



Appeal Decision

Site visit made on 15 November 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Appeal Ref: APP/Y3940/W/22/3293096

Land at Pavenhill, Purton, Swindon SN5 4DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
- The appeal is made by Hills Homes Developments Ltd against the decision of Wiltshire Council.
- The application Ref 20/11382/FUL, dated 16 December 2020, was refused by notice dated 4 November 2021.
- The development proposed is demolition of 1 existing dwelling and erection of 25 market and affordable dwellings, with associated access works, car parking, public open space and landscaping.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal, new issues arose in relation to the effects of increased recreational activity, associated with major residential schemes, upon ecological interests at the North Meadow and Clattinger Farm Special Area of Conservation (SAC).
3. Although not forming part of the Council's reasons for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of the SAC in accordance with the Habitats Directive¹. For this reason, it is necessary to consider this matter as a main issue.
4. To inform my assessment of the appeal in relation to this main issue the Council has provided details of the relevant designated site together with other information that support its concerns. I have also sought comments from the appellant and Natural England (NE) (the government's statutory nature conservation adviser) on these matters, and where provided considered those as part of my assessment.
5. Council concerns, relating to on-site biodiversity effects, which were not raised at the application stage, were submitted following the appeal's submission. The appellant has been given the opportunity to comment on these.
6. A signed and dated legal agreement made under Section 106 of the Town and Country Planning Act, as amended (S.106 agreement), accompanies the appeal. This seeks to overcome the Council's second reason for refusal, concerning the absence of a mechanism to secure the provision of offsite financial contributions to deliver improvements to mitigate the pressures on education services, open space and play provision, waste and recycling facilities and the delivery of affordable

¹ Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

housing for the area. The contents of the S.106 agreement are noted and will form part of my assessment.

Main Issues

7. The main issues in this appeal are:

- whether the site is a suitable location for the proposed development, having regard to local and national policies;
- whether the proposal includes adequate provision for the necessary infrastructure directly required by the proposed development; and
- the effect of the proposed development on the integrity of the North Meadow and Clattinger Farm Special Area of Conservation (SAC).

Reasons

Location

8. Located at the west end of Purton the appeal site comprises a large area of pastureland enclosed in most directions by mature landscaping. It is outside the settlement's built-up edge. The site's green, undeveloped form and mature boundary landscaping give it a rural appearance. The surrounding hinterland has a rural character consisting of fields and farmsteads. However, the site is enclosed by urban development on three of its sides, while its long northern boundary abuts an area of allotments with associated sheds, green houses, and other paraphernalia.
9. The site's contiguous relationship with residential plots within the village and broadly urban backdrop ensures, that despite being outside the village, it is cohesive and well connected to the built edge.
10. The proposed 25 dwelling units would comprise a mix of market and affordable dwellings laid out either side of a new access road through the site.
11. Core Policy 1 of the Wiltshire Core Strategy (2015) (Core Strategy) sets out the settlement strategy for the area, identifying a hierarchy of settlements to which development will be directed with the aim of achieving sustainable development. Purton is identified as a 'Large Village', defined as settlements with a limited range of employment, services and facilities and where development will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities.
12. Development at large villages, according to Paragraph 4.15 of the Core Strategy will predominantly take the form of small housing schemes of less than 10 dwellings. However, paragraph 4.15 does not form part of any Core Strategy policy and the use of the word "predominantly" indicates that this is not a firm requirement. As such, the failure of the development to comply with the terms of paragraph 4.15 is afforded limited weight.
13. Core Policy 2 of the Core Strategy provides a more detailed delivery strategy, which does not permit development outside limits of development except in defined circumstances. None of these apply in this case and so in these regards the development would be contrary to Core Policy 2.
14. Core Policy 19 details the amount of development expected in each community area. The site falls within the Royal Wootton Bassett and Cricklade Community Area, within which around 385 houses are expected to be delivered outside of

Royal Wootton Bassett Town. There is no dispute that this number has been delivered or that the appeal proposal conflicts with those policies.

