



Appeal Decision

Site visit made on 14 December 2022

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/X0360/W/22/3290780

Land at Croft Road, Croft Road, Spencers Wood RG2 9EY

- 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 Millen Homes against the decision of Wokingham Borough Council.
 - The application Ref 213232, dated 24 September 2021, was refused by notice dated 29 November 2021.
 - The development proposed is erection of emergency siren and 2 self build plots.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address in the banner heading above is taken from the application form although, in the interests of clarity, I have added the postcode which is taken from the Council's decision notice.
3. The description of the development on the application form includes reference to the location of the site. I have removed this reference as it is not an act of development.
4. The appeal submission includes revised plan (drawing no. SFCR001 Rev 4) modified after the Council made its decision subject to this appeal. The revised plan depicts an adjusted position of the proposed emergency siren.
5. The Planning Inspectorate's guidance¹ provides advice on the circumstances whereby amendments proposed during the appeal process can be taken into account having regard to the Wheatcroft High Court judgement². It established that the main, but not the only, criterion is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. An integral part of the legal test is the issue of fairness to third parties.
6. The Council and third parties would both appear to have had opportunity to comment on the amendment. In these particular circumstances, I consider no party would be prejudiced, and I accept the revised plan and determine the appeal with regard to it.
7. Outline planning permission is sought with matters of appearance, landscaping and scale reserved for future consideration. Given both matters of access and

¹ Procedural Guide: Planning appeals – England Updated 12 April 2022

² Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harbrough DC (1982)

layout are included, I have taken both the point of access to the site from Croft Road and the details of the junction, together with the arrangement of the internal private drive, as matters for my consideration at this stage.

8. Following the Council's decision, a unilateral undertaking (UU) has been submitted, the purpose of which would be to secure financial contributions towards mitigation measures in relation to the Thames Basin Heaths Special Protection Area, secure the installation of an emergency siren and a financial contribution towards its upkeep and a related safety brochure, and further financial contributions towards a bus strategy and a travel awareness initiative. I comment on these obligations later in my reasoning.

Main Issues

9. The main issues are:

- The suitability of the site for the development having regard to the development plan's spatial strategy, and the effects of the development upon the character and appearance of the area including trees protected by a Tree Preservation Order;
- The effects of the development upon an emergency response relating to the Atomic Weapons Establishment Site at Burghfield; and
- Whether or not affordable housing should be provided, and, if so, whether appropriate arrangements have been made.

Reasons

Location and character and appearance

10. The appeal site is an undeveloped parcel of land located beside Croft Road on the fringes of the settlement of Spencers Wood. On the opposite side of Croft Road are residential properties, many of which form part of a recently developed residential estate which has a suburban character. On the appeal site side of Croft Road there are further residential properties which are more sporadically distributed and generally set within spacious plots. Farther to the north-east there is a garden centre. In the vicinity of the site, Croft Road is quite narrow and is not served by pavements. On either side of the road there are hedges and trees including those which overhang the road, and this provides for a verdant character. The sporadic built form, and spacious development plots on this side of Croft Road, together with the leafy and narrow nature of Croft Road provides for a semi-rural character to the site and its context.
11. Although the appeal site is located within the bounds of the South of the M4 Strategic Development Location (SDL), it is nevertheless, located outside of a development limit. So as to accord with Policy CC02 of the Wokingham Borough Adopted Managing Development Delivery Local Plan, 2014 (LP) development is required to be located within the development limit or, if located within the SDL but outside a development limit, constitute an exception, supported by a comprehensive masterplan and infrastructure delivery plan. Similarly, Policies CP9 and CP11 of the Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document, 2010 (CS) accept, in principle, development where within settlement development limits only, with some exceptions permitted, including

but not limited to, affordable housing on rural exception sites and rural enterprise development.

