



Appeal Decision

Hearing Held on 24 January 2023

Site visit made on 24 January 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th March 2023

Appeal Ref: APP/V3120/W/22/3295297

Land at Townsend Road, Shrivenham

- 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 CBGR Developments Ltd against the decision of Vale of White Horse District Council.
 - The application Ref P21/V2264/FUL, was dated 30 July 2021.
 - The development proposed is demolition of existing structures and construction of Entry Level Exception Site comprising 26 no. one, two and three bedroom affordable dwellings, vehicular and pedestrian accesses, internal access road, resident and visitor parking, pumping station, landscaping and public open space, boundary treatment and associated works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The scheme was originally for 26 dwellings but the appeal was submitted with a revised layout and housing mix plan which reduced the number to 25. Where amendments are proposed, regard should be had to the 'Wheatcroft'¹ principles - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted would be deprived of that opportunity. As the plan details relatively modest amendments and it has been the subject of consultation as part of the appeal process, I do not consider it prejudicial to anyone's interests if I take it into account. I shall therefore determine the appeal on the basis of the amended plan for 25 dwellings, along with the site location plan, elevations and floor plans as originally submitted.
3. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that had it been in a position to determine the application, it would have refused it for 6 reasons relating to the principle of development, the housing mix, effects on trees, effects on biodiversity, the design and also the absence of a planning obligation.
4. Prior to the hearing, a draft planning obligation made under Section 106 of the Town and Country Planning Act 1990 was submitted. Due to an issue of

1. ¹ Wheatcroft Ltd V SSE [1982]

disagreement between the parties in relation to such, this became a unilateral undertaking (UU) made as a deed that was engrossed and submitted on the 1 February 2023. The UU provides for the entry level affordable rent tenure of the dwellings and a range of other contributions and measures to offset the impacts of the development.

5. Prior to the hearing, the submission of further documentation and continued dialogue between the parties resulted in the agreement of the biodiversity effects of the development and also the housing mix aspect. As such, these matters were agreed within the Statement of Common Ground and did not form part of the hearing discussion.

Main Issues

6. In light of the above, the main issues in the appeal are:
 - whether the development accords with local or national policies that seek to guide the location, scale and nature of housing developments relative to existing settlements;
 - the effects of the proposal on protected trees; and
 - whether the scheme would be adequately designed.

Reasons

Context

7. The appeal site comprises just under a hectare of pasture land, to the south of Townsend Road and to the south-western edge of the village of Shrivenham. Whilst the site is set down modestly from the road level, it is relatively flat and has treed boundaries, with some protected trees dotted within it and on its edges. A public right of way abuts the south-eastern corner of the site.
8. The proposal is to develop 25 dwellings on an 'entry-level' exceptions basis which would be restricted to affordable rent tenures and which would be owned and managed by a registered provider of housing (South Oxfordshire Housing Association (SOHA)). The reference to 'entry-level' housing comes from paragraph 72 of the National Planning Policy Framework (the Framework) (2021), although these provisions are soon to be entirely superseded by the provisions relating to 'First Homes'² partly in acknowledgement of the fact that the entry-level exception site policy has not delivered affordable housing to the extent originally envisaged. However, the parties agree that the transitional arrangements relating to entry-level housing apply in this case and that the scheme is eligible to be considered as such under the terms of the Framework.

Location and nature of development

9. There has been a recent development to the north of Townsend Road in the vicinity of the appeal site which has extended the edge of the settlement on that side. However, the built edge of Shrivenham on the southern side of Townsend Road has, thus far, retained more of its semi-rural, tapered quality and the edge of the built form up to and beyond the dwelling known as 'Acorn Way'. The appeal site forms a small gap between Acorn Way and another detached dwelling, Holkham House, then there is a commercial car garage and an adjacent site which has permission for the construction of 10

² As set out in a Written Ministerial Statement published on 24 May 2021, 'Affordable Homes Update'

dwelling. There was discussion at the hearing about whether the site should be considered within the settlement which is unsurprising given its location, character and the extent of recent developments. In my view, the site can currently be considered to fall outside of the settlement's built limits but there is a certain vulnerability to this aspect which may further change on implementation of the additional consented development on this side of Shrivenham.

