



Appeal Decision

Site visit made on 15 November 2022

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/Y0435/W/21/3284952

Land adjacent to 3 Main Road, Astwood, Newport Pagnell MK16 9JS

- 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 Dr H Ghazzawi against the decision of Milton Keynes Council.
 - The application Ref 21/01438/OUT, dated 11 May 2021, was refused by notice dated 13 July 2021.
 - The development proposed is the erection of up to five (5x) detached dwelling houses and the change of use of land to garden land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with only access sought for approval. I have therefore had regard to the submitted drawings on an indicative basis in so far as they relate to the reserved matters.
3. The Council have confirmed that reference to Policy H10 of the Milton Keynes Council Plan:MK 2016-2031 – March 2022 (the Local Plan) within the decision notice was made in error.
4. The Astwood and Hardmead Neighbourhood Development Plan (the NDP) was made in January 2022. Both main parties have had the opportunity to make comment in respect of the NDP in so far as it relates to the development proposals.
5. An amended proposed site access plan, reference SK01-Rev D, has been supplied within appendix GC-3 of the appellant's statement. This plan did not form part of the original planning application. Nor did the swept path analysis Refuse Vehicles Plan ref SP01- rev D. Annex M.1.1. of the Procedural Guide – Planning Appeals- England advises that if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh application. Annex M.1.2 of the same guide further advises that if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. In this case, and having regard to the Wheatcroft principles¹, the acceptance of the amended plans would prejudice the interests of the Council and any other interested parties, as I cannot be certain that interested parties have had the

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

opportunity to make comment on the proposed amendments. This appeal has therefore been assessed based on the plans upon which the application was determined.

Main Issues

6. The main issues in this appeal are;
- the effect of the development on the character and appearance of the area;
 - the suitability of the site for housing with particular regard to the provisions of local and national policy in respect of the location of development; and, the effect of the development on;
 - flood risk;
 - highway safety; and
 - biodiversity.

Reasons

Character and appearance of the area

7. The appeal site comprises a large grass paddock between Main Road and Newport Road (the A422). It is on the edge of the small rural settlement of Astwood, which is largely surrounded by agricultural land. On the opposite side of Main Road from the appeal site are located the Grade II* Listed St Peters Church and 2 roadside dwellings. Substantial roadside hedgerows separate the appeal site from Main Road; the A422; and the house at 3 Main Road. These, and the undeveloped nature of the appeal site, give the area a pleasant and green, semi-rural character and appearance.
8. In common with the houses to the rear of St Peters Church, the houses at 3 and 3a Main Road are set back some way from the Main Road carriageway. However, the prevailing pattern of development along Main Road and between its junctions with A422 and Cranfield Road, is of a linear form. Properties are typically located close to and addressing Main Road, and are mainly accessed via individual driveways. These properties positively inform the distinctiveness of the area.
9. The proposed means of access would entail the construction of an internal estate type road. Due to its layout and design, it would have a suburban character and appearance which would not conform with, and would be harmful to the distinctive and prevailing patterns of development in the area.
10. Although paragraph 119 of the National Planning Policy Framework (the Framework) promotes an effective use of land in meeting the need for homes and other uses, Paragraph 120 indicates that some undeveloped land can perform many functions. Notwithstanding the presence of residential development to both sides, the appeal site makes a positive contribution to the semi-rural character and appearance of the area. This is largely due to its; edge of settlement location; boundary hedgerows; and undeveloped appearance. Even if the subsequent design of the proposed houses was to be of a high standard, with significant landscaping proposals and a layout sensitive to the semi-rural site location, the development of the site as proposed would cause harm to the prevailing character and appearance of the area.
11. For the afore mentioned reasons, the proposed development would harm the character and appearance of the area. As such, and in these respects, it would conflict with the parts of Policies D1, D2 and D5 of the Local Plan which,

amongst other things, seek to ensure that development; responds appropriately to the site and surrounding context; is locally inspired; and which does not have a detrimental impact on the character of the area or is overbearing on existing buildings and open spaces. In addition, it would conflict with the parts of sections 12 and 15 of the Framework which seek to ensure that developments add to the overall quality of the area and are sympathetic to local character, and to ensure that decisions recognise the intrinsic character and beauty of the countryside.