12. Situated outside of a development limit, and not constituting one of the exceptional forms of development permissible under the aforementioned policies, the proposed development is contrary to the spatial strategy of the CS and LP. Policy 1 of the Shinfield Parish Neighbourhood Plan, 2017 (NP) does permit, in principle, development adjacent to settlement development limits albeit only where the benefits outweigh any adverse impacts. I undertake such a balance later in my reasoning.
13. Given there is an existing house and garden centre located to the rear of the appeal site, I accept that the development would not reduce the open land that provides separation between the settlements of Spencers Wood and Shinfield, nor, in turn, cause harm to the separate identity of these settlements.
14. Nevertheless, the proposal would introduce development into a location where presently there is none, and in so doing erode a parcel of countryside. The number of dwellings proposed has reduced from the 3 subject of a previous appeal decision³, and the 2 dwellings now proposed would be well spaced apart. The appellant has also put to me that the dwellings proposed would have amongst the lowest proportions of hard surfacing within their plots in comparison to the nearest properties. The full details of the methodology to come to this conclusion is not before me, however, even if I were to accept this, the existing undeveloped nature of the site would nevertheless be transformed in the proposal. The combination of the houses, garaging, hard surfacing, domesticated gardens and the proposed emergency siren would adversely affect the semi-rural character of this part of the countryside and create a more suburban character to this side of the road. Comprising of a 10m high tubular pole, the proposed emergency siren, would introduce a particularly conspicuous structure to the site, unsympathetic with the semi-rural and verdant setting.
15. The revised position of the emergency siren would ensure that it would not affect the roots of any trees protected by the tree preservation order (TPO). So as to facilitate the access, a gap would necessarily be formed in the line of trees and hedgerow adjacent to Croft Road, a grouping subject to the same TPO. This gap would be similar to those of other accesses on Croft Road, the majority of the trees and hedgerow would be retained and at the reserved matters stage compensatory planting would be achievable. This would largely ensure that the verdant frontage of the site would be maintained. That said, the width of the gap and its positioning would open up views of the built development proposed and make the incursion into the countryside more apparent.
16. I note the redevelopment approved at the nearby garden centre. Unlike this proposal, that development obtained planning permission in part as it constituted development at an existing rural enterprise, thereby complying with the spatial strategy of the development plan. The garden centre land already contains built development whilst the appeal site does not. Furthermore, between the appeal site and location of the garden centre redevelopment, are a number of mature trees which I have no reason to conclude would be unlikely to survive for many years. These trees would provide screening for the garden

³ Appeal ref: APP/X0360/W/21/3269790

centre redevelopment and thereby limit the extent to which that development would cause any detriment to the semi-rural character of the environs of the appeal site.

17. Therefore, the proposed development would introduce housing into the countryside beyond the settlement development limit. In so doing it would cause a harmful erosion of the semi-rural character and appearance of the area contrary to Policies CP1, CP3, CP9, CP11 and CP19 of the CS, Policies CC02 and TB21 of the LP and Policy 2 of the NP. In summary, and amongst other matters, these policies restrict development to being within settlement development limits, and, within the SDL area, unless particular exceptions apply or criteria is met, seek to ensure that development is appropriate to the character of the area whilst retaining or enhancing the condition, character and features which contribute to the landscape.
18. The development would be contrary to guidance contained within the Borough Design Guide, 2012 and South of the M4 Strategic Development Location, 2011 Supplementary Planning Documents including that development must respond positively to local context including the local settlement pattern, that development within the SDL should be comprehensively masterplanned whilst retaining the rural character of settlements within it. The development would also conflict with advice within the National Planning Policy Framework (the Framework), including at paragraph 130, which states that development should be sympathetic to local character including the built environment and landscape setting, and the objective of enhancing the natural and local environment including through recognising the intrinsic character and beauty of the countryside contained at paragraph 174.
19. Given I have found that the verdant frontage of the site would be acceptably maintained through the proposal, the development would not conflict with Policy CC03 of the LP which requires the protection of green infrastructure. I consider that sufficient information is before me in respect of trees for me to come to a decision and therefore I find no conflict with BS 5837:2012. Section 197 of the Town and Country Planning Act 1990 (as amended) places upon me a duty to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. In this instance I am dismissing the appeal but irrespective, and given my above findings, I am satisfied that if I were to allow the appeal that this duty would be complied with.
20. Part 4 of the Framework provides advice on decision-making, including in relation to the processes involved in pre-application engagement and the determination of planning applications. I find that this advice is not very relevant to the particular harm I have identified in this main issue and therefore I find no conflict with Part 4 of the Framework.
21. Finally, the Council's reasons for refusal also reference Policy CC01 of the LP which reiterates the content of paragraph 11 of the Framework. I return to this matter later in my decision.

