

Appeal Decisions

Hearing held on 13 September 2023

Site visit made on 12 and 13 September 2023

by P Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 9th October 2023

Appeal A: APP/Y3940/W/23/3315962

Land south of Filands, Malmesbury, Wiltshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Bloor Homes South West against the decision of Wiltshire Council.
- The application Ref PL/2021/05209, dated 13 May 2021, sought approval of details pursuant to condition No. 2 of planning permission Ref 19/11569/OUT, granted on 1 September 2020.
- The application was refused by notice dated 4 August 2022.
- The development proposed is residential development, including the construction of up to 71 dwellings, the creation of new vehicular access with footways and cycleways and ancillary road infrastructure, public open spaces, children's play area, landscape planting, surface water attenuation and associated infrastructure (outline planning application, all matters reserved except means of access only in relation to a new point of access into the site).
- The details for which approval is sought are erection of 70 no. dwellings with public open space and associated infrastructure, approval of reserved matters (scale, layout, landscaping and external appearance).

Appeal B: APP/Y3940/W/23/3317359

Land at Filands Road/Jenner Lane, Malmesbury, Wiltshire

- 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 consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Bloor Homes South West against the decision of Wiltshire Council.
 - The application dated 8 March 2022, sought approval of details pursuant to condition No. 2 of planning permission Ref APP/Y3940/W/21/3282365 granted on appeal on 5 January 2022.
 - The development proposed is residential development and land for a nursery, associated infrastructure and public open space, (all matters reserved).
 - The details for which approval is sought are erection of 69 no. dwellings with public open space and associated infrastructure, and land for a nursery, approval of reserved matters (scale, layout, landscaping and external appearance) pursuant to outline application ref: 21/01363/OUT).
-

Preliminary matter

1. The Council indicated that had it had the opportunity to determine the application subject to appeal B, it would have refused approval of reserved matters for similar reasons to those used for the application subject of appeal A.

Decisions

2. Appeal A is dismissed.
3. Appeal B is dismissed and approval of details not granted.

Main Issue

4. The main issue in both appeals is whether the proposed detailed reserved matters application would lead to a combined scheme that is of a high quality of design and layout, having regard to advice in the development plan and national guidance.

Reasons

Background

5. The two adjoining sites North East of Malmesbury are both under the control of the appellant company. That subject to appeal A (the northern parcel) was initially owned by another developer which made the initial outline application approved by the Council on 1 September 2021. The usual outline approval conditions required an application for the reserved matters to be made before the sites could be combined into one planning unit following the successful appeal on the land subject to appeal B (the southern parcel) which was approved on 5 January 2022. The Council's concern in both cases can be summarised as the implications of the lack of masterplanning between the two sites that it submits has resulted in a scheme that is demonstrably poor in terms of its layout and design.

Policy

6. The Development Plan includes the Wiltshire Core Strategy, adopted January 2015 (the CS), the Wiltshire Housing Site Allocations Plan, adopted February 2020, the Malmesbury Neighbourhood Plan, made in March 2015 (the MNP), and 'saved' policies of the North Wiltshire Local Plan 2011, adopted June 2006 (the LP). A draft revised Neighbourhood Plan has been published for Regulation 14 consultation (April 2022) but this attracts only very limited weight.
7. The policy referred to in the reason (or putative reason) for refusal in both appeals is CS policy 57 which seeks a high standard of design in all new developments. Paragraph (iii) expects development to respond positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines to effectively integrate the development into its setting. Paragraph (xi) expects development to take account of the needs of potential occupants, through planning for diversity and adaptability, and considering how buildings and space will be used in the immediate and long-term future. Paragraph 130 of the National Planning Policy Framework (NPPF) sets out some principles that all developments should achieve in creating high quality, beautiful and sustainable places.

8. The MNP reflects the overall design quality objectives of the CS and seeks community-led development that provides high quality accommodation that sustains and enhances the beauty and vitality of Malmesbury, a historic hilltop town with a unique character centred around the Abbey. It sets out a series of tasks that new development needs to address in order to create a sense of place that respects its context, setting, local townscape and landscape character.

