



Appeal Decision

Hearing (Virtual) held on 7 November 2023

Site visit made on 9 November 2023

by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)

an Inspector appointed by the Secretary of State

Decision date: 21st November 2023

Appeal Ref: APP/J0405/W/23/3325793

Land North of All Saints Close, Nash, Buckinghamshire, MK17 0FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Ms JL and SG Wickson and Raven against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref 22/03193/APP, dated 12 September 2022, was refused by notice dated 20 January 2023.
 - The development proposed is Erection of five dwellings with garages, new access road and all associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is a made neighbourhood plan in effect for the village of Nash. I have taken this into account in determining this appeal.
3. A Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) is submitted with the appeal. I shall return to this later in my decision.
4. An additional appeal decision¹ was submitted by the Council when the oral Hearing was in progress. The appellant was however aware of the appeal and, following the inclusion of this document into the Hearing, provided an oral rebuttal. No party was prejudiced by my acceptance of this document.
5. The main parties jointly provided me with a suggested itinerary for my appeal site visit, which I duly noted and followed.

Main Issues

6. The main issues for the appeal are:
 - whether or not the proposal is in an accessible location;
 - the effect of the proposed development on the character and appearance of the area, including the Nash Conservation Area;
 - the effect of the development upon living conditions of future occupiers, particularly from overshadowing; and
 - effects of the development upon social infrastructure.

¹ APP/J0405/W/23/3316759

Reasons

Accessible location

7. Nash is a small village surrounded by countryside. I observed a church, a village hall and a playground on my site visit, though saw no other shops or services across the village. The approach roads into the village, such as Winslow Road, Whaddon Road and Thornborough Road, are unlit and do not have footpaths for much of their length.
8. The appeal development is for five dwellings located to the north of All Saints Close from which it would take vehicular access. A separate proposed footpath access would be provided linking the northeast corner of the appeal site with the High Street, which is almost wholly residential in nature.
9. The previous appeal in 2022² determined that Nash had very limited services, with prospective occupants being reliant on the private car to visit larger settlements for day-to-day living. In the Hearing, I heard nothing had changed since that appeal decision and the availability of services remained the same. I visited the nearby settlements of Whaddon, Great Horwood and Winslow, as raised in the Hearing. However, private car journeys would be essential to reach these rural settlements and, given the limited services in these settlements, travel to bigger service areas such as Milton Keynes would be far more likely. I do not consider the proposal would economically or socially support any of the limited services in the nearest villages.
10. I recognise that access to public transport will differ between urban and rural areas, but it is clear, particularly when local roads are not conducive to cycling, that all journeys from the proposed development would be by private car.
11. I note that the appeal site was submitted to, and considered within, the Council's Housing Economic Land Availability Assessment. However, the appeal site does not form part of a housing allocation in any of the development plan documents. I am also mindful that the appeal site has been found unsuitable for development consistently by both the Council and previous Inspectors³. I have no reasons to find otherwise and there is no evidential credibility of the appeal site being a suitable windfall housing opportunity.
12. I conclude that the proposed development would not be in an accessible location and occupiers would be dependent upon the private car, undermining the environmental limb of sustainability as set out in the National Planning Policy Framework 2023 (the Framework). The proposal would therefore conflict with policies S1, S2, S3, S5 and D4 of the Vale of Aylesbury Local Plan 2021 (VALP), which seeks to locate houses in smaller villages where they can be served by existing infrastructure. The proposal also conflicts with policy NNP1 of the Nash Neighbourhood Plan (NNP), which seeks to direct any small-scale development to within the settlement boundary.

Character and appearance

13. The proposed dwellings would be developed in a cul-de-sac formation on a greenfield site, currently constituting an open field. It would not have any direct road frontage, accessed by an extension of All Saints Close and would sit