15. Additionally, the proposal would not accord with Policy H4 of the North Wiltshire Local Plan 2001 (Local Plan) which allows only replacement dwellings or residences required in connection with a rural enterprise on sites outside settlements.
16. At a local level the Purton Neighbourhood Plan (NP) sets the vision, objectives and strategic aims for land use and development in the area. It is consistent with the Core Strategy policies insofar as allocating sites for housing development within the defined settlement of Purton. Accordingly, the proposal's location would be contrary with those aims.
17. The Framework advises that housing in rural area should be located where it will enhance or maintain the vitality of rural communities. Purton has a broad range of services and facilities that include primary and secondary schools, pubs, shops, a pharmacy, several sport facilities, a community hall, and hot food establishments. These would be a short walk or cycle from the appeal site and therefore encourage sustainable modes of transport other than the motor vehicle. Whilst there is an absence of pavements along sections of Pavenhill, alternative safe pedestrian routes are nevertheless available to future residents to access those services.
18. The site's location outside of the village is acknowledged, however, it adjoins the boundary so that the difference in accessibility with other parts of the settlement would, in my view, be negligible.
19. Accordingly, the scale of development proposed would lead to further use and support of those facilities, in the ways envisaged by the Framework. They could also be accessed by sustainable transport modes.
20. Although the use of services and facilities in Purton would be likely, it does not for instance have many employment uses or larger retail and health facilities, such as those in nearby Swindon. Public transport is available from Purton, but access to those other services would to a large degree be dependent on car journeys, a transport mode somewhat discouraged by the Core Strategy and the Framework.
21. Based on the above, the proposal's location outside the settlement boundary, its scale being larger than that envisaged by the Core Strategy and the likely increase in some outward travelling to access services, would be contrary to Core Policies, 1, 2 and 19 of the Core Strategy, Policy H4 of the Local Plan and the provisions of the NP.
22. The harm caused in these respects is diminished by the scheme's accordance with the Framework's provisions on the location of rural housing and the potential for residents to walk to village facilities and use public transport links nearby.
23. I will consider the weight of these development plan conflicts and the scheme's alignment with parts of the Framework further in the planning balance.

Infrastructure

24. The completed S.106 agreement that accompanied the appeal includes a range of provisions. These cover financial contributions towards early years education and waste and recycling facilities, the provision of on-site open space, play facilities, landscaping and footpaths, as well as maintenance agreements and a mix of affordable housing units across the site.

25. The Council has not objected to the terms of the S106 agreement whilst I have found its obligations to be acceptable insofar as being able to secure the necessary contributions and facilities.
26. Overall, I find the obligations included in the S106 agreement are directly related to the requirements of development plan policies and are necessary, and fairly and reasonably related in scale and kind to the proposed scheme. I conclude that the S106 agreement provides an adequate mechanism for provision of the above obligations, thus addresses the Council's second reason for refusal. As such it complies with Core Policies 3, 43, 45 and 52 of the Core Strategy and provisions of the Framework in requiring important development contributions and planning obligations to address unacceptable impacts.

SAC

27. The SAC comprises lowland hay meadows in the Thames Valley. It is also a Site of Special Scientific Interest (SSSI). In terms of the designation's qualifying features, it represents an exceptional survival of the traditional pattern of management of lowland hay meadows. Furthermore, north meadow is known for a rich diversity of meadow plants, including the presence of around 95% of the UK's surviving population of the nationally scarce Snake's head fritillary *Fritillaria meleagris*.
28. NE, in its advisory capacity, has formally commented on this scheme. NE have indicated that increases in recreational impacts from the proposal would have likely significant effects on the integrity of the SAC, through increased visitor pressure and trampling effects. Human activity of this nature could harm the condition of the designation's qualifying features. These risks have been identified as occurring within an interim Zone of Influence (ZoI) of 8km from the SAC.
29. The appeal site according to the Council is situated 6.71km south west of the SAC, while a map accompanying the NE's comments shows that the site lies within the 8km ZoI. I note that NE and the Council will review the ZoI boundary using the results from recent visitor surveys. No date, however, has been given for the publication of those findings, and until such time I will assume that the 8km distance remains in place.
30. The appellant questions the rationale for the ZoI as journeys to the SAC by future residents would not follow a straight line, but would instead be made along local routes. In this respect they have calculated, through a route planner, a travelling distance of 9km. Accordingly the appellant disputes whether the appeal site is within the ZoI and states that on the balance of probability, future residents would be unlikely to frequent the SAC, instead favouring closer recreational sites, such as Lydiard Park, some 6.5km away.
31. NE have advised that the ZoI is drawn as a straight line from the boundary of the SAC rather than an as travelled (driven/walked) distance. This is because the standard approach for a ZoI is based on the central points of visitors post codes rather than actual locations and routes travelled, it takes into account that routes used can change due to a number of factors.
32. Despite this rationale, NE state that the ZoI is currently precautionary but will be updated following the results of the visitor surveys. Notwithstanding that position, I note that the ZoI has been consistently applied in other cases (Siddington House appeal and Land at Stones farm planning application). Moreover, I have not been made aware that it has been questioned in determining those other decisions in the absence of a review.

