



Appeal Decision

Site visit made on 13 September 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th January 2022.

Appeal Ref: APP/J3720/W/22/3298087

Land north of Collingham Lane, Long Itchington, Warwickshire

- 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 outline planning permission
 - The appeal is made by Rosconn Strategic Land Ltd against Stratford-on-Avon District Council.
 - The application Ref 21/02854/OUT, is dated 3 September 2021.
 - The development proposed is outline application for the construction of up to nine self-build/custom-build dwellings and creation of two new vehicular accesses from Collingham Lane (approval sought for access at outline stage).
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. I have taken the description of development above from the appeal form, which more accurately describes the proposal than the planning application form, in confirming that access is the only reserved matter being considered now. The other matters, including layout (which was initially sought at this stage), are reserved for subsequent application.
3. I have determined the appeal based on the location plan, as well as the plot layout plan, parameters plan, illustrative layout, the open space adoption plans, and the site access and swept path analysis plans insofar as they relate to matters of access but otherwise as illustrative including in respect of plots sizes and positions.
4. A legal agreement with Warwickshire County Council (S106) and a Unilateral Undertaking (UU) in favour of the District Council, both pursuant to section 106 of the Town and Country Planning Act 1990 as amended have been submitted as part of the appeal documents. I have some concerns that both the UU and the S106 would be ineffective because they refer to the incorrect references for this appeal, ending in 3298097 and not 3298087. There are also inconsistencies in some of the trigger points, for example between UU Clause 5, and Paragraph 1 of Schedule 1, Part 3, regarding commencement. Nevertheless, I have taken the UU and S106 into account in reaching my decision.

Main Issues

5. Although the appeal results from the failure of the District Council to determine the application within the prescribed period, its Statement sets out the reasons

why it would have refused permission and, on this basis, I consider that the main issues are:

- whether the proposal would accord with the Development Plan's strategy for the distribution of housing; and
- the effect of the proposal on the character and appearance of the area.

Reasons

Development Plan strategy for housing distribution

6. Policies CS15 and CS16 of the Stratford-on-Avon Core Strategy 2011-2031, adopted July 2016 (SACS) provide the policies of the District Council on the distribution of development. The former makes clear that this is based on the balanced dispersal of development. This includes development in Category 1 Local Service Villages, such as Long Itchington, taking place through small-scale schemes within a Built-Up Area Boundary (BUAB) where defined, or otherwise within their physical confines. There is no dispute that the amount of residential development in the village has exceeded that envisaged by the targets in SACS Policy CS16, although these are not a cap or limit.
7. It is common ground that the site lies outside of the BUAB of the emerging Long Itchington, Bascote & Bascote Heath Neighbourhood Plan 2011-2031 (eNP). Its Policy H1 makes clear that areas outside of the BUAB are classed as countryside where new dwellings are strictly controlled. Policy H2 of the eNP supports housing including self and custom-build units, albeit generalised rather than being specifically for land outside of the BUAB. However, the Examiner has recommended its deletion.
8. The eNP and therefore the BUAB is still emerging, although the Examiner's Report recommends that the eNP proceeds to referendum, subject to amendments. The eNP has not been 'made' (adopted) and it is unclear how the qualifying body intends to proceed. Nevertheless, given the advanced stage it has reached, I attribute significant weight to the eNP as amended by the Examiner's recommended modifications.
9. SACS Policy AS10(a) supports proposals on sites adjacent to a village, where it would meet a need identified by the local community in a Parish or Neighbourhood Plan or other form of evidence. Policy CS15(f) also supports small-scale community-led schemes which meet a need identified by the local community. However, such needs have not been identified specifically for the Long Itchington community, and so the proposal cannot draw support from these policies.
10. SACS AS10(b) supports small-scale housing schemes within the physical confines of a Local Service Village. The term 'small scale' is not precisely defined but, in the context of the village, the development proposed here on a relatively large site of approximately a hectare would not be a small amount of development. In any case, the site consists of open, undeveloped pastureland. Although the site is close to the village core, and accessible from it by foot and car, it forms part of a larger network of fields and countryside to the northeast of the village, and it is not within the physical, built-up confines of the settlement. Therefore, the proposal would not accord with SACS policy AS10(b).

