



Appeal Decision

Site visit made on 21 February 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/C1760/W/22/3303109

Land to the east of Moorfield, Peach Grove, Palestine SP11 7EP

- 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 Mr and Mrs Dinnell against the decision of Test Valley Borough Council.
 - The application Ref 22/00161/OUTN, dated 21 January 2022, was refused by notice dated 5 April 2022.
 - The development proposed is erection of a self-build residential dwelling and associated hard & soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought for one new dwelling. All matters have been reserved other than the access. Illustrative plans have been submitted with this outline proposal and I have considered them on this basis in this appeal.
3. The appellants' appeal submission includes a plan that did not form part of the original application. I have considered this under the principles established by the Courts in *Wheatcroft*.¹ The plan is limited to showing visibility splays at the access. As this seeks to clarify a matter considered as part of the original proposal, and does not result in modifications to that proposal, I find that considering this plan in this appeal would not prejudice interested parties.

Main Issues

4. The main issues are:
 - Whether the appeal site is a suitable location for residential development, having regard for the spatial strategy of the development plan;
 - The effect of the proposal on the integrity of protected habitats;
 - The effect of the proposal on the character and appearance of the area; and
 - Whether the proposal would provide a suitable access having regard to highway safety.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Reasons

Suitable Location

5. Policy COM2 of the Test Valley Revised Local Plan (Local Plan) sets out the settlement hierarchy. The Policy permits specified development within the settlement boundaries provided that it is appropriate to the other policies of the Local Plan. Development outside the settlement boundaries will only be permitted if it is appropriate in the countryside as set out in the Local Plan, or it is essential to be located in the countryside. In this regard the Policy provides a clear spatial strategy that directs development towards settlements while providing flexibility to promote sustainable development in rural areas.
6. The appeal site is located at the edge of the rural settlement of Palestine, and the main parties agree it is outside the settlement boundary of this rural village. The appellants also accept that the proposal would not satisfy the criteria set out in the Policy for development outside the settlement boundary, and in this respect the proposal would conflict with this Policy. I find nothing before me to dispute this position.
7. The appellants assert that the site is suitable given its proximity to the settlement boundary and other existing dwellings, and that one dwelling would not undermine the spatial strategy of the Local Plan. They highlight that there should be sufficient flexibility taking account of the differences between urban and rural areas. I also note the guidance in the Braintree Judgment on this matter.
8. While the appeal site is not isolated, in this rural location it is remote from a wide range of services. Also, it is not close to either a major centre or a key service centre as identified in the settlement hierarchy listed in Table 7 of Policy COM2.
9. The supporting text of Policy COM2 recognises that some additional development in rural villages may be appropriate and includes criteria for development outside of settlement boundaries. This is reflective of guidance set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) which seeks to maintain the vitality of rural settlements. I find that the Policy does not appear overly restrictive and is consistent with national planning policy in respect of rural housing.
10. Taking account of these factors and given this clear yet flexible local policy context and its intent, it seems to me, that a site should not be deemed suitable just because it is close to a rural settlement boundary. Moreover, in the same way one new dwelling can be significant to the supply of homes in an area, allowing one dwelling in an unsuitable location can contribute to undermining a spatial strategy, and this would be harmful.
11. The appellant states that there are a number of dwellings in Palestine outside the settlement boundary. However, with limited information presented I am unable to consider these in detail. Consequently, I attach limited weight to this matter.
12. Therefore, I find that the appeal site would not be a suitable location for residential development, having regard for the spatial strategy of the development plan. It would be contrary to Policy COM2 of the Local Plan in respect of this issue.

Protected Habitats

13. The appeal site is within the catchment area of the Solent Maritime Special Area of Conservation, Solent and Southampton Water Special Protection Area (SPA), Chichester and Langstone Harbours, and Portsmouth Harbour SPAs. The Solent and its inlets provide unique and complex marine and estuarine habitats which include the estuary, mud flats and sand banks. These habitats support flora, which includes specialist plant species and varied fauna. Chichester Harbour and Portsmouth Harbour SPAs form one of the most important sites for wildlife in the UK and is internationally important for migratory birds.
14. It has been found that the protected habitats identified above are in unfavourable condition due to an exceedance in nitrogen. Natural England (NE) has reviewed its advice on the impact of nutrients on habitats which are already in unfavourable condition². It has identified that additional development that would lead to a net increase in population served by waste water systems, including new homes, would have a likely significant adverse effect on the integrity of the habitats.
15. Given the unfavourable condition of the habitats, a single new dwelling, if it was to result in a net increase in nutrients being released in the catchment area, is likely to have an adverse impact on the habitats. Consequently, an Appropriate Assessment³ is required in this case. The purpose of the assessment is to ascertain whether or not the proposal would adversely affect the integrity of the area.
16. This proposal would result in a new home in the catchment area and therefore likely significant adverse effect on the integrity of the protected areas cannot be ruled out. NE has advised that in order to mitigate such an adverse effect, it needs to be demonstrated that a development would be neutral in terms of the nitrogen it may produce.
17. The appellants confirm that there is no potential for on-site mitigation. Although the appellants indicate that the Council could provide nutrient credits to ensure that the proposal is nutrient neutral, the Council states that there are limited credits available. Moreover, the appellants have not provided calculations to confirm the credits that would be required. Nor have they submitted any mechanism which would ensure that their proposed mitigation would be secured or effective. On this basis, there is no certainty that the development would not have an adverse impact on the integrity of the protected areas.
18. In light of the above, I find that the proposal would have a significant adverse effect on the integrity of protected habitats. In this regard it would be contrary to Policies E5 and E8 of the Local Plan. These collectively require, amongst other matters, that development that is likely to result in a significant effect, either alone or in combination, on an international or European nature conservation designation will need to satisfy the requirements of the Habitat Regulations.