Emergency response

22. The site lies within the Detailed Emergency Planning Zone (DEPZ) for the Atomic Weapons Establishment at Burghfield (AWE). The DEPZ is a geographical zone in which it is proportionate to plan for protective action in the event of a radiation emergency. It is for the local authority to determine this geographical zone in accordance with a duty placed upon them under the Radiation (Emergency Preparedness and Public Information) Regulations 2019. The same regulations require the local authority to prepare an adequate off-site emergency plan covering the zone. The appeal site is within the DEPZ following a quite recent expansion to its coverage area. The assessment that led to the extension of the zone has been upheld in a High Court judgement⁴.
23. Although the appellant has submitted that the area within which the appeal site is situated was unnecessarily included within the DEPZ, that is not a matter that can be addressed in the context of this appeal, and I see no good reason to depart from the area designated by the emergency planning authority.
24. Policy TB04 of the LP states that development will only be permitted where the applicant demonstrates that the increase in the number of people living, working, shopping and/or visiting the proposal can be safely accommodated having regard to the needs of emergency services and the emergency off-site plan in respect of the AWE.
25. Given the modest scale of the scheme, it would be unlikely to create a significant additional burden upon the emergency response should an incident necessitating such a response arise. With the appeal site located toward the outer edge of the DEPZ, the risk that would be posed to residents here would be lower than locations closer to the AWE and, in turn, that the focus of the emergency response effort would be likely to be more concentrated elsewhere. I also accept that daily fluctuations will occur to the population within the DEPZ at any given time and that such fluctuations may well be greater than the occupancy levels of the development.
26. Nonetheless, the proposal would further increase the number of homes within the DEPZ and contribute further to pressure on the resources available to implement the emergency off-site plan. The Council's emergency planning service have objected to the development, and I have no substantive evidence before me that emergency services have capacity to deal with the modest increase in population that the development would bring.
27. In principle, I accept the benefit that there would be in the provision of the emergency siren proposed. On the basis of the evidence before me, should an emergency arise, the most appropriate course of action would be for residents in this locality to take shelter. The sooner the message for that course of action to take place was disseminated the better. An emergency siren could contribute towards this. I also note that the UU includes a financial contribution towards its upkeep and the distribution of a safety brochure for residents. However, I have very little information before me on the content of the existing emergency plan, the precise measures to be undertaken, the allocation of responsibilities and, moreover, it has not been shown to me how the proposed emergency siren would effectively integrate into the wider emergency plan. Therefore, I cannot be certain that the proposed siren would be deployed effectively in the

⁴ Crest Nicholson & Ors v West Berkshire District Council [2021] EWHC 289 (Admin)

event of an emergency, and this considerably limits the weight I attribute to it as mitigation for the development.

28. Consequently, it has not been shown to me that the increase in people living within the DEPZ that would result from the development can be safely accommodated having regard to the needs of emergency services and the emergency plan for the AWE, contrary to the requirements of Policy TB04 of the LP. I also find that the proposed development would conflict with advice within the Framework which, at paragraph 97, states that planning decisions should promote public safety and take into account wider security and defence requirements including through anticipating and addressing possible malicious threats and natural hazards.
29. I note that the appellant has stated that they have not received feedback from the Council or the AWE on the emergency siren proposal, whilst they have also put to me that the Council have no solutions in place to help reduce the demands on emergency services. I can appreciate that greater dialogue in respect of the siren may have been of assistance to the appellant. I also appreciate that the capacity of emergency services to cater for any growth within the DEPZ is, perhaps frustratingly, somewhat out of the control of the appellant, however, I must determine the appeal on the basis of the evidence before me.