10. In policy terms, the development plan for the area includes the Vale of White Horse Local Plan 2031 Part 1 (adopted 2016) (LPP1), the Local Plan Part 2 (adopted 2019) (LPP2) and the Shrivenham Neighbourhood Plan (made 2021) (SNP).
11. Under a combination of Policies CP3 and CP4 of LPP1 and Policies CP04a and CP20a of LPP2, Shrivenham is identified as a larger village within the plan area which is to receive a proportion of growth over the plan period, where allocated either by the Council through the local plans, or by neighbourhood plan allocation. There is no defined settlement boundary for Shrivenham on the accompanying policies map but the policies require that developments must take place on sites adjacent or well related to the existing built up area of the settlement. Unallocated developments are intended to be limited to providing for local needs.
12. SNP Policy H1 says that developments will be supported provided that they are appropriately located in accordance with core Policies CP3 and CP4 of LPP1. Part of the supporting text to the housing policies in the SNP sets out that there is also a need for starter homes and affordable housing to enable the village's young people to remain in Shrivenham. SNP Policy H3 provides a steer for the quality expected of development within the built-up area.
13. Having reached the view that the site cannot presently be defined as being within the built up area of Shrivenham, the development conflicts with the aforementioned policies of LPP1, LPP2 and the SNP.
14. Policy CP25 of LPP1 relates to rural exception sites and indicates that affordable housing schemes will be permitted on sites not otherwise acceptable for housing development, provided that a number of criteria are met, including the avoidance of harm to heritage assets, consistency with flood risk and Green Belt policies and that any affordable units proposed are secured in perpetuity. The most relevant requirements are that the development should (i) meet a clearly established local need identified through a robust housing needs assessment, (ii) is designed to meet the established need of a village (or its neighbouring village) in terms of dwelling numbers, types, sizes and affordability and (iv), be located within or on the edge of a village and not harm the character, visual amenity or setting of settlements and is of a design, layout and appearance that complements and enhances its surrounding natural and built environment.
15. As the proposal is based on an entry-level scheme which would be directed to meeting a Shrivenham-wide affordable housing need, a housing needs assessment has not been specifically undertaken or submitted to fulfil the requirements of Policy CP25 (i). Nor is the scheme specifically intended to meet the needs of the village or any neighbouring village. Though I return to the design, layout and character and appearance effects later in this decision, it is clear that, although the scheme would provide affordable housing, it would not

do so in a manner consistent with the expectations of LPP1 Policy CP25. Additionally, there are no specific policies within the SNP relating to exception schemes.

16. For the above reasons, given its location and the nature of development proposed, the scheme also conflicts with Policy CP25 of LPP1.

Entry-level exceptions considerations

17. The scheme is promoted as an entry-level exceptions scheme. Paragraph 72 of the Framework sets out that entry-level exception sites should deliver housing suitable for first time buyers or those looking to rent their first home unless the need for such homes is already being met within the authority's area. It also states that such sites should offer one or more types of affordable housing, on land adjacent to existing settlements that is not already allocated for housing, of a size proportionate to the settlement, outside of any designated areas, and that they should also comply with any local design policies and standards.
18. At marginally less than 1 hectare, the site fits within the parameters prescribed by the Framework, is not allocated or designated, and is adjacent to a settlement. The scheme would provide a range of 1, 2 and 3 bed homes suitable for those seeking an affordable rent tenure, and through the UU, would prioritise the allocation of the units for occupation by first-time renters for initial and subsequent occupations, albeit for a period of only 6 weeks, after which other applicants would be considered. In the absence of any specific guidance on how precisely to secure entry-level housing, I can only conclude that this aspect of the scheme meets the requirements of Framework paragraph 72.
19. The Council acknowledged that no entry-level exceptions schemes had been delivered in the area in the time that the Framework provisions have been relevant. Its development plan policies do not reflect the entry-level exceptions policy requirements and given the imminent expiration of such, there will not be a need for them to do so. The Council does not count the needs for entry-level affordable houses as distinct from the general need for affordable housing either. Furthermore, it was confirmed that there were no entry-level affordable houses within the housing stock owned and/or managed by SOHA.
20. The South Oxfordshire and Vale of White Horse Housing Delivery Strategy (October 2022) (Delivery Strategy) sets out the need for affordable housing in the district. The Delivery Strategy details a total need of 2,147 applicants, with 40 applicants in exceptional need (band 1), 242 applicants in urgent housing need (band 2), 628 in significant need (band 3), and 1,237 applicants considered to be adequately housed at the present time (band 4). Across all bands of need, the highest demand is for 1 bed units, followed by 2 beds, with proportionately less need for 3 and 4 bed units. Whilst the Council's Affordable Housing Officer indicated that the total need would include some proportion of those in need of intermediate sale or shared ownership housing, the largest component of need was for affordable rented housing.
21. The appellant highlighted that the overall need figure has risen since the response of the Parish Council based on the total need figure as of August 2021 of 1,699 applicants in need, indicating a trend towards a growing demand for affordable housing within the district.