The quality of design and layout

9. The sites are located outside the framework boundary for Malmesbury and are not allocated for residential development in the MNP. They form part of the Council's action plan to address a shortfall in deliverable housing supply across Wiltshire and the Council acknowledged when it made its decision on 19/11569/OUT that delivery of housing is, and remains, a pressing priority.
10. With respect to the northern parcel, the illustrative site masterplan¹ and a parameter, or concept plan indicates blocks of development and a street pattern with an indication of recognised design constraints such as views towards the Abbey, the proposed access and pedestrian links to the adjoining Filands View scheme (also by the appellant company) and links to the town. A generously tree-lined central main access through the site is indicated with a central 'village green' labelled '*2' containing a Local Area for Play (LAP).
11. However, the planning layout accompanying the application for approval of details of development on the northern parcel differs considerably from the submitted illustrative plans. The southern boundary is substantially altered, restricting the options for locating blocks of housing and limiting the potential for landscaping the main access route and providing street trees. The sequence of green spaces throughout the scheme referred to in the supporting statement is reduced to a brief experience on the edge of the layout just inside the new access from Filands. The village green (*2) that was part of the sequence of green spaces, is removed. Moreover an 'additional vista' towards the Abbey ('the jewel in the town's crown' (MNP)) across the centre of the site that was catered for in the layout, valuable for providing a second visual link with the historic centre, is indicated as obstructed by the proposed blocks of housing on the illustrative plans of the southern parcel.
12. The illustrative plans are not formal proposals and are not specifically referred to in the conditions attached to the outline planning permissions. The main consideration is whether an acceptable development as described in the proposals could be accommodated based on the evidence provided on the illustrative or indicative plans. The number of proposed dwellings on the northern parcel is reduced by 1 but the site area is significantly reduced, from 3.63 to 3.16 hectares. This means that, as pointed out by objectors and by Council officers, amongst other things, that plots would be constricted along the central part of the primary route with prominent areas of 90 degree side by side parking opposite a narrow grass verge. This affords little room for street tree planting, which is an aim of the NPPF expressed in paragraph 131. Objectors expressed doubt that measures for long term maintenance would be effective, given pressures from large and tall vehicles and visitor parking, and I find that argument persuasive. Dwellings on the south side of the road (in the southern parcel) would also be sited very close to the road. Whilst that is a

¹ Terence O'Rourke Planning Supporting Statement Nov 2019

feature of existing development at Filands View, that development is noticeably more spacious on the main access (Snell Avenue) with more generous planted verges and more visible parcels of green space distributed along the route.

13. The overall effect of the site boundary and layout changes sought in the application for approval of details is a significantly cramped arrangement at the centre of the scheme in the northern parcel, inconsistent with the grain and quality of recently completed development at Filands View and with that indicated on the illustrative plans. This would be particularly noticeable to pedestrians or cyclists approaching from Snell Avenue and Gilmore Road into the primary route, which would become little more than a movement corridor with considerable hazards due to the parking arrangements. It would be very apparent to people dropping off and collecting children from the proposed nursery site, many of which would use cars and would have to drive into the scheme along the primary route from the B4014 Filands road. There is little evidence to doubt the assertion by the Town Council that the nursery would be popular with customers from other parts of Malmesbury who would need to drive.
14. The National Design Guide (NDG) says that the underlying purpose for design quality and the quality of new development at all scales is to create well-designed and well-built places that benefit people and communities. This reflects guidance in the NPPF and long-standing advice in previous Government guidance publications such as 'By Design'. The design statements submitted in support of the applications for approval of details recognise the respective planning histories and statuses of the northern and southern parcels and refer to both as the 'masterplan areas', but the time constraints referred to above have meant that the detail applications have had to be prepared separately. There are clear disadvantages in the layout which conflict with the clearly set out aims of the NPPF on preparing a clear design vision grounded in an understanding and evaluation of each area's defining characteristics (paragraph 127) and ensuring that developments will function well and add to the overall quality of the area (paragraph 130). The harmful effects would persist for the long term and would conflict with the design quality aims of CS policy 57.
15. The pressing need for housing in Wiltshire² is beyond doubt and the presumption in favour of sustainable development, set out at paragraph 11(d) of the NPPF, applies. Officers considered that the disadvantages of the detailed layouts were not so severe as to indicate refusal would be justified, in the light of that and the fact that, without this scheme, the housing supply figure would worsen. However, Malmesbury has an early (2015) example of a Neighbourhood Plan that supported the delivery of Wiltshire's strategic policies and allocated housing sites to meet demand anticipated at the time. It advises at paragraph 1.1.1 that 'nearly 80% of the housing requirement for Malmesbury Town has planning permission or has been delivered in just the first 8 years of the 20-year period between 2006 and 2014' (that is, the 20-year period 2006-2026). Locations for 270 homes are proposed which is one third more than the requirement. In a recent appeal decision³ the Inspector records the Council's statement that the disaggregated housing requirement for Malmesbury has already been met and significantly exceeded, a point made by the Town Council and others. Wiltshire also achieved 141% delivery against the

