
Appeal Decision

Site visit made on 29 June 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/J1915/W/21/3279812

Land West of The Grove, Bury Green, Little Hadham SG11 2EZ

- 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 Hastingwood Estates Limited against East Hertfordshire District Council.
 - The application Ref 3/21/1092/OUT, is dated 23 April 2021.
 - The development proposed is erection of 4 no self-build dwellinghouses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for outline planning permission with approval sought at this stage for access only, with layout, appearance, landscaping and scale reserved for future approval. Whilst the submitted proposed block plan shows how the site might be developed, I have treated details other than access as indicative and not as formally part of the scheme.
3. This appeal is against the failure of the Council to make a decision within the prescribed period. Following the lodging of the appeal, the Council has indicated that, had it been in a position to do so, it would have refused the application for the following three reasons:
 - i. *The proposed development would not accord with the development strategy for the district. The scheme would not represent an acceptable form of development in the Rural Area Beyond the Green Belt. The site is situated in an unsustainable location for residential development, and the future occupiers of the dwellings would be reliant on the use of the private vehicle to access basic amenities, services and facilities. Therefore, the proposal would not facilitate sustainable journeys. The proposed scheme would be contrary to Policies DPS2, GBR2, VILL3 and TRA1 of the East Herts District Plan (2018).*
 - ii. *Insufficient information has been provided to demonstrate that a net gain in biodiversity would be achieved at the site. As such, the proposal fails to comply with Policy NE3 of the East Herts District Plan (2018).*
 - iii. *The submitted unilateral undertaking would fail to suitably secure the site for self-build and custom-build housing. Therefore, the proposed development would be contrary to Policy HOU8 and Policy DEL2 of the East Herts District Plan (2018), and Section 5 of the National Planning Policy Framework (2021).*

Main Issues

4. The main issues are whether or not the site is a suitable location for housing having regard to the development plan; whether or not sufficient information has been provided to demonstrate that a net gain in biodiversity would be achieved at the site; and whether or not, in the overall planning balance, there are material considerations that would justify the granting of outline planning permission.

Reasons

Location

5. The Council's development strategy, as set out within Policy DPS2 of the East Herts District Plan (EHDP), sets out a hierarchy of locations where new development will be focussed, including limited development in the villages of the district. The proposed dwellings would be sited within an existing paddock located at the north-eastern edge of Bury Green, a Group 3 Village as defined by EHDP Policy VILL3. Within Group 3 Villages, Policy VILL3 provides for only limited infill development identified in an adopted Neighbourhood Plan. The site is not identified for development within an adopted Neighbourhood Plan and the proposal is not, therefore, supported by Policy VILL3.
6. The dwellings would be situated within the 'Rural Area Beyond the Green Belt' (RABGB) as defined by the EHDP Policies Map. In order to maintain the RABGB as a valued countryside resource, EHDP Policy GBR2 permits a limited range of development types, including limited infilling in sustainable locations, where appropriate to the character, appearance and setting of the site and/or the surrounding area. As the site is bounded by open countryside to the north and east, it does not constitute an infill site. Consequently, the proposed development is contrary to EHDP Policy GBR2.
7. EHDP Policy TRA1 relates to sustainable transport and requires that development proposals should be primarily located in places which enable sustainable journeys to be made to key services and facilities by a range of sustainable transport options. As a Group 3 Village, Bury Green would not provide the facilities and services necessary to meet the daily needs of future residents. The appellant has identified various travel distances to the nearest settlements providing key services, including 2.25km to Little Hadham and 4.5km to the centre of Bishops Stortford. Little Hadham is identified by the EHDP as a Group 2 Village and the appellant advises that it provides a primary school and village hall. Bishop's Stortford is the largest town in the district and, accordingly, provides a wide range of services and facilities, including a large supermarket on its outskirts which the appellant advises is 2.25km from the site.
8. Access to the above noted larger settlements on foot and cycle would require travel along narrow and unlit roads, often without segregated footways. Such conditions would make journeys uncomfortable for pedestrians and cyclists. Furthermore, it is unclear as to the extent to which the proposed development would be served by buses in terms of the location of the nearest stop and the frequency of service. These factors, combined with the length of the required journeys, would act as a deterrent for future occupiers to walk and cycle to the nearest key facilities and services. It is therefore likely that prospective residents would be heavily reliant on private motorised transport for trips to

serve their everyday needs and employment. The development would not, therefore, enable sustainable journeys to be made to key services and, in this regard, is contrary to EHDP Policy TRA1.

