

Appeal Decision

Site visit made on 26 July 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/J0405/W/23/3314293

Land adjacent to West Bourn, Main Street, Padbury, Nr Buckingham, Buckinghamshire MK18 2BJ

- 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 permission in principle.
 - The appeal is made by Mr Christopher McNally against Buckinghamshire Council.
 - The application Ref 22/04068/PIP, is dated 2 December 2022.
 - The development proposed is Permission in Principle range minimum 5 maximum 9 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in principle and the second (technical details consent) stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. A plan has been submitted illustrating the location of 8 dwellings and access arrangements. This is clearly marked as being indicative and I have treated it as such. The permission in principle procedure requires the minimum and maximum number of dwellings to be specified. My assessment is based on a minimum of five dwellings and a maximum of nine as stated on the application form.
4. All other matters would be considered as part of a subsequent Technical Details Consent (TDC) application if permission in principle is granted. I have determined the appeal accordingly.
5. The Council failed to determine the application but has indicated that had it done so it would have refused permission in principle and has set out four reasons for refusal and cited the relevant development plan policies. In summary these claim that harm would be caused due to the location of the

¹PPG Paragraph: 012 Reference ID: 58-012-20180615.

appeal site on the edge of the settlement of Padbury and its links with the surrounding open countryside; risk of surface water flooding; harm to the character of the area and its effect on the Padbury Conservation Area due to the quantum of development proposed; and lack of information regarding the potential impact on protected habitats/species.

Main Issue

6. The main issue is whether the site is suitable for residential development having regard to its location, the proposed land use and the amount of development.

Reasons

7. The appeal site comprises an area of land on the southern side of Main Street on the south-western edge of the settlement of Padbury. There are houses on the opposite side of Main Street, including a cul-de-sac, but West Bourn and land associated with it is the last property on the southern side of Main Street beyond which to the south-west and south is open countryside. The site rises in levels from Main Street which makes it quite prominent in the landscape and emphasises its rural character compared with the built-up appearance of the village.
8. Due to the prominence of the site, its topography and extent, especially to the south, development on the appeal site would represent a notable expansion of the settlement at this end of the village. The location of the site on the edge of the village would represent a significant intrusion into open countryside. It would expand the built form of the village into the countryside. The impact of this would be particularly noticeable as the appeal site reflects the transition from the village into the countryside. As such, the proposal would have a harmful effect on the character and appearance of the area.
9. The appeal site is outside the Padbury Conservation Area. Main Street is the main spine road running through the Conservation Area. Although not in the Conservation Area, given the site's proximity I have had regard to the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 of the desirability of preserving or enhancing the character or appearance of a Conservation Area.
10. Although the development of this site would represent a significant expansion of the built up area outside the settlement, the layout of the proposed dwellings is not for determination at this stage. Whilst a cul-de-sac arrangement has been illustrated, which the Council consider would conflict with the linear pattern of development which mainly characterises the Conservation Area, the details required at this stage are not of a sufficient level to indicate that the Conservation Area would be harmed. I appreciate that the maximum number of dwellings proposed could have an impact on the character and appearance of the Conservation Area but the extent of that impact and whether or not that would be harmful would be a matter for assessment at the TDC stage. This is particularly the case given that the site is not within the Conservation Area but on the edge of it.