² Local Housing Need figure is at most 4.72 years

³ APP/Y3940/W/22/3290305

housing requirement in the Housing Delivery Test which measures housing delivery over the past 3 years⁴.

16. NPPF paragraph 14 sets out exceptions to the presumption of paragraph 11(d). Only one of these (a) *'the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made'* does not apply, the MNP being made on 25 February 2015, 5 years before outline permission was granted and 7 years before the decision on reserved matters was made. Nevertheless, a draft revised MNP has been published and this indicates the direction of travel, completions already exceeding the 2026 target. The appeal site does not form part of the allocated land for housing in the MNP. The guidance in paragraph 14 has been considered when applying paragraph 11 d) and some weight attaches to it.

Other matters

17. Representatives of the Town Council and those responsible for the MNP advised at the Hearing that a new planning application was made in February 2023 for the comprehensive redevelopment of both northern and southern parcels by the same appellant company in full consultation with the local community. A reference is made by Wiltshire Council in its statements of case⁵. The details were not presented at the Hearing, very limited information was provided and that is not a proposal I can give any weight to in considering the merits of these appeals.

Conclusion

18. I have given consideration to whether, given the disadvantages of the scheme subject to appeal A, that subject to appeal B may proceed independently, but delivery of the southern parcel cannot occur without the central primary route.
19. The delivery within a short timescale of a significant number of homes attracts substantial weight as does the proposed contribution to affordable housing and benefits associated with employment and other considerations. However, it is unclear that similar benefits cannot be brought forward with a scheme that is better planned. The sequence of approvals to the original outline applications and the way in which the subsequent applications for detail approval have come forward has meant that the northern and southern parcels have been conceived without an appropriate degree of design vision for an acceptable level of quality, conflicting with the principles in the CS, NDG and NPPF. The provisions of paragraph 14 of the NPPF modify the force of paragraph 11(d). The disadvantages of the proposal would last 100 years or more and significantly and demonstrably outweigh the benefits, assessed against the NPPF as a whole.
20. For these reasons, the appeals should be dismissed.

Paul Jackson

INSPECTOR

⁴ Housing Land Supply Statement April 2021 CD 4.12

⁵ Ref PL/2023/00958

APPEARANCES

FOR THE APPELLANT:

Paul Tucker	Kings Counsel
Jeff Richards	Turley
James de Havilland	Stantec

FOR THE LOCAL PLANNING AUTHORITY:

Adrian Walker	Team Leader
Mark Goodwin	Senior Landscape officer
Morgan Jones	LPC (Trull) Ltd

INTERESTED PERSONS:

Gavin Grant	County Councillor, Mayor of Malmesbury
Philip Exton	Malmesbury Town Council, Deputy Mayor
Kim Power	Malmesbury Town Council, former Mayor

Spencer Claye	Bloor Homes
Isaac Kibblewhite	Bloor Homes
Jim Fletcher	Bloor Homes