Location of development

12. The appeal site is adjacent to the built edge of the village of Astwood.
13. Local Plan Policy DS1, of the Local Plan directs development which would result in the provision of new homes and jobs to settlements and to where there may be selective infill, brownfield, regeneration and redevelopment opportunities. Local Plan Policy DS5 indicates that all land outside the development boundaries defined on the policies map should be considered to be open countryside. In such areas it is indicated that planning permission will only be granted where it can be demonstrated that the development is essential in such a location, which is wholly appropriate in a rural area, and cannot be located within a settlement, or, where other policies within the plan indicate that the development would be appropriate.
14. Although closely related to the main built-up area of Astwood, both main parties agree that the site is outside of its settlement boundary as identified within the Local Plan. It is also outside of the settlement boundary as defined within the NDP. As such, and in the context of the Development Plan, the site is within an open countryside location. No compelling evidence has been submitted from which to conclude that the development would represent an opportunity for selective infill, brownfield, regeneration or redevelopment. Nor that any of the exception criteria identified within Local Plan Policy DS5 would apply.
15. At the time of making its decision the Council indicated within the delegated report that it had a 6.41 year supply of housing land. After the appeal was made, the Council have submitted updated housing land supply information which indicates a 6.10 year supply of housing land. This has not been challenged by the appellant, and I have no evidence before me to indicate that the authority cannot demonstrate a five year supply of deliverable housing land.
16. Both main parties agree that Astwood has limited services and facilities. The level of information regarding local bus services is insufficient to enable me to conclude that other villages and larger settlements are readily accessible by modes other than private car. Even if, over time more journeys were to take place using low or zero emission cars, the harm which would result from the delivery of housing in this open countryside location, would outweigh any benefits which may result from development in one village supporting services in nearby villages, or contributing towards the longer-term viability of services, facilities and the community of Astwood.
17. Consequently, and due to its location, the site is not suitable for the development proposed, and it would not conform with the settlement strategy within the development plan. In this respect, it would conflict with Local Plan

Policies DS1 and DS5, which seek to direct development to settlements and to protect the countryside from inappropriate development. It would also conflict with Policy H1 of the NDP, which indicates that housing development should be within the settlement boundary.

18. Policy H2 of the NDP, relates to an allocated housing site away from the appeal site. It is not therefore determinative to this appeal.

Flood risk

19. Local Plan Policies FR1 and FR2 seek to manage and reduce flood risk associated with development proposals, and to ensure that the management of surface water is considered at the earliest opportunity in the design process. On the information before me, and having regard to the criteria within Local Plan Policy FR1. E. as well as at Paragraph 167 of the Framework, I cannot conclude that there is a need for a site-specific FRA. Notwithstanding this, Local Plan Policy FR1, requires all development to include a surface water drainage system with appropriate flood control.
20. Although the amount of hardstanding that would be created is not yet known, evidence has been provided by the appellant indicating that infiltration would not be a viable surface water drainage strategy within the site. Whilst Local Plan Policy FR2, indicates that above ground attenuation will be provided in preference to below ground attenuation, it is not clear how, even if an above ground attenuation scheme were to be provided, any excess surface water would be drained from the site without increasing flood risk elsewhere.
21. Therefore, given the identified ground conditions, and on the information before me, I cannot be confident that it would be possible to construct up to five houses with associated infrastructure on the site, without increasing flood risk both within the site or elsewhere. It would not be appropriate to apply conditions requiring the provision of a surface water drainage strategy. This is because I cannot be certain that any such condition would be capable of preventing an increase in flood risk within or beyond the site.
22. Consequently, based upon the information before me, I can not conclude that the development could comply with the requirements of Local Plan Policies FR1 and FR2 which seek to manage and reduce flood risk. Nor can I conclude that it could comply with paragraph 167 of the Framework which indicates that when determining planning applications local authorities should ensure that flood risk is not increased elsewhere.

Highway safety

23. Adjacent to the appeal site, there is no existing pavement or walkway from which safe pedestrian access can be secured to the core of the settlement. There are however, pavements on the opposite side of Main Road, and from beyond number 3 Main Road towards the core of the settlement.
24. Local Plan Policy CT2 indicates that development proposals will be permitted where, amongst other things, they provide safe, suitable and convenient access for all potential users, and do not have an inappropriate impact on the operation, safety or accessibility to the local or strategic highway networks.
25. The need for a footway connection between the proposed site access and the existing footway beyond number 3 Main Road has not been disputed by the

appellant. Nor has the need for a larger kerb radii at the site access junction. In the absence of any compelling information to the contrary, I proceed on the basis that these are both necessary to ensure that the development proposal does not result in an unacceptable harm to highway and pedestrian safety.