33. My assessment of the map contained in NE's comments shows Purton being due south of the habitat site, and I do not find reason to dispute that the appeal site is within 8km. The appellant's assertion that the appeal site is outside of the ZoI is based on a route future residents could likely take along local roads. I do not dispute the distance indicated. However, it is not clear what mode of transport that route has been planned for and whether there would be shorter more direct routes from the appeal site to the SAC that could be undertaken by a range of transport modes.
34. Against this background, I cannot be certain of the exact distance the appeal site maintains from the SAC, while the underlying principle of how distances are measured is currently under review. Nonetheless based on the submitted evidence the distance is somewhere in the region of 6.71km and 9km. Irrespective of the method used for assessing the site's proximity to the SAC, along with the pending review of the ZoI, I must adopt a precautionary approach as prescribed by the courts and embedded within the Habitats Directive.
35. On this basis, visits by future residents could take place and even if those would be small in number, given the amount of houses proposed, an assessment would need to take account of the proposed development in combination with any other residential development within the ZoI of the SAC. Whilst I accept that the development's effect would be limited, taking account of the rarity of the qualifying features concerned and in combination with other plans or projects, including other housing developments, the effects could be significant. There is, therefore, a risk of significant effects on the conservation objectives of the SAC, and I have no objective evidence to the contrary.
36. There is currently no Council mitigation strategy in place advising on how significant effects on the SAC could be reduced or removed. Furthermore, no suggested measures have been proposed by the appellant. Therefore, taking a precautionary approach, and notwithstanding the absence of a Council mitigation strategy on this matter, I must proceed on the basis that the development would lead to adverse harm upon the SAC.
37. My findings have given significant weight to the advice of NE as the statutory conservation adviser as well as documents and communications received from them and presented in the evidence.
38. The appellant's suggestion to hold the appeal in abeyance pending the review of the ZoI is noted. However, no specific date has been given in relation to that work. Even if an imminent date was given that would allow greater scrutiny of a revised ZoI there are no details of when a mitigation strategy would be published. Therefore, holding the appeal in abeyance without the certainty of knowing when that information becomes available would not be practicable.
39. Based on my findings, I cannot conclude that the proposed development, in combination with other developments, would not have an adverse effect on the integrity of the SAC. It would, therefore, be contrary to Core Policy 50 of the Core Strategy and the Habitats Directive. Together, these seek to safeguard internationally designated wildlife sites from development that could cause a significant effect that would adversely affect their integrity. Unless an appropriate assessment were to conclude that mitigation would outweigh any effect on that integrity, the development would conflict with that policy.

Other Matters

40. During the course of the appeal the appellant was given the opportunity to address the Council's site-specific biodiversity concerns. These according to the Council

have largely been addressed, while suitably worded conditions could secure the implementation of mitigatory actions. The impact of the proposal upon foraging routes around the site could be addressed through measures to control lighting within the site.

41. I am satisfied that local concerns relating to vehicle and pedestrian safety would be addressed through the proposed highway improvement and traffic calming measures in the vicinity of the site. Moreover, I note that the Council's transportation advisers have raised no objection to the scheme.
42. Late concerns submitted by the Council indicate that the site is at high risk from groundwater flooding. According to the Council a sequential test in accordance with the revised Framework should be prepared. However, as one of the main issues provide clear reasons for dismissing the appeal, I have not considered the implications of the development on groundwater flooding since my findings on that issue would not change the appeal outcome.
43. The Council has raised no specific objections in relation to residential amenity and local character and I have no reason to dispute their findings having viewed the scheme's layout, appearance and separation distances from existing dwellings.
44. A previous appeal² at the site for a similar number of dwellings was dismissed. Interested parties consider that circumstances have not materially changed in respect of this appeal. However, unlike this case, the Council was able to demonstrate a deliverable 5 year housing land supply at the time of that earlier decision. Therefore, I am unable to draw parallels with that scheme and I give limited weight to the matter as a comparison.
45. The Council has referred to several recent appeal decisions where housing schemes were dismissed, despite the prevailing deficit in the 5-year housing land supply. However, none of those schemes directly related to Purton, while the shortfall in supply varied in each case. Therefore, the appeal can be distinguished from the others referred to.