22. The Council offered counter evidence to suggest that it is already providing affordable rent and shared ownership houses to meet the needs of those seeking to rent their first home. A submitted extract from the Council's Annual Monitoring Report (AMR) (2021-22) shows that the delivery of affordable units has exceeded the annual target of 273 units for the last seven years running. It also shows that the majority of affordable units delivered were 1, 2 and 3 bed, with 50% being 2 bed, and with a far higher proportion of dwellings for affordable rent than shared ownership.
23. Further evidence provided by the Parish Council highlights that in August 2021, for those specifically with a connection to the parish of Shrivenham, the need for affordable homes was for 9 dwellings across bands 1 to 3 and 21 dwellings for those in the 'adequately housed' band 4 category. The response also highlights that any remaining need should be more than catered for by the many permitted developments around the village, totalling in excess of 247 affordable dwellings.
24. From the evidence and discussion at the hearing, it is clear that the Council has been proactive in recent years in delivering sufficient development to maintain an adequate five year housing land supply and meet its annual housing target across the district. The high number of smaller affordable units and those of an affordable rent tenure have inevitably helped to meet a high demand for such. It is also evident that the village of Shrivenham has materially expanded and received a high proportion of both market and affordable housing, leaving a relatively modest need for affordable homes for those specifically with a connection to the parish.
25. Drawing all of the above points together, despite the positive effort of the Council, there is still a level of unmet need for affordable housing in the district, which whilst not unique, does not support the Council's position that the need for such homes is being fully met. Absent of any specific means to disaggregate the need more forensically, I can be comfortable that sufficient demand for 25 entry-level dwellings would exist within the high level of overall need in the district.
26. I return to whether the scheme complies with the relevant local design policies and standards as required by Framework paragraph 72 below.

Trees

27. The effects of the proposal on three protected trees have been highlighted as a concern by the Council. The Beech tree, T2, is at the site entrance on Townsend Road. T35 is a Copper Beech tree which is positioned within the front central area of the site and T33 is a Walnut tree which is to the western boundary side of the site. The appellant has submitted a '*Tree Constraints, Impact Assessment and Protection Method Statement*'³ (Tree Statement) which considers the likely effects in more detail.
28. The submitted plans appear to show an incursion into the root protection area (RPA) of T2 to provide a footway to the eastern side of the access to facilitate crossing over to the north side of Townsend Road. The absence of specific topographical data relating to the levels within the RPA has prevented a thorough assessment of the likely effects, with the impacts assessed on a

³ BJ Unwin Forestry Consultancy, issued April 2019 and revised in June 2021, March 2022 and Jan 2023

worst-case scenario. During the site visit it became apparent that the extent of root spread beneath the road is likely to be far lower than any works to provide the footpath. On the basis of this finding, I have greater confidence that the measures outlined in the Tree Statement could ensure the protection and longevity of T2.

29. T35 would be set within an area of open space. Due to the positioning of the access road, there would be a minor incursion to the outer edges of the RPA which measures around 301 sqm. Whilst the incursion is measured to extend to around 20sqm, this appears to be based, in part, on the fixed position of a refuse storage area which, if sited there, would relate poorly to the houses it would serve and undermine the quality of the space. A condition may be able to address this minor design shortcoming.
30. T22 would be positioned within a modest area of green space with the access road running to the eastern side. The RPA area has been measured at around 221 sqm and the incursion to provide the road, footway and a drainage swale would extend to around 40 sqm of it. The drainage swale itself being a relatively deep excavation of around 900mm. The Tree Statement suggests for the drainage swale to be moved tight to the edge of the footway, rather than gently curving and further within the RPA area as shown in the submitted drainage plans, but the options for avoiding harm appear more restricted owing to the more restricted space. Having regard to the extent of the works within the RPA, despite the measures outlined in the Tree Statement and the ability for the tree to root in other directions, I consider that there would be harm that would undermine the longevity of T22.
31. In view of the above, there would be a degree of conflict with Local Plan Policies CP37 and CP44 which seek to ensure that key features that contribute to the nature and quality of the district's landscape will be protected from harmful development and to ensure that new development incorporates high quality Green Infrastructure and landscaping to enhance biodiversity and meet recreational needs.

