



Appeal Decision

Site visit made on 19 September 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2023

Appeal Ref: APP/J0405/W/23/3320727

Boudicca's Rest, Site opposite the entrance to Flora Avenue, Stablebridge Road, Aston Clinton HP22 5FR

- 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 John Cattermole against the decision of Buckinghamshire Council.
 - The application Ref 22/03374/AOP, dated 14 October 2022, was refused by notice dated 9 December 2022.
 - The development proposed is affordable homes as follows: 3 x 2 bedroom and 2 x 3 bedroom.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the proposed development would be in a suitable location, having regard to the local development strategy;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on flood risk;
 - the effect of the proposal on biodiversity; and
 - if harm arises, whether this is outweighed by other considerations.

Reasons

Suitability of location

3. The site lies outside the settlement boundary, as defined by Policy H1 of the Aston Clinton Neighbourhood Plan 2018 (ACNP) and is therefore within the countryside for planning purposes.
4. Policy H1 generally restricts development outside the settlement boundary but supports certain exceptions including the development of rural housing exception schemes. The appellant asserts that the proposal would provide five shared ownership affordable homes and would form a rural housing exception scheme. However, Policy H2 of the Vale of Aylesbury Local Plan 2021 (LP) requires dwellings provided through rural exception schemes be reserved in perpetuity for those in affordable local need with a valid local connection by planning obligation or conditions. No planning obligation or similar mechanism

has been provided to secure the proposed dwellings for this purpose and tenure.

5. The supporting text to Policy H2 expects exception schemes to be supported by the local parish council and a Rural Housing Enabler or equivalent to undertake a local housing needs survey. The appellant has provided data which suggests there were 43 people on the Council's housing register within Aston Clinton Ward. In addition, the appellant undertook a survey which indicates there are at least 10 people in housing need with a strong connection to Aston Clinton. However, this was a self-reported survey undertaken without the support of either a Rural Housing Enabler or the parish council. Neither dataset adequately demonstrates the number of households with a valid local connection to the parish and therefore carries limited weight.
6. In the absence of both the necessary planning obligation and suitable evidence of need, there is insufficient certainty that the proposal would comprise a rural housing exception scheme in perpetuity. Consequently, I must conclude the proposal would not meet the exceptions provided by ACNP Policy H1 and thus would not be in a suitable location.
7. The proposal would therefore conflict with LP Policy D3 which directs development to small scale areas of land within the built-up areas of settlements and would not be of a development type supported in the countryside by ACNP Policy H1.

Character and appearance

8. The appeal site is a triangular plot of undeveloped land enclosed by a timber close-boarded fence. To the north is an open field, and a woodland to the west of the site. An activity centre is situated within parkland to the south of the site. The built-up areas of the village are generally to the east of Stablebridge Road and north of London Road. Conversely, the appeal site is located west of Stablebridge Road, beyond the built area of the village and within an open and predominantly undeveloped area which contributes positively to the setting of the village.
9. The development of five dwellings would have an urbanising effect upon the site which would result in the encroachment of development into the countryside, thus appearing out of keeping with the form of the settlement. The proposed development would appear prominent in the landscape and would harm the intrinsic character and beauty of the countryside and rural setting of the village.
10. ACNP Policy EN3 designates certain areas of open space for protection from development in accordance with the provisions of the Framework. The appeal site is situated within the boundary of the Green Park Local Green Space (LGS). The appellant asserts that Green Park is a neighbouring site, and the appeal site was erroneously included within the LGS designation, citing documents from the Parish Council which suggest the ACNP misidentifies land within the Green Park LGS and indicates the LGS designation will be amended through a future review of the ACNP.
11. The proposed development would result in a loss of the site's open character and thus would conflict with the purpose of the LGS designation. Whilst there is some evidence that the designation may be reviewed in future, the site is

nonetheless designated for protection by the development plan, and in this regard the proposal would conflict with Policy EN3, thus weighing against the proposal. However, even if the site was not designated as LGS there would still be harm to the character and appearance of the area, as set out above.

12. The proposal would therefore be contrary to ACNP Policy HQD1 and LP Policies BE2 and NE4 which together require development proposals to be in keeping with local character and natural qualities and features of the area and ensure that development is not visually prominent in the landscape.
13. In addition, the proposal would not accord with paragraph 174 of the National Planning Policy Framework (the Framework), which requires proposals to recognise the intrinsic character and beauty of the countryside.