11. The site is identified for self and custom build housing in the emerging Site Allocations Plan (SAP), as site SCB5. The SAP is however at an early stage of the plan process, and objections have been received to it, including to site SCB5. As such, I can give the SAP only limited weight.
12. As a site in the countryside, and outside of the BUAB, notwithstanding the SAP's potential allocation of the site, I therefore conclude that the proposal would undermine the Development Plan's strategy for the distribution of housing, and so it conflicts with SACS Policies CS15 and AS10. For the same reasons, it would also conflict with eNP Policy H1. However, SACS Policy CS16 only sets out housing targets and so I find no conflict with this policy.

Character and Appearance

13. The site consists of countryside surrounded by trees and hedges. There is a building on the site, and it has crossing power lines, but the site is otherwise undeveloped and has the appearance of attractive countryside. The site has some of the key characteristics of the Feldon Lias Uplands, as identified in the Council's Landscape Sensitivity Assessment for Villages 2012 (LSA).
14. These features include having hedgerows and roadside trees and forming part of the landscape's pattern of small and medium sized fields. The LSA summarises the area including the site as having a medium sensitivity to development. Although it is reported as susceptible to change, it is also described as having potential to accommodate development in some situations without significant character change or adverse effects.
15. The illustrative plans show that the dwellings and the access driveway would be set back behind an area of trees and hedging, and this would help to limit its impact. It would also be somewhat contained by the existing field boundary. Details of the dwellings are reserved for future consideration and there is no reason why they could not be designed to reflect those nearby.
16. The appellant's Landscape and Visual Appraisal (LVA) describes the proposals as resulting in a modest extension to the village having little urbanising effect. The LVA considers that the characteristics and features of the site and its immediate surroundings are of a medium sensitivity and that its vulnerability to residential development would be moderate. This is because of the presence of recent development, the retention of the existing field pattern and the containment of the site by mature boundary vegetation.
17. Planning conditions could be used to secure retention and enhancement of landscaping and to control permitted development rights including in respect of outbuildings. Even so, the proposal would result in the construction of a large and permanent amount of new built form, on a site that extends some way back from the road, together with hard surfacing, accesses and a driveway parallel to the road.
18. There is little dispute that the LVA's evaluation matrix predates the latest guidance¹ and as a result I find the evidence of the Council's landscape expert more convincing, that the LVA somewhat downplays the significance of the development. In particular, the suburbanising effect of the proposal would mean that the site's landscape character as a small field would be lost, as

¹ GLVIA3 published by the Landscape Institute and the Institute of Environmental Management and Assessment

would its contribution to the landscape as an attractive extension of countryside into the village. Its deep form means that it would not integrate particularly well with that of the village, which is largely enclosed by the existing road pattern.

19. For these reasons, the contribution of the site to one of the key characteristics of the wider landscape, including those referred to in the LSA, would be considerably diminished. I therefore consider that the significance of the impact of the proposal to the landscape would go beyond being moderate (defined in the LVA as having a noticeable but not defining effect) but would in fact be at the higher end of adverse significance.
20. Turning to visual impact, the LVA identifies that from Collingham Lane (Viewpoints 11 and 12), the baseline is one of high sensitivity, and the proposal would result in a long-term adverse change of medium-high magnitude. The visual effects of the proposal from Collingham Lane would be greater in winter months when foliage is reduced, including when viewed from the adjacent dwellings and by road users.
21. It would be partially screened behind sections of hedgerow and would be seen in the context of existing residential development. Additional landscaping and planning conditions securing this and preventing additional development within gardens would further help to mitigate its visual impact. I therefore agree with the appellant's LVA that the effects of the proposal would be medium-high from these viewpoints.
22. In terms of its wider visual effects, the site is visible from a number of other locations, including from the Bridleway off Collingham Lane (Viewpoints 1 and 10). From my visit, I saw that the dense vegetation means that only glimpses of the proposal would be available from these viewpoints. As such, I find that it would result in a long-term adverse change of low-medium magnitude from Viewpoints 1 and 10, with few or no discernible effects from the other viewpoints.
23. However, given the site's medium sensitivity, the adverse significance effects on landscape character and its medium-high effects when viewed from Viewpoints 11 and 12, I conclude that the proposal would have a medium to high adverse impact on the landscape hereabouts. For these reasons, I conclude that the proposal would have a harmful effect on the character and appearance of the area.
24. As such, it would be contrary to Policies CS5, CS9 and AS10 of the SACS, which require proposals to (amongst other things) maintain and enhance the landscape character of the District. As such, I give this harm significant weight. Policy BE1 of the eNP makes no specific requirements about landscape impact and so I find no conflict with this emerging policy in respect of this matter.