11. I note a previous proposal for 15 dwellings which was dismissed on appeal² and whilst it includes part of the current appeal site, it is not directly comparable with the appeal site. This is because the previous application related to a much larger site, taking in part of the appeal site but excluding some of it and extending further eastwards to the rear of properties on Main Street. The impact of developing that larger site on the Conservation Area would have differed significantly to the site before me. I also note other decisions to approve developments relating to Fairhaven, Main Street but one of these relates to a replacement dwelling and the other to an agricultural building³ both of which relate to different types of development than the proposal subject to this appeal and neither of which are comparable.
12. The Council has also indicated that permission would have been refused on the basis of the lack of information regarding surface water flooding. That concern is heightened due to the number of dwellings proposed. However, this is a technical consideration that would be taken into account as part of an application for TDC.
13. The Council has also stated that the site falls within an amber Great Crested Newt impact risk zone and is adjacent to a Habitat Creation Area and as such require an ecological survey to determine the effects of the proposal on ecology and protected species. Whilst I am mindful that the Council would be justified in requiring an ecological assessment up front in order to determine a planning application, the same level of detail is not required for an application for Planning in Principle. In particular, planning permission is only granted when both stages of the procedure have been approved and in this case such details would be a reasonable requirement at the second stage when along with any other technical matters, the implications would be fully assessed. Therefore, notwithstanding the Council's concerns about the amount of development and location in respect to ecological issues, this too is a matter that would be dealt with at the TDC stage.
14. Notwithstanding those matters above that would be required to be assessed via a TDC application, due to my findings that the proposal would have a harmful effect on the character and appearance of the area, the location of the proposed development is unacceptable. As such, it would conflict with Policy D3 of the Local Plan⁴ which primarily restricts development to small scale areas of land within the built-up areas of the settlement. It would also conflict with Policy S3 which sets out a hierarchy of settlements. Padbury falls within the list of medium villages which are considered moderately sustainable locations for development but Policy S3 resists development in the countryside where it would compromise the character of the countryside between settlements. I have taken into account the other policies referred to by the Council but consider policies D3 and S3 to be the most relevant.

Other Matters

15. I have taken account that outline planning permission and a subsequent reserved matters application have been granted for three dwellings⁵. These

² Planning Appeal Ref: APP/J0405/W/15/313457.

³ Planning Application Refs: 22/00774/APP & 19/01233/APP.

⁴ Buckinghamshire Council – Vale of Aylesbury Local Plan (VALP) 2013 – 2033 Adopted Plan September 2021.

⁵ Planning Application Refs: 16/00482/AOP & 18/00064/ADP).

would form a linear development fronting Main Street. The appellant considers that permission is extant on the grounds that development has commenced. The Council dispute this and state that in the absence of a Certificate of Lawfulness, no weight should be given to this as a fall-back position.

16. I saw on site that the site comprises a variety of building materials, earthworks and marking out for future development. However, despite the appellant's conviction that permission has commenced, it is not the role of this appeal procedure to determine whether development has lawfully commenced.
17. Notwithstanding whether permission for development is extant or not, permission has been granted and no evidence has been submitted that would indicate that a different decision would be made for the same development now. However, the appeal site is substantially larger than the site for the previous approval and the number of dwellings proposed is significantly more, especially taking into account the upper end of the amount applied for. I do not therefore accept that the previous approval justifies development on this larger site. I have therefore afforded only moderate weight to this fall-back position.
18. The appellant also states that notwithstanding the status of the previous planning approval, the site is bounded by an old railway embankment to the south-west and as this involved engineering/built development works the site meets the criteria for previously developed land (PDL) as set out in the National Planning Policy Framework (the Framework). However, I have no substantive information before me that would establish that the site was PDL. Whilst historically there may be evidence that supports this view, I have based my decision on the evidence before me and my own observations and as such find the proposal unacceptable for the reasons I have already stated.
19. My attention has been drawn to a recent statement by the Council regarding its five-year housing land supply position⁶. This clarifies that it is unable to demonstrate a five year supply of deliverable housing sites for Aylesbury Vale area from a 31 March 2023 base date.
20. Despite this shortfall, the Council consider that the proposal would harm the setting of the Padbury Conservation Area and that the site is at risk from ground water flooding and parts of it are at risk from surface water flooding and that therefore paragraph 11(d) of the Framework is not engaged. The Council quote footnote 7 of the Framework to support this view. However, I have found no harm in relation to the principle of 5 to 9 dwellings in relation to the heritage asset and the matter of flooding can be dealt with at the technical stage of the Planning in Principle procedure. Consequently, as the Council can only demonstrate a 4.5 year supply of housing sites for the five-year period 2023-2028, paragraph 11(d) of the Framework applies.
21. The proposed development would make a positive, albeit modest, contribution to housing land supply in the Borough. Furthermore, it is

⁶ Buckinghamshire Council – Aylesbury Vale Area Five-Year Housing Land Supply Position Statement, September 2023.

reasonable to assume that the occupants of those dwellings would be able to contribute towards the social and economic sustainability of the village. However, whilst there is clearly a shortfall in housing land supply, this shortfall is relatively modest and the benefits would similarly be modest. As such, the harm that I have found with regard to the location of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

22. For the reasons given above, and having regard to the development plan and all other considerations, I conclude that the appeal should be dismissed.

J D Clark

INSPECTOR