² Natural England Letter to Councils and the Planning Inspectorate dated 16 March 2022

³ Ref: Conservation of Habitats and Species Regulations 2017

Character and Appearance

19. The appeal site is a paddock at the end of a lane. There are existing dwellings at its north and western boundaries. To the east is a field which is bounded by a mature hedge. The lane which fronts the appeal site is also bounded by a high mature hedge and trees, which I saw had an enclosing effect on Peach Grove. With these hedges and the relatively flat topography of the site, the outlook in the immediate vicinity of the appeal site is largely confined to the paddock and field to its east, with views of the wider countryside in this area very limited. In this regard, I observed that the appeal site does not significantly contribute to the open landscape of this part of the Thruxton and Danebury Chalk Downland landscape character area.
20. The settlement of Palestine comprises fragmented groups of properties, interspersed by countryside, and this provides its distinctly rural character. Properties, near the appeal site, are generally characterised by detached, one to two storey dwellings in spacious plots.
21. The illustrative plans show that the new dwelling would have a similar footprint of neighbouring dwellings. Its plot layout and size would also be similar to these existing properties and in this regard, it would respect the prevailing pattern and character of development along Peach Grove.
22. The proposal would result in a slight encroachment of development into a largely undeveloped space, but this would affect a relatively small paddock. Although this proposal would extend the pattern of development on Peach Grove, it would not extend the built form beyond the building line of existing dwellings to the north of the appeal site. The development would also not extend beyond the existing head of this no-through road private lane.
23. In light of the factors outlined above, the new dwelling would be largely seen against the existing built form in this part of the settlement. There would be a small visual change, and this would be observable from the footpath on Peach Grove in the immediate vicinity of the site. However, when viewed from the wider footpath and from Orange Grove to the north, the new dwelling would be largely seen in the context of existing surrounding dwellings and would not significantly interrupt views of the surrounding countryside. For this reason, I find that the new built form at the appeal site would visually assimilate with existing development, without harmfully eroding the important transition from the village to agricultural fields.
24. I have had regard to the appeal decision relating to a site on Salisbury Road⁴. However, that site, although set behind dwellings on the main road, is principally surrounded by agricultural buildings and benefits from relatively open and wide views of the countryside. The visual context of that site is therefore distinctly different to the relatively enclosed character surrounding the appeal site. Therefore, this example has not altered my findings in respect to this matter.
25. For the reasons outlined, I find that the proposal would not harm the character and appearance of the area. In this regard it would not conflict with Policies E1 and E2 of the Local Plan. These collectively require development, amongst other matters, should integrate, respect, and complement the character of the

⁴ Ref: APP/C1760/A/01/1073766

area, and ensure that it does not have a detrimental impact on the appearance of the immediate area and the landscape character of the area within which it is located.

Highway Safety

26. The Council, in its reasons for refusal state that there is insufficient information to assess whether safe access would be provided at the appeal site. The appellants, through this appeal, has supplied additional information in respect to this matter. The Council has consulted the Highway Authority and it is satisfied that a safe access could be provided, and this could be secured by condition.
27. I observed that Peach Grove is a straight lane with access on to a long, straight stretch of carriageway. This affords good visibility for road users in this area. I find nothing before me that would lead me to dispute the Council and Highway Authority's conclusion on this matter.
28. I therefore find that the proposal would provide a suitable access having regard to highway safety. In this regard it would be consistent with Policy T1 of the Local Plan which seeks to ensure, amongst other matters, the access and highway network is safe.