Design

32. The scheme would comprise 8 pairs of semi-detached dwellings and a small number of detached dwellings and apartment buildings. There would be two linear arrangements of dwellings backing onto the northern and southern site boundaries and an east-west facing terrace of dwellings situated between them which would front onto the central open space. The access road would loop around the central space and behind the centrally-positioned dwellings. The scheme would be relatively high density at 25 dwellings per hectare.
33. In terms of the layout, the concern about the dwellings to the north backing onto Townsend Road would ordinarily be understandable from an urban design perspective, but in this instance, the dwellings would be set down from the road level and behind an existing established tall belt of trees lining Townsend Road. Given these factors and the precedent for existing dwellings to the north also backing onto Townsend Road, this would be logical and would allow the dwellings to face into the internal estate road. Furthermore, the retention of the trees and hedges on and around the site on Townsend Road would contain the visual effects of this arrangement.

34. The simple linearity of the scheme and focal area of green space containing T35 would be positive aspects. Otherwise, there would also be less attractive aspects of the scheme's layout, such as the road running to the rear of plots 9 – 14 which would be poorly-designed and dominated by garages and parking. Another shortcoming would be the generally cramped quality of the scheme. Policy CP23 of the LPP1 states that a minimum density of 30 dwellings per hectare (dph) is required "*unless specific local circumstances indicate that this would have an adverse effect on the character of the area, highway safety or the amenity of neighbours*". Whilst 25dph is proposed in this instance and would fall short of the desired 30dph, the layout would still appear efficient in the extreme, with the dwellings and landscaping appearing cramped when compared to the slightly gentler density of other neighbouring development and adjoining detached dwellings set in large plots.
35. In terms of open space provision, Policy DP33 of LPP2 requires a 15% proportion of the site area to be provided as public open space, which in this case would be an area of 1,500 sqm. Based on polygons measured by the Appellant of the central and western areas of open space, only 1,406 sqm would be provided. Whilst the open space to the rear of the flatted block at Plots 1 – 4 would not be private, the way it would be positioned behind the building and set behind the parking serving those flats would not invite people to use it as part of the public realm. As such, this approximate 470 sqm area has been excluded from the calculations. Additionally, further unspecified deductions would need to be made from the total of 1,406 sqm for drainage swales and structural planting which would affect the useability of the spaces, particularly that on the western side of the site which would appear more as an undevelopable area and highway verge rather than deliberate open space. As such, there would be a quantitative and qualitative deficiency of public open space when considered in the context of LPP2 Policy DP33.
36. In terms of private garden sizes and useability, in most cases, would be broadly acceptable relative to the size of dwelling they would serve. However, Policy DP33 does not allow for aggregated oversized gardens to offset any shortfall in open space as was suggested by the appellant.
37. The dwellings themselves would be of a relatively uninspiring suburban character and would be constructed from a palette of stone cladding, rendered blockwork, concrete roof tiles and composite cladding. There would be a range of common design features across the scheme, including stone quoins, simple canopy porches over the front doors and gable features. However, despite some differentiation in the orientation of the dwellings, their materiality and colour palette, there would be a distinctly repetitious quality to the development. The homogeneity across the dwellings, combined with the high density of the scheme resulting in a cramped appearance, would result in a mediocre quality of design overall.
38. Whilst screening a development is not a means of mitigating any design shortcomings, the suggested landscape buffer to the south would have softened the effects of the development rather than leave an abrupt transition between the rear gardens and adjoining retained paddock area to the south. However, the buffer proposed would fall outside of the appeal site defined by the red line and, in light of this, could not be secured by condition.

39. Considered in the round, the proposal would not be adequately designed having regard to Policy D1 of the SNP, Policies CP37 and CP44 of LPP1 and Policy DP33 of LPP2. Taken together, these Policies collectively seek to ensure new development demonstrates high quality design, respects the scale and appearance of the existing built environment and creates a distinctive sense of place through high quality townscape and landscaping.