9. Accordingly, on this first main issue, it is concluded that the proposed development would not accord with EHDP Policies DPS2, GBR2, TRA1 and VILL3, which taken together, require, amongst other things, development to be sustainably located within the district in accordance with the development strategy.

Biodiversity

10. EHDP Policy NE3 requires that development should not only seek to enhance biodiversity, but must also demonstrate how the development improves the biodiversity value of the site and surrounding environment. Paragraph 174 of the National Planning Policy Framework (the Framework) requires that planning policies and decisions should contribute to and enhance the local environment in a number of ways, including the provision of net gain for biodiversity. The Government's Planning Practice Guidance (PPG) defines biodiversity net gain as works which deliver 'measurable improvements for biodiversity by creating or enhancing habitats in association with development.'¹
11. The appellant's submitted Preliminary Ecological Assessment (PEA) includes a range of recommendations aimed at ensuring both that protected species are protected and that the site is enhanced for the benefit of biodiversity. Whilst there is no one approach that is mandatory for use in calculating if biodiversity net gains would be achieved, the PEA lacks detail regarding the existing and proposed biodiversity values of the site. As such, there is insufficient evidence to demonstrate whether the development offers overall net gains in biodiversity.
12. I acknowledge that, given the outline stage of the proposal, many of the details that may affect the final biodiversity value of the site would be confirmed at the later reserved matters stage. I also note that the PPG advises planning conditions can, in appropriate circumstances, be used to require that a development provides for works that will measurably increase biodiversity². However, given the lack of detail regarding the existing and potential biodiversity values of the site, I cannot be certain that a condition would be appropriate in this case.
13. Consequently, insufficient information has been provided to demonstrate that the proposed development would result in a net gain in biodiversity of the site and surrounding environment. The proposed development, therefore, fails to comply with EHDP Policy NE3 and Framework paragraph 174.

Other Matters

Self-build and Custom Housebuilding

14. The proposal is for open market, self-build/custom-build dwellings. The PPG states³ that, in relation to self-build and custom housebuilding (SBCH), relevant authorities should consider how local planning policies may address identified

¹ Paragraph 022, Reference ID: 8-022-20190721

² Paragraph: 023, Reference ID: 8-023-20190721

³ Paragraph: 025 Reference ID: 57-025-20210508

requirements for SBCH to ensure enough serviced plots with suitable permission come forward. Support for SBCH is also set out at paragraph 62 of the Framework, where it states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, amongst others, people wishing to commission or build their own homes). Accordingly, EHDP Policy HOU8 expects a proportion of serviced dwelling plots on sites of more than 200 dwellings to be for sale to self-builders, and that locally proposed self-build projects identified within a Neighbourhood Plan will be supported. Given the small scale of the proposed development and the lack of an adopted neighbourhood plan, neither of these provisions of Policy HOU8 explicitly support the development.

15. Footnote 28 to Framework paragraph 62 reminds that under section 1 of the Self Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) (the Act), local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own SBCH building. Footnote 28 also notes that local authorities are subject to duties under sections 2 and 2A of the Act to have regard to the SBCH Register and to give enough suitable development permissions to meet the identified demand. The appellant's evidence regarding the Council's SBCH Register indicates that there is significant and ongoing registered demand for SBCH plots within the district, including in rural areas. The Council does not dispute that the evidence provided by the appellant indicates insufficient permissions have been granted to meet the demand for SBCH plots demonstrated within the Register.
16. As such, I find that the Council has not satisfactorily demonstrated that it has met its duty under Section 2A of the Act. Where insufficient SBCH permissions have been granted to meet demand in accordance with the statutory duty, then this will be a material consideration in favour of granting permission and I return to this matter later.

Heritage

17. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that special regard shall be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses. S72(1) of the LBA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. The appellant's heritage statement identifies that the proposed dwellings would be located to the east of the Grade II listed Holly Tree Cottage and to the east of the Bury Green Conservation Area boundary. Subject to the final details of the reserved matters, the significance of these heritage assets would be preserved by virtue of the proposed development representing an extension of the existing intervening modern development on The Grove.