² APP/J0405/W/21/3284696

³ APP/J0405/W/20/3253053

- behind dwellings on the High Street and Stratford Road. The layout proposed was relatively consistent with that put forward on the previous appeal scheme².
14. Nash is generally linear in form, with dwellings fronting onto the principal highways into and out of the village. There are few exceptions, including All Saints Close itself, where development extends with depth away from the main highway, but these are in the minority when considering the settlement as a whole. It was common ground that the appeal development itself would be contrary to any linear character, should that be considered to exist.
 15. Nash is covered by a Conservation Area, which has three physically separate parts, joined together by more modern housing development. The appellant states this is evidence of the polyfocal nature of the village and the appeal development would not challenge this pattern. However, the appellant accepted in the Hearing that existing built form within the Conservation Area generally follows the roads.
 16. In my view, built form inside the Conservation Area boundaries has a distinctive linear character, which is purely replicated by the more modern housing in the village. The fact there are three parts to the Conservation Area does not detract from this obvious physical characteristic. Developing the appeal site for housing would adversely affect the settlement pattern by infilling between two of the linear limbs, being Stratford Road and the High Street, linking the two together through backland development. This would be contrary to the pattern of development in the area and would erode one of the special physical defining features of the Conservation Area.
 17. I also consider that the rurality of the village, in particular the containment of the village with agricultural fields, contributes to the character and appearance of the settlement. Whilst there is some development abutting the appeal site, the proposal would urbanise an area of open landscape character, to the detriment of the rural character and appearance of Nash as well as to the setting of the Conservation Area. I acknowledge that the local landscape is not covered by any designations either in the VALP or the NNP. Nonetheless, even if the appeal site could be susceptible to landscape change and only makes a neutral contribution at present to the Conservation Area, the appeal scheme would not represent an enhancement.
 18. With regards to paragraph 202 of the Framework, I find less than substantial harm would be caused to the significance of the Conservation Area, noting of course that paragraph 199 states great weight should be given to an asset's conservation. In terms of public benefits, the appellant verbally submitted that the provision of market housing would be of a benefit given the Council's current housing shortfall. However, having identified above that the proposed dwellings would be in an inaccessible location, market housing in an unsuitable area would not outweigh the less than substantial harm arising.
 19. My attention is drawn to the first appeal decision⁴ on this appeal site where no heritage harm was alleged to have occurred. Nonetheless, the second appeal decision⁵ found such harm to exist on the basis of the scheme submitted. With no changes to the layout or form of the proposed development since that dismissed scheme, I am justified in reaching a similar conclusion.

⁴ APP/J0405/W/20/3253053

⁵ APP/J0405/W/21/3284696

20. I conclude that the proposed development would cause significant harm to the character of the area, including the setting of the Conservation Area. The proposal would therefore conflict with policies NNP3 and NNP5 of the Nash Neighbourhood Plan and would not accord with policies BE1, BE2 and NE4 of the VALP, which together aim to protect the character and appearance of the area and heritage assets.

Living conditions

21. Trees to the northwest of the appeal site are large mature specimens. I observed that, even though not in full leaf at the time of my visit, the canopy spread was significant. It is common ground that the trees, covered by Tree Preservation Orders (TPO), are capable of causing shading at certain times of the day throughout the year. The trees are outside of the appeal site on third party land and thus not in control of the appellant.
22. My attention has been drawn to two trees in particular, T13 and T14, that would be in close proximity to the rear of plot 1 within the proposed development. In the Hearing, the appellant stated the trunks of the trees would be circa 12 metres away from the dwelling on plot 1. Contrary to this, the Council provided uncontested evidence that, due to the spread of the tree canopy, the trees would be approximately 2 metres or less away. These trees, it is argued, would be subject to pressure for maintenance or removal in order to provide suitable living conditions for the owners of the proposed plot 1, whose dwelling and garden would otherwise be dominated by shade.
23. Given the size and proximity of these trees to the proposed dwelling at plot 1, I agree that there would be significant pressure to do works to these trees. From the evidence before me, I do not consider that the legislative regime for works to TPO trees would provide adequate security to limit or otherwise deter such works. Regular maintenance, as expected by the appellant⁶, would likely occur thus undermining the health of these trees. I do not believe that forewarning future purchasers via a home information pack would meaningfully reduce the pressure, nor that the desire for shade on hotter days would provide anything other than anecdotal protection of the trees.
24. Without works to the trees, the garden of plot 1 would be mostly in shade throughout the year. Due to the reach of the canopy, the level of shade in the ground floor habitable rooms of plot 1 would also be notable for those occupiers. It is likely then, in my view, that leaving the trees in their current condition would cause an unacceptable overshadowing impact upon the enjoyment of plot 1.
25. I conclude the proposal would adversely affect the living conditions of future occupiers by way of an adverse overshadowing impact. That impact would be incapable of being resolved without adversely affecting the health of the nearby TPO trees. The proposal fails to accord with policies NE8 and BE3 of the VALP, which seek to protect the living conditions of residents.