Other Considerations

The Need for self and custom build Housing

25. The Self-Build and Custom Housebuilding Act 2015 as amended (the 2015 Act), requires the District Council to keep a register of individuals who are seeking to acquire serviced plots of land in their area for this purpose. The Housing and Planning Act 2016 added a duty to grant planning permission in respect of

- enough serviced plots of land to meet the demand for self-build and custom housebuilding in the Authority's area arising in each base period².
26. The most recent published District Council data, up to the close of the last base period, indicates that supply, as measured by Community Infrastructure Levy (CIL) Part 1 exemptions is greater than demand measured by entries on the Register over the last three base periods. This would suggest that the requirements of the 2015 Act are being met.
27. However, the evidence provided within the appellant's Statement of Case suggests that the data overstates supply, relying on CIL Exemption Forms but without the detailed analysis to confirm that they would all comply with the legislation's definition of self and custom build housing. As a result, the Register is likely to double-count development approved by earlier permissions, to include consents without the applicant/owner's primary design input; and to include householder proposals, none of which amount to self and custom build housing. Not all replacement dwellings counted would meet the criteria as self and custom build housing either.
28. This evidence also suggests that the Register underestimates demand. I do not have an equivalent detailed assessment of the current self and custom build housing position from the District Council to dispute this evidence. The District Council acknowledges a likely shortfall between supply and demand with its Committee Report³ stating that the demand for plots is growing at a faster rate than supply, such that there is likely to be a considerable gap. The District Council reports in connection with a concurrent appeal at Welford-on-Avon⁴ that the shortfall in supply is around 81 plots⁵, though the appellant's evidence is that this could be as high as 124 plots⁶.
29. Not all will want to develop on a multiple self and custom build housing site as here, and such sites may be more difficult to manage and sell than others. However, I understand that the appellant's initial marketing generated some interest. If effective, the UU would secure a marketing period of 12 months. This is less than the 24 months suggested by the SAP and the District Council's advisory Task and Finish Group has established that other Councils use periods between 9 and 12 months. These relate to Local Plan allocation sites, sites within settlement limits or percentages of larger developments, rather than to windfall sites as here.
30. However, the route to permission is unlikely to significantly affect the level of demand. In light of this, I do not consider that the 12-month marketing period suggests a lack of confidence in demand for self and custom build housing here. If effective, the UU would also secure an initial 12-week marketing period to those with a local connection, a further small benefit of the proposal.
31. Measures such as the marketing of the plots as self and custom build housing, the initial period of marketing for those with a local connection and compliance with the self and custom build housing definition would also be secured by the UU, if effective. I understand that the SAP is intended to identify self and

² Consecutive 12-month periods. At the end of each period the Council has 3 years to grant permission for an equivalent number of self and custom build plots as entries for that period.

³ Dated 22 June 2022

⁴ APP/J3720/W/22/3297821

⁵ Self-build and Custom-build Housing Demand & Supply Position on 1st April 2022 (May 2022)

⁶ Rosconn found a supply of 109 plots, less than half the 233 people on the Register at October 2021

custom build housing plots on developments including those at Long Marston Airfield and Gaydon/Lighthorne Heath, and that other developments will include self and custom build housing. However, the SAP is at an early stage and there is clearly a shortfall now.

32. The proposal would make a positive contribution to meeting the need for self and custom build housing in the District. As such, although for 'up to' nine dwellings (and potentially for fewer self and custom build housing units than this) I give significant weight in the planning balance to the need for provision of self/custom build housing in the District and the effect of the proposal on its supply.