Other Matters

40. It was suggested that the 'net zero carbon' standards to which the dwellings would be built under the terms of the UU is an aspect that commands positive weight in favour of the scheme. The Council does not have a strict policy basis for requiring such standards, but it nonetheless attracts limited weight.
41. The submitted UU would secure the affordable rent tenure of all of the dwellings in perpetuity, as well as the following measures and contributions:
- a GP Surgery contribution of £13,625 towards improvements at Shrivenham GP Surgery;
 - a public art contribution of £7,956 towards the provision of public art in accordance with a public art statement;
 - a Street naming contribution of £536;
 - a waste and recycling contribution £4,650 towards the provision of waste and recycling bins within the development;
 - aspects concerning the transfer, landscaping, management and maintenance of the open space and sustainable urban drainage system (SUDS) within the development, including the provision of an area of play of at least 100 sqm;
 - an education contribution of £182,518 towards the expansion of primary and nursery education facilities within the area;
 - a public transport contribution of £8,904 towards the provision of a real time information display unit at the nearest bus shelter and additional £26,275 towards the improvement of local public transport services;
 - a contribution of £103,968 towards expansion of secondary education capacity;
 - details of the requirements to provide highway works through a separate Section 278 Agreement under the Highways Act 1980, to provide the access and an uncontrolled pedestrian crossing over Townsend Road.
42. Other than the affordable housing which would be a true benefit of the scheme, the above measures, whilst comprehensive, would only mitigate the effects of the development itself by ensuring that the new and existing infrastructure were capable of accommodating the demand from new residents to the area.

Planning Balance

43. I have identified harms arising from the location, nature, and overall design of the scheme which bring it into conflict with the development plan when considered as a whole.
44. Returning to Framework paragraph 72, it sets out that sites for entry-level housing should be on land which is not already allocated for housing and that schemes should: (a) comprise of entry-level homes that offer one or more types of affordable housing and, (b), be adjacent to existing settlements,

proportionate in size to them, not compromise the protection given to areas or assets of particular importance, and comply with any local design policies and standards.

45. Whilst I have found that the site is not already allocated for housing, would be of the right scale and location and would offer the right type of housing to individuals that are in need of such, I have identified conflicts with local design policies and standards, in respect of its overall design, effects on trees and open space in particular. Accordingly, the scheme does not wholly accord with Framework paragraph 72.
46. Given the identified conflicts, Paragraph 72 of the Framework attracts reduced weight and consequently, does not form a material consideration that itself indicates that planning permission should be granted other than in accordance with the development plan. The benefits of the scheme would result from the provision of 25 net zero carbon, entry-level affordable dwellings in the context of the general affordable housing need within the district. There would also be a boost to the local economy throughout the construction phase and beyond, with future residents creating more demand for goods and services from local businesses. However, the totality of these benefits is also incapable of outweighing the identified harms.

Conclusion

47. For the foregoing reasons and taking account of all other matters raised, the appeal is dismissed and planning permission is refused.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Troy Healy LLB MA MRTPI	Planning Consultant
Mr Simon Gibson	CBGR Developments Ltd
Mr Adam Reed	CBGR Developments Ltd
Mr William Stoneham	CBGR Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ms Katherine Pearce MRTPI	Senior Planning Officer
Ms Katherine Canavan	Senior Planning Officer
Mr Joe Smith	Senior Tree Officer
Mr Jake Bassett	Senior Urban Designer
Mr Stephen May	Affordable Housing Team Leader

INTERESTED PARTIES:

Councillor Elaine Ware	Watchfield and Shrivenham Ward
Councillor Julia Jones	Shrivenham Parish Council
Councillor Richard Bartle	Shrivenham Parish Council
Mr Martin Chaston	Local Resident

DOCUMENTS

Document 1	South Oxfordshire and Vale of White Horse - Housing Delivery Strategy 2022 - 2024
Document 2	Agreed Statement of Common Ground
Document 3	Agreed list of draft planning conditions
Document 4	Updated Biodiversity Net Gain metric document and related emails
Document 5	Public Open Space calculation plans
Document 6	Extract from Design Guide SPD on Net Zero standards