26. The proposed site access plan reference SK01 Rev B does not include details of a dedicated pedestrian connection from the site to the footway beyond number 3 Main Road. Although outline permission is sought, means of access is a matter considered at this stage. On the information before me, I cannot be certain that it would be possible to provide a suitable footway connection. It would not therefore be appropriate to apply a condition requiring such provision.
27. Were I to allow this appeal, then notwithstanding the detail on the submitted plans, a condition requiring a larger kerb radii at the proposed site entrance could have been applied. This would improve access to the site for larger vehicles and would reduce the likelihood of obstructions within the highway.
28. In the absence of a proposal for a suitable footway connection from the development site to the footway beyond 3 Main Road, the appeal proposal would therefore have an unacceptable harmful effect on highway safety. Consequently, it would conflict with Local Plan Policy CT2 where it requires the provision of safe, suitable and convenient access for all potential users. It would also conflict with Paragraph 110 of the Framework which guides that safe and suitable access to the site should be achieved for all users.

Effect on biodiversity

29. Local Plan Policy NE3 requires development proposals to maintain and protect biodiversity, and wherever possible result in a measurable net gain in biodiversity.
30. In the absence of any compelling contradictory evidence, I accept the findings of the appellants Phase 1 habitat and protected species survey. Within which it is indicated that it is important to retain the hedgerows within the site and that additional biodiversity can be achieved as part of the landscaping proposals.
31. The Biodiversity Impact Assessment submitted indicates that there would be a net loss of biodiversity on-site as a consequence of the development. In the absence of proposals related to landscaping and layout reserved matters, this conclusion, or a similar conclusion via another calculation method, is not surprising. However, given the size of the site and the amount of development proposed (up to five dwellings), I do not doubt that it would be possible to secure either the maintenance and protection of the biodiversity value of the site or an on-site net gain in biodiversity. Were I to allow this appeal, then this matter could be dealt with via an appropriately worded condition. As such, and based upon the requirements of Local Plan Policy NE3 (B) and (D), there would be no requirement for the appellant to make a Section 106 contribution to offset any adverse biodiversity effect.
32. Consequently, the implementation of the development proposal would result in either the maintenance of, or a positive effect on, the biodiversity value of the site. It would therefore comply with the aim of Local Plan Policy NE3, to ensure that development proposals maintain and protect biodiversity. Furthermore, it would comply with Paragraph 174 of the Framework which advises that development should contribute to and enhance the natural environment by,

amongst other things, protecting and enhancing sites of biodiversity value and by minimising impacts on and providing net gains for biodiversity.

Other Matters

33. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, in this case the grade II* Listed St Peters Church, great weight should be given to the asset's conservation.
34. The significance of St Peters Church is its historic fabric, its edge of village location, and its historic community use. It is also from its setting. The church building is set back from Main Road, and has a good-sized graveyard/grassed area, with substantial trees and hedgerows within and around its boundaries. The church and its curtilage therefore retain a secluded and pleasant semi-rural character and appearance.
35. Although close to St Peters Church, I have been presented with no compelling evidence from which to conclude that the development of up to five houses within the appeal site, or the proposed means of access would cause harm to the significance of the heritage asset or its setting.
36. I have not been provided with full details of the development approved under planning application reference 16/03395/ful. In the absence of any conflicting evidence, I accept the Council's assertion that the decision was made at a time when the Council could not demonstrate a five-year supply of housing land. As such that application is not directly comparable to the development subject of this appeal.
37. No compelling evidence has been submitted demonstrating that the appeal site is in an area where there are particular challenges in terms of housing affordability. Even if there were such challenges, there is nothing to suggest that the scheme, if allowed, would help to address the issue.

Planning Balance

38. In this case there would be a benefit from the delivery of up to five new houses on a site which is supported by paragraph 60 and 69 of the Framework. The development would create short term job creation and increased support for local services and facilities, including any that may be available within Astwood. This would be beneficial to the rural economy and help to maintain the vitality of Astwood as well as nearby towns. It could also include measures to secure energy efficiency and deliver benefits in terms of biodiversity. However, given the scale of the scheme, any identified benefits would be small, and as such the weight that can be attributed to these benefits is limited.
39. These benefits would be outweighed by the harms which would be caused; to the character and appearance of the area; in relation to the location of development; and in terms of flood risk, and highway safety, to which I give great weight.

40. The proposed development conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

Conclusion

41. For the reasons given above, this appeal is dismissed.

V Simpson

INSPECTOR