Other Matters

29. The proposal would result in one family home coming to the market, and this would make a small contribution to the Government's objective of significantly boosting the supply of homes. It would add to the mix of dwellings in the local area. Future occupants of the dwelling would likely support local services, and this would be a limited social and economic benefit to the area given the scale of the development. There would also be a small economic benefit during the construction phase of the development and as a small site it could be built-out relatively quickly. These matters weigh in favour of the proposal.
30. The appellant indicates that the proposal would result in a self-build plot. The Government is actively seeking to increase the supply of self-build housing, and this is reflected in the Framework. The appellants contend that the Council is failing in its statutory duty to provide sufficient permissions for self-build housing.
31. The original application indicates that it would be a self-build plot, and this is stated in the description of the proposal. I understand that the appellants are also registered on the statutory register. However, I am not satisfied that imposing a condition could ensure that this would be a self-build plot, as it is unlikely to satisfy the test for planning conditions. Moreover, despite indicating they would enter into a legal agreement, one has not been submitted as part of this appeal. Therefore, even if I was to accept the appellants' intentions on this matter, there is no mechanism that would provide certainty that this proposal would be a self-build plot. This matter does not weigh in favour of the proposal for this reason.
32. My attention has been drawn to several appeal decisions where significant weight was attached to securing self-build plots. However, in all cases legal agreements were provided to ensure that the development meet the self-build definition. This would not be the case with this proposal.

33. The Council states it can demonstrate a 5 year housing land supply, and I find no evidence before me that would lead me to question this. Therefore, the provisions set out in Paragraph 11 of the Framework are not relevant in this case. Even if this was not the case, Paragraph 182 of the Framework clarifies that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on habitats sites, unless an appropriate assessment has concluded that the plan or project would not adversely affect the integrity of the habitats site. I have found that this would not be so with this proposal for the reasons set out above. Therefore, the tilted balance is not applicable in this case.
34. The appellant asserts that the development plan policies relevant to this proposal are out of date, and my attention has been drawn to the Newman and Wavendon Judgments in respect of this matter.
35. In considering this matter, I have taken account of the appeal decision for the site at Houghton for eight self-build plots.⁵ In that appeal the appellant advanced the case that that proposal was essential in the countryside and would therefore satisfy limb (b) of Policy COM2, as the Council had a shortfall of self-build plots. The Inspector concluded that the undersupply at that time did not suggest that the Local Plan policies were out of date, nor did the evidence in that case demonstrate that this undersupply indicated that it was essential to locate self-build plots in the countryside, having regard to Policy COM2. He also highlighted that the evidence in that case did not demonstrate that the undersupply of such plots could not be dealt with by identified housing allocations in the Borough, in line with guidance set out in PPG on this matter. As such he found conflict with Policy COM2 in that case.
36. As outlined previously I find that Policy COM2 is generally consistent with the Framework in respect of rural housing. Moreover, I find no compelling evidence in this case to question the Inspector's conclusion in the Houghton decision, with regard to the undersupply of self-build plots not necessarily indicating that relevant policies are out of date. In any event, if this was found to be so, it is not certain that this proposal would contribute to the provision of sufficient self-build plots in the Borough as previously stated. I therefore consider the policies most important for determining the appeal are not out of date, and the tilted balance is not applicable in this case either.
37. The Inspector's reasoning in respect to the weight that should be attached to new housing in appeal reference 3206947 is noted. But that proposal related to nine dwellings, and the contribution to the supply of housing was substantially greater than would be the case in this proposal. That proposal related to development on previously developed land. Furthermore, the question as to whether the site was in a suitable location in terms of the spatial strategy in that area was not in dispute in that case. The conclusion of that appeal holds limited weight in this appeal for these reasons.
38. The appellants have drawn my attention to three appeal decisions⁶ in this Borough where permission was allowed for development outside of the settlement boundary. The Inspectors identified conflict with Policy COM2 in all three cases. However, in two of these cases this was outweighed by the benefit of securing affordable housing. The remaining case related to five dwellings and

⁵ Ref: APP/C1760/W/22/3293740

⁶ Refs: APP/C1760/W/17/3170081, APP/C1760/W/17/3179932 and APP/C1760/W/17/319235

included contributions to a nature reserve. Moreover, all three sites were located close to a main centre which offers a range of services. The factors in those cases are therefore distinctly different to this proposal in these regards. Those developments are not directly comparable to this appeal and have not altered my findings for these reasons.

39. The appellants have identified several other appeal decisions where conflict with the spatial strategy of the development plan was at issue or development was proposed in rural locations. However, all those decisions relate to proposals in different boroughs with a different local planning context. They are not relevant to this appeal for this reason.
40. Planning law requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicated otherwise. The evidence presented in this case, including the limited benefits identified above, do not indicate that there are material considerations which would outweigh the harm of permitting a dwelling in an unsuitable location and the conflict with the Local Plan in respect of this matter. I therefore find that the considerations in this case would not justify approving a development which is contrary to the development plan when read as a whole.

Conclusion

41. For the reasons stated above and having regard to the development plan and relevant material considerations, including the Framework, the appeal is dismissed.

A J Sutton

INSPECTOR