Other Matters

33. There have been a range of ecological assessments at the site, the results of which have varied. The Parish Council and others consider them to be flawed and to undervalue the biodiversity value of the site. However, I note that repeat surveys were undertaken at an optimal time of year and that neither the County Council's Ecologist, nor the District Council, has objected to the proposal on these grounds. I therefore see no reason to believe that the proposal would harm the interests of protected species.
34. If the UU were effective, it would secure a financial contribution towards biodiversity and the management and maintenance of the mitigation land as well as the provision of affordable housing in the event of unsold plots. The S106 would also secure ecological mitigation. These would therefore result in small but positive additional benefits.
35. Local residents, the Parish Council and others have referred to the effects of the proposal on sewage, flooding and drainage. They have also raised concerns in respect of access (including for emergency vehicles), construction traffic and the effect on the living conditions of neighbouring dwellings in respect of light and outlook. They have also raised the loss of farmland, light pollution, air quality and other matters. However, the District Council did not raise these matters as reasons for refusal and, in some instances, they can be resolved or mitigated by suitable planning conditions. These do not therefore alter my overall findings.

Planning Balance and Conclusion

36. The appellant considers that in the absence of any reference to self and custom build housing, the Development Plan is out-of-date and so the 'tilted balance' of paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged. A number of appeal decisions have been referred to me. At Wyre Forest⁷, Bishampton⁸ and Droitwich Spa⁹, the absence of self and custom build housing policies resulted in the tilted balance being engaged.
37. However, in this case the effect of the proposal on the character and appearance of the area including on the landscape is a matter of dispute, and I have found conflict with a specific landscape policy that is consistent with the Framework. As such, this case is not directly comparable with those referred to

⁷ APP/R1845/W/21/3284761

⁸ APP/H1840/W/22/3291131

⁹ APP/H1840/W/19/3241879

me, or to that at Woodville¹⁰. Nor does landscape harm form part of the Council's putative refusal reasons for the concurrent appeal at Welford-on-Avon. Furthermore, given that the appeal decisions relate to different policies, in different local authority areas, and thus the specific considerations relevant to those cases thus differ, I can give them only limited weight.

38. I have found that the District Council is not meeting its obligations to provide self and custom build housing under the 2015 Act, but this does not over-ride the provisions and stipulations of the Development Plan. Bearing in mind the decision in *Paul Newman*¹¹, and my findings above, SACS Policies CS5, CS9, CS15 and AS10 are clearly directly relevant to the proposal.
39. SACS Policies CS5, CS15 and AS10 are the most important policies to the determination of the proposal given that they relate to the Council's strategy for the distribution of development in countryside and village locations as here. They make specific requirements regarding the effect on the landscape. As such, they contrast with the appeals and other examples referred to me.
40. It is therefore not the case that there are no relevant Development Plan policies, and SACS Policies CS5, CS9, CS15 and AS10 are broadly consistent with the Framework, including its requirement that planning decisions should enhance the natural and local environment recognising the intrinsic character and beauty of the countryside. Furthermore, contrary to the appellant's position that self and custom build housing delivery will not come forward through these policies, some at least is being delivered.
41. As such, read as a whole, the policies are not out-of-date and the 'tilted balance' is not therefore engaged. However, as SACS spatial policies CS15 and AS10 do not refer to self and custom build housing specifically and having regard to the apparent need for this in the District, I give the conflict with these policies only moderate negative weight. Nevertheless, I have also found that the proposal would have a significantly harmful effect on the character and appearance of the area, to which I give significant negative weight.
42. The provision of self and custom build housing, including the benefits secured by the UU if effective, attracts significant weight in favour of the proposal. Benefits in respect of biodiversity and the provision of affordable housing in the event of unsold plots would attract further limited positive weight. There would also be minor social and economic benefits from employment during construction and from future residents, to which I also give limited positive weight.
43. However, taking all these benefits together into consideration, when balanced with the harms that would arise from the proposal, I find that the harm would outweigh the benefits in this instance. For the reasons given, there would be conflict with the Development Plan, read as a whole. No material considerations have been shown to have sufficient weight to warrant a decision other than in accordance with it. I therefore conclude that the appeal should be dismissed.

O Marigold

INSPECTOR

¹⁰ APP/G2435/W/18/3214451

¹¹ *Paul Newman v SSHCLG* [2021] EWCA Civ 15