reasonable distance between the two, this interrelationship would be within the range to be generally expected within an established residential area of this character.
24. However, houses at Plots 3-7 would face directly across the new access road to the rear garden of No. 123, including from first and second floor bedroom windows and from full-width first floor external terraces. While, to a degree, overlooking from Plots 3-7 would be lessened by boundary foliage, the proximity and elevated position of the first-floor terrace and second-floor windows, in particular, would enable substantial potential for overlooking along the length of the garden and towards the rear elevation of No. 123. The cumulative effect of this from these five new houses would be an unreasonable loss of privacy for occupiers at No. 123.
25. The development would harm the living conditions of occupiers of 123 Wendover Road, with regard privacy. It would therefore conflict with VALP

Policy BE3, which in part seeks to ensure that development would not unreasonably harm any aspect of the amenity of existing residents.

Housing mix

26. There is a lack of clarity and consistency in the appeal documents over the proposed mix in light of the units for which the floor plans show 3 bedrooms plus a first-floor study. Given the first-floor studies would be apparently capable of use as fourth bedrooms, and there is no persuasive evidence before me to the contrary and reflecting the overall floorspace of the family-sized houses and the provisions elsewhere in the VALP in relation to parking provision where first floor studies are considered as bedrooms, on its face the development would result in 9 houses of four and five bedrooms each.
27. VALP Policy 6a expects a mix of homes to meet current and future requirements. Table 102 sets out proportion expectations for bedroom numbers for market and affordable housing, based upon the December 2016 Buckinghamshire Housing and Economic Needs Assessment (HEDNA). It is not clear whether the HEDNA has been subject to review or updated since 2016, however no more up-to-date evidence of needs or of local market conditions has been provided. Even if five units are considered 3-bedroom homes, and taking the appellant's figures, the mix would only reflect "almost 80% of the 'need'".
28. While, potentially, this level could be considered in general conformity with the HEDNA, no significant justification has been provided to explain the variation from the HEDNA evidence or why a greater degree of conformity could not be achieved at this site. If those units are considered 4-bedroom, the variation from the expectations of Policy 6a is substantially more marked, particularly given that the greatest proportion of need for both affordable and market housing is for 3-bedroom houses.
29. Overall, the proposed housing mix has not been adequately justified as appropriately providing or contributing to the creation of mixed, balanced, and inclusive communities. It therefore conflicts with aims of Policy 6a of the VALP in relation to providing homes to meet housing needs and create socially mixed communities.

Parking

30. The proposed on-site car parking provisions of 22 spaces and 2 visitor spaces represent a shortfall of the Council's updated optimum parking standards for residents and visitors' spaces as specified by VALP Policy T6, albeit I note the appellant's position that the level of parking provision proposed was compliant with the previous maximum parking standards in force at the time the application was submitted to the Council. I also note, from the appellant's Transport Statement that position was based upon Plots 3-7 being considered 3-bedroom houses. Appendix B to Policy T6 now specifies that studies, other than on the ground floor, are to be regarded as bedrooms.
31. Appendix B also indicates that provision below the optimum standard may be acceptable provided it is supported by justifying evidence detailing local circumstances. Car ownership levels for the Aston Clinton ward indicate lower provision of 20 spaces would be sufficient to support the proposed 9 dwellings. While this is based on data from the 2011 Census it suggests that, even if car

ownership has increased somewhat in the interim, the total spaces proposed would be likely to be sufficient to serve the development. In accepting this position, I am mindful that the site lies on a bus route into Aylesbury town centre with a bus stop in front of the site, and that Stoke Mandeville railway station is around half a mile away. These factors indicate alternative modes would be conveniently available for future residents here, supporting lesser reliance on car journeys and ownership.

32. The proposal would therefore make adequate provision for parking and would not conflict with VALP Policy T6, which seeks to ensure that all development provides an appropriate level of car parking.