Flood risk

14. The site is located within Flood Zone 1 and is at very low risk of surface water flooding. However, the Lead Local Flood Authority (LLFA) has identified a risk of groundwater flooding at the site.
15. The appellant has provided a SUDS report proposing management of surface water using active rainwater harvesting at plot level. However, the proposal does not provide sufficient information to demonstrate that the proposal would not cause flooding onsite or offsite. Such additional information could not be secured through a planning condition since it is necessary to demonstrate that the proposal would not increase flood risk before granting permission.
16. The proposal therefore conflicts with LP Policy I4 and ACNP Policy EN4 which require development proposals to minimise the impacts of and from all forms of flood risk, demonstrate that flood risk is not increased elsewhere, and provide a development layout that is informed by a drainage strategy.

Biodiversity

17. The Preliminary Ecological Assessment (PEA) concludes that there are no priority habitats on the site and recommends a number of biodiversity mitigation measures be provided. The PEA together with a completed Biodiversity Net Gain (BNG) metric suggest the proposed development would provide a 13% BNG.
18. However, LP Policy NE8 requires retention of a 100m natural buffer around woodlands. The indicative layout plan does not include this buffer, which the appellant suggests can be detailed in the reserved matters application. However, the indicative layout shows a significant portion of the site would be occupied by development. It is therefore unclear how the buffer and the development would both be accommodated within the site.
19. The appellant suggests that further BNG information would be provided at the reserved matters stage. However, additional information in relation to badger surveys and assessment of impacts on the adjacent biological notification site are required to demonstrate the proposal would not harm priority species and is capable of achieving BNG.
20. In the absence of adequate information to demonstrate the proposal would not have an adverse effect on protected species and would achieve a BNG the proposal would conflict with LP Policy NE1 and ACNP Policies EN1 and EN2

which together require developments provide a measurable net gain in biodiversity.

21. In addition, the proposal would not accord with ODPM Circular 06/2005, which requires proposals take steps to secure the long-term protection of protected species, and paragraph 179 of the Framework which requires proposals to promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species, and secure measurable net gains for biodiversity.

Other considerations

22. The proposal would provide five dwellings, thereby providing a modest contribution to the supply of dwellings within the area. The appellant suggests the proposal would benefit households in need of affordable homes, but as set out above, as the development would not be secured within an affordable tenure, this benefit attracts limited weight.

Planning Balance

23. The development plan comprises the ACNP, made in 2018, and the LP, adopted in 2021. However, the weight to be attached does not hinge on the development plan's age. Rather, paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.
24. As set out above, I have found the proposal would conflict with the development plan's locational strategy, namely LP Policy D3 and ACNP Policy H1, and through its harm to the character and appearance of the area would conflict with ACNP Policy HQD1 and LP Policies BE2 and NE4. At paragraph 174 of the Framework recognises the intrinsic character and beauty of the countryside.
25. Through a harmful loss of openness of the LGS, the development would be contrary to ACNP Policy EN3. Likewise, paragraph 103 of the Framework affords a high level of protection to Local Green Space from development, commensurate with national policies for Green Belt.
26. The proposal does not demonstrate that flood risk would not increase, as required by LP Policy I4 and ACNP Policy EN4. Similarly, Framework paragraph 167 requires proposals ensure that flood risk is not increased elsewhere. In addition, the proposal does not adequately demonstrate biodiversity would be conserved, as required by LP Policy NE1 and ACNP Policies EN1 and EN2. Paragraph 179 of the Framework requires proposals protect priority species and secure measurable net gains in biodiversity.
27. Due to the conflict with those policies set out above, I consider the proposal would conflict with the development plan as a whole. There is a great deal of synergy between the provisions of the Framework and those development plan policies pertinent to the appeal. Therefore I attach significant weight to the scheme's conflict with the development plan.
28. The Council identifies that there is a 4.5-year supply of housing sites in the Aylesbury Vale area, and therefore there is a current shortfall against the five-year housing land supply requirement. The proposal would provide five dwellings thus contributing positively to the area's housing supply.

29. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The benefits associated with the provision of five dwellings would be modest even taking account of the objective of boosting significantly the supply of housing in the Framework and the Council's housing land supply position.
31. However, the adverse impacts of the proposal on the locational strategy, character and appearance, flood risk, and biodiversity, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
32. The appeal site is within the zone of influence of the Chilterns Beechwoods SAC, a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Since I am dismissing the appeal for other substantive grounds which result in conflict with the development plan, the Habitats Regulations do not require I carry out an Appropriate Assessment.
33. I note that Natural England objected to the proposal on the grounds that the scheme could have potential significant effects on Chiltern Beechwoods SAC from increased recreational pressure from population growth associated with the development. Whilst the appellant identifies alternative locations for recreation in the area, no mitigation of the scheme's effects has been provided. Paragraph 11.d) of the Framework makes clear that permission should not be granted where its policies that protect areas of particular importance, including habitats sites, provide a clear reason for refusing the development.

Conclusion

34. Having regard to the development plan taken as a whole, and all other relevant material considerations, I conclude the appeal should be dismissed.

E Dade

INSPECTOR