Effects on social infrastructure

26. The submitted UU seeks to secure a commuted sum towards offsite affordable housing, to be paid to the Council prior to the occupation of the proposed development.

⁶ Appellant Statement of Case of Helen Lowe, paragraph 4.73

27. The Council affirmed in the Hearing that the UU was of suitable content and construct to secure the necessary obligations, with no objections raised to the list of activities excluded from the definition of commence within the UU. The signed Statement of Common Ground also contains clauses to this affect.
28. I have reviewed the UU and the obligations therein, considering it to be of a suitable draft and to meet the statutory tests for imposing obligations. Therefore, the Council's concerns prior to the appeal with regards to the delivery of social infrastructure are addressed. The proposal would therefore comply with policies H1 and H6a of the VALP.
29. In respect of housing mix, the Council's assessments indicate a high priority for new three-bedroom dwellings, followed by a need for four-bedroom properties to meet its housing needs⁷. The appeal scheme would provide 4no. four-bedroom homes and a single three-bedroom home. Whilst this does not represent the exact housing mix sought by the Council, it would nonetheless deliver in respect of those house sizes most in need across the Council's area. For this reason, I do not find any particular conflict with policy H6a of the VALP, that states developments will be expected to provide a mix of homes to meet current and future needs.

Other Matters

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that my determination must be in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
31. It is common ground that the Council cannot demonstrate a robust five-year housing land supply. My attention is therefore directed to paragraph 11(d) of the Framework.
32. The appellant submits that the housing policies of the Council are out-of-date, and the NNP does not contain policies or allocations to meet its identified housing requirement. On this basis, the appellant submits the tilted balance applies.
33. The NNP is a made plan, and it is common ground that paragraphs 14(a), (c) and (d) of the Framework are met. With respect to 14(b), I heard evidence that VALP policy S3 strategically does not include any housing allocations in the village but expects sites to come forward within the NNP. I note the NNP was made in November 2022 and its policy NNP1 provides a strategy for windfall development, allowing for small scale development within the defined Nash Settlement Boundary. Development outside of such boundary could take place if it falls within a certain supported category. The proposed development of five dwellings would not fit into any of the categories. The proposal would therefore conflict with these policies.
34. For these reasons, I find that the NNP is an up-to-date, material and relevant part of the Development Plan for the purposes of this decision. The appeal

⁷ Paragraph 5.37 and Table, Council's Hearing Statement of Case

development would be contrary to the NNP, which has full weight under paragraph 14 of the Framework.

35. Nonetheless, I have not needed to weigh the harms or benefits of the proposed development as per Framework paragraph 11(d)(ii). This is because I have identified above that the less than substantial harm caused to the heritage asset, attracting great weight, would not be outweighed by the public benefit of market housing. Taking the Framework as a whole, the heritage policies of the Framework therefore provide a clear reason for refusal under paragraph 11(d)(i). This is a material consideration key to my determination.
36. The fact that there are no disputes between the main parties in respect of other planning matters beyond the main issues I have identified does not change my views above. I have considered whether the use of planning conditions could overcome the reasons for refusal. Whilst there may have been scope to provide some mitigation for the living conditions of future occupiers, in my view there are no conditions that would override my fundamental concerns with the development.
37. I have found the proposal conflicts with the Development Plan. There are no material considerations that would warrant a decision other than in accordance with the Development Plan, pointing instead to a clear reason for refusal.

Conclusion

38. For the reasons given above I conclude that the appeal should be dismissed.

David Wallis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Lowe
Andrew Crutchley
William Gardner
Susan Raven

FOR THE LOCAL PLANNING AUTHORITY:

Kirsty Elliot
Jennifer Martin
Ryan Lloyd

INTERESTED PARTIES:

Michael Williams	Chairman of Nash Parish Council
James Norton	Nash Ridings Management Company Limited
John Hamilton	Resident
William Affleck	Resident