Surface Water Drainage

33. The appellant's Sustainable Drainage Assessment (March 2021) included a Sustainable Drainage Systems (SuDS) Strategy accounting for the 1 in 100 year storm event and 40% allowance for climate change, and identified that the site has a moderate potential for infiltration. The appellant has subsequently provided an updated Assessment including infiltration testing by Ashdown Site Investigation (June 2022), which shows infiltration to be feasible at the site. The evidence is sufficient to indicate that the site would be capable of accommodating a satisfactory sustainable surface water drainage solution for the proposed development. Accordingly, I am satisfied that further testing requirements and a fully detailed surface water drainage strategy, including details such as the design of permeable paving, could reasonably have been secured by condition, had the appeal been allowed.
34. Consequently, I find no conflict with VALP Policy I4, which among other things seeks to ensure the effective management of surface water on site through use of sustainable drainage systems. There would also be no conflict in this respect with Policy D3, which sets out expectations for development on non-allocated sites.

Other Matters and Planning Balance

35. The signed UU provided to the appeal includes provision for not less than 25% affordable housing (3 units) on-site, with a tenure mix to be agreed, which is compatible with the 25% requirement of VALP Policy H1. It also includes provision for contributions to mitigate various effects of the development, which would be necessary to make the development acceptable, including towards education, sports and leisure, and transportation towards a real time passenger information system, plus a monitoring fee.
36. There are some divergences between the parties over the drafting of the submitted UU, ranging from typographical points to preferences over trigger points, and a potential shortfall in the education and sports and leisure contributions based on discrepancies around whether 3 or 4-bedroom units should be considered for the purposes of calculating the contribution requirements. While these matters could potentially have been addressed to ensure compliance with the relevant policies and tests prior to the grant of planning permission, had I been minded to allow the appeal, they call into question the effectiveness of the UU and limit the weight attached to it in this appeal. Nevertheless, as the appeal is to be dismissed for other reasons, my further detailed consideration of the submitted UU at this point would not alter the overall outcome of this decision.

37. VALP Policy NE1 requires a net gain in biodiversity for minor and major developments. While the Council has not included such a condition in its suggested list, the main parties essentially agree that this matter could be addressed by condition. I am satisfied that, had I been minded to allow the appeal in respect of all main issues, a suitably worded condition could have been imposed to secure appropriate biodiversity measures. Alternatively, this could be addressed by planning obligation.
38. My attention has been drawn to the Council's April 2022 Housing Land Supply Position Statement, which indicates the supply position to be 5.0 years. I note the appellant's opinion that this is 'extremely marginal' and that failure to bring forward one sizeable site could tip the position to less than the requisite 5 years' worth. However, there is no significant evidence before me to show that any relevant sites have failed or are particularly likely to do so, or any other significant evidence to indicate the position set out in the April 2022 Statement is unreliable. As such, I am satisfied for the purposes of this appeal that the Council can currently demonstrate the necessary housing land supply. Therefore, and having regard to Paragraph 182 of the National Planning Policy Framework relating to likely significant effects on habitats sites, the tilted balance is not engaged in this case.
39. While the development would not be harmful in respect of the spatial strategy for the distribution of housing, parking provision, or surface water drainage, there would be harm in respect of the character and appearance of the area, living conditions, and the housing mix. There would also be harm to the Chiltern Beechwoods SAC, which alone would be sufficient to require the appeal to be dismissed. There would be multiple benefits, including the provision of homes in a generally sustainable location, economic benefits, environmental considerations such as southerly orientations for solar gain, a net gain in biodiversity, and the provision of 3 affordable housing units which would be significant. However, overall, the benefits are insufficient to outweigh the various harms, and there are no reasons of overriding public interest to justify the likely adverse effects on the integrity of the CBSAC.

Conclusion

40. The development would conflict with the development plan, taken as a whole, and there are no other considerations, including the Framework, of sufficient weight to indicate that planning permission should be granted. Therefore, the appeal is dismissed and planning permission refused.

C Jack

INSPECTOR