Affordable housing

30. Policy CP5 of the CS states that affordable housing will be expected on all housing sites of at least 5 dwellings, or which cover a net site area of at least 0.16ha.
31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Framework is a material planning consideration.
32. Paragraph 64 of the Framework states that affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. In such designated rural areas, policies may set out a lower threshold of 5 units or fewer. It has not been shown to me that the site is within a designated rural area. Policy CP5 is not reflective of the advice at paragraph 64 of the Framework and is therefore inconsistent with it.
33. Aside from the Policy CP5 wording and justification, I have not been provided with any supporting evidence or documentation that sets out affordable housing need in the district including that, in this location, and having regard to paragraph 64 of the Framework, affordable housing is necessary for the minor development proposed.
34. In such circumstances I attribute significant weight to the advice in the Framework, with which I have identified Policy CP5 to be inconsistent. As a result, and despite Policy CP5 seeking affordable housing provision on sites of the scale of the appeal site, I find that a planning obligation to secure the provision of affordable housing would not be necessary to make this development acceptable in planning terms.

Other Matters

35. The proposal is submitted on the basis that the 2 dwellings would be self-build houses. On the basis of the evidence before me, the Council are not granting enough permissions for serviced self-build plots to meet the demand for self-build and custom build plots to meet their duty to do so under the Self-build and Custom Housebuilding Act 2015 (as amended).
36. Whilst some matters are reserved for consideration at a later stage and although the dwellings are described as being self-build houses, I have no substantive evidence before me to suggest that the design of the proposed dwellings would be especially innovative, outstanding or would promote high levels of sustainability.
37. The site lies within the zone of influence of the Thames Basin Heaths Special Protection Area (SPA), which is of national and international importance for its rare bird species. The proposed development would be likely to have significant effects on the SPA through additional recreational pressure causing disturbance to the rare bird species.
38. So as to avoid an adverse effect upon the integrity of the SPA, the appellant proposes that financial contributions would be made towards the provision of a Suitable Alternative Natural Greenspace and towards the management and monitoring of public access within the SPA, secured via the UU.
39. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the SPA including through the undertaking of an Appropriate Assessment. However, even if that were the case, it would at most be a neutral factor in this appeal.
40. The submitted UU also proposes financial contributions towards a bus strategy and a travel awareness initiative. Whilst this would appear to address the requirements of the Council in these regards, once again, it is not necessary for me to look at the UU in detail given that the proposal is unacceptable for other reasons.
41. I also appreciate that the Council may not have made comments on the content of the submitted UU, however, given my reasoning above and that I am dismissing the appeal, this matter has not been determinative in my decision.

Conclusion

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
43. I have identified that there are policies within the development plan most important for determining the application which are out of date by reason of their degree of inconsistency with the Framework. In such instances paragraph 11(d) of the Framework is engaged.
44. The 2 houses proposed would boost the supply of housing in the area, albeit this benefit would be moderated given that the evidence before me shows that the Council are able to demonstrate a 5 year supply of deliverable housing. The appellant submits that the proposed dwellings would deliver self-build homes.

Currently, the Council are not delivering enough planning permissions for such developments. However, and despite the appellants' stated intentions to this end, the UU does not secure that the houses would be self-build homes and, consequently, this limits the extent to which I can attribute any positive weight to their provision.

45. On the other hand, I have found that the proposals would be contrary to the spatial strategy of the CS and LP and would cause a harmful erosion of the semi-rural character and appearance of the area. The proposal would contribute further to pressure on the resources available to be able to implement the emergency off-site plan in respect of the AWE, and I have no substantive evidence before me that emergency services have capacity to deal with the modest increase in population that the development would bring. Furthermore, whilst mitigation is proposed in the form of the emergency siren, I attribute this very little weight because I have significant uncertainties surrounding whether it would be effectively deployed.
46. Taken together, the adverse effects of the development are considerable and sufficient to significantly and demonstrably outweigh the aforementioned benefits of the development when assessed against the policies in the Framework taken as a whole. The proposal therefore does not benefit from the presumption in favour of development in the Framework.
47. In arriving at this conclusion, it follows that the development would also be contrary to Policy 1 of the NP which only permits development adjacent to development limits where the benefits of the development outweigh the adverse effects. It is also not necessary to assess the effects of the proposal on the SPA as the outcome of that assessment would not have any bearing on my decision.
48. In turn, the conflict that I have identified with the development plan is not outweighed by other considerations, including the Framework. For the above reasons, having taken account of the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

H Jones

INSPECTOR