Planning Balance

Housing land supply

46. The Council's latest figures³ indicate 4.72 years of deliverable housing land supply. This is below the minimum 5 years which the Framework requires local planning authorities to demonstrate. At sub-regional level the appeal site falls within Wiltshire's North and West Housing Market Area (NWHMA). In this respect the shortfall in supply is around 4.16 years or in numeric terms a deficit of 537 dwelling units. I consider the scale of the under-supply to be significant.
47. Based on these most recent figures the Council is currently unable to demonstrate a deliverable 5 year housing land supply. In such circumstances, Paragraph 11 (d)(ii) of the Framework states that relevant development plan policies which are most important for determining the application are out-of-date. Planning permission should be granted unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against Framework policies taken as a whole (i.e the presumption in favour of sustainable development).
48. The proposal for 25 dwellings (24 net) would make a meaningful contribution towards addressing an identified shortfall in housing supply. The 10 affordable

² APP/Y3940/W/17/3166533, dismissed 10th May 2018

³ Housing Land Supply Statement, Base Date: April 2021, Published: April 2022, Wiltshire Council

housing units would also meet a variety of accommodation needs in the locality, and as a whole the housing numbers would significantly boost the local provision.

49. There are concerns that the number of units would exceed the size of the development envisaged for large villages in the Core Strategy. Notwithstanding the optimum figure advised, this is not an absolute number and in the context of Purton, a village, in my estimate, of several hundred dwellings and numerous services/facilities, the proposal's scale would be proportionate and not overwhelm local amenities. In any case, the proposal would help address the county and sub-regional housing shortfall, a benefit which I ascribe significant weight.
50. The Council has identified housing schemes either with the benefit of outline planning permission or currently being considered in more sustainable settlements with larger service provision in the NWHMA. However, none of those schemes, on account of the stage in which they are at, provide me with any certainty that they would be built out to address the under-supply.
51. The site is not allocated in the NP and would be contrary to its requirements for new developments. However, the NP is more than 2 years old and in accordance with Paragraph 14 of the Framework the presumption in favour of sustainable development applies to applications involving the provision of housing. Accordingly, this reduces the weight that can be given to the NP.

SAC

52. On this main issue, the precautionary principle, and the lack of mitigation before me to overcome any negative effects means that I was unable to conclude that the proposed development, in combination with other developments, would not have an adverse effect on the integrity of the SAC.
53. Notwithstanding the terms of Paragraph 11 (d)(ii) of the Framework described earlier, in the context of the presumption in favour of sustainable development, Paragraph 11 also states at (d)(i) that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The SAC is a designated habitat site and is one of the areas of particular importance listed in the footnotes to Paragraph 11⁴.
54. The proposed development would be contrary to paragraph 180 of the Framework, and the harm to the SAC that I have identified above provides a clear reason for refusing the development proposed. Therefore, the presumption in favour of sustainable development does not apply in this instance. I have also found there to be conflict with Core Policy 50 of the Core Strategy where it seeks to safeguard habitat sites. Accordingly, these matters carry substantial weight.

Other considerations

55. Cognisant of the current under-delivery of housing, the Council has prepared a briefing note⁵. To address housing supply there is an action, amongst others, to 'positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated'.
56. In this respect I have found no development plan or Framework policy conflicts relating to local character and appearance, neighbouring amenity, drainage, highway safety and site-specific biodiversity interests. Although not policy the

⁴ Footnote 7, National Planning Policy Framework

⁵ Wiltshire Council Briefing Note on Housing Land Supply

briefing note carries moderate weight in light of the development plan's status in being out of date.

57. The proposal would not accord with the development plan's spatial strategy and policies on the location of housing. However, it would accord with the Framework's aim to locate rural housing where it would maintain the vitality of communities. Also, in line with the Framework, the development would allow the potential for walking, cycling and public transport trips to some facilities, despite the reliance on the private car to access places of employment and higher order services. As such, I attach only moderate weight to the unsuitability of the development's location as it relates to the Council's settlement strategy.
58. Similarly, I have given moderate weight to the economic uplift associated with the development's construction and the increase in local spending by future residents thereafter. The same level of weight is attributed to new open space provision, local education contributions and improved footpath links.

Overall findings

59. I have found that the proposal would boost local housing land supply and address the locality's current under-provision. There would also be associated benefits in terms of encouraging sustainable modes of transport, safeguarding the vitality of local amenities, infrastructure provision, affordable housing and some contribution towards the local economy. In combination, these matters attract significant weight.
60. Nevertheless, the substantial weight I have given to the harm upon the integrity of the SAC would outweigh those benefits, particularly when assessed against the terms of Paragraph 11(d)(i) of the Framework.

Conclusion

61. I have found that the proposal would address local housing supply and result in significant scheme benefits. But, these benefits would be outweighed by the substantial harm and conflict with the Framework and development plan with regard to the scheme's failure to safeguard the integrity of the SAC. For this reason and having regard to all other matters including the Framework, the appeal is dismissed.

RE Jones

INSPECTOR