Planning Balance

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations, including the Framework, indicate otherwise. I have identified that the proposed development does not accord with EHDP policies that require development to be sustainably located within the district in accordance with the development strategy. Furthermore,

the proposal is contrary to EHDP Policy NE3 by virtue of failing to demonstrate a net gain in biodiversity would be achieved. The proposed development is not, therefore, in accordance with the development plan when taken as a whole and the identified development plan conflict is afforded considerable weight.

19. I have considered the appeals referred to me by the main parties, including those at Droitwich Spa⁴, Aston End⁵, Chilton⁶, Steventon⁷, Lower Bodham⁸ and Sandway⁹. In the majority of the referred appeals, substantial weight is given to the delivery of SBCH plots where Councils have not met their duty under Section 2A of the Act. In the final planning balance of these appeals, however, the substantial weight given to the delivery of SBCH plots does not always outweigh other considerations. Indeed, in the dismissed appeals at Sandway and Chilton, conflict with development plan policies steering development to sustainable locations was found to outweigh the benefits of delivering SBCH plots.
20. The allowed appeal at Steventon differs from the current proposal in so far as the Inspector found the development to be in line with the development plan's strategy for housing delivery. The circumstances of the allowed appeal at Droitwich also differ from those of the current proposal due to the Inspector finding the tilted balance to be triggered by virtue of the development plan being silent on the provision of SBCH. The EHDP, in contrast, includes a specific policy relating to SBCH and the most important policies for determining this appeal are not out of date. The policies referred to in the Council's putative refusal reasons are broadly in line with the aims of the Framework, in so far as they seek to focus development in the most sustainable and accessible parts of the district, and to provide net gains for biodiversity. The different circumstances of these allowed appeals in contrast to the current appeal limits their direct comparability and, consequently, the weight afforded to them. I have, in any case, reached my own conclusions on the proposed development based on the evidence before me.
21. I find the development would, given the limited number of dwellings proposed, make only a limited contribution to the Government's overall objective of significantly boosting the supply of homes. The proposed development is, however, also supported by the Framework requirement for the needs of groups with specific housing requirements to be addressed.¹⁰ As such, given the Council's shortfall in granting SBCH permissions, I give substantial weight to the delivery of 4 SBCH plots and their contribution to meeting the Council's duty under Section 2A of the Act.
22. I have had regard to the concerns of interested parties including in relation to character and appearance, drainage, living conditions and highways impact. The Council did not conclude that these concerns would amount to reasons to justify withholding planning permission. I have been provided with no substantive evidence which would prompt me to disagree with the Council. I am, therefore, satisfied that these matters could be appropriately controlled through the imposition of planning conditions.

⁴ Appeal Ref: APP/H1840/W/19/3241879, Wychavon District Council

⁵ Appeal Ref: APP/J1915/W/20/3261881, East Hertfordshire District Council

⁶ Appeal Ref: APP/V3120/W/20/3261691, Vale of White Horse District Council

⁷ Appeal Ref: APP/V3120/W/20/3265465, Vale of White Horse District Council

⁸ Appeal Ref: APP/Y2620/W/21/3270961, North Norfolk District Council

⁹ Appeal Ref: APP/U2235/W/20/3254230, Maidstone Borough Council

¹⁰ Framework paragraphs 60 & 62

23. Whilst the Act, in combination with national and local policies, seek to support the delivery of SBCH, they do not represent a carte blanche for housing development where other policy conflicts exist. Indeed, there is no compelling evidence before me to demonstrate that the proposed SBCH dwellings need to be located where they would conflict with the Council's development strategy. Overall, I find that the substantial weight given to the delivery of the proposed SBCH dwellings does not outweigh the considerable weight given to the above identified policy conflicts with the EHDP.
24. In light of this overall finding, for the purposes of making my decision, there is no need to examine the dispute between the main parties regarding the appropriate legal mechanism to ensure that the SBCH development is constructed in that manner. The proposed development would conflict with the development plan when read as a whole and there are no other considerations that outweigh that identified conflict.

Conclusion

25. For the reasons given above, the appeal is dismissed.

S D Castle

INSPECTOR