



Appeal Decision

Site visit made on 14 November 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/J3720/W/23/3325887

Land west of Bull Ring Farm Road, Harbury, Warwickshire CV33 9HJ

- 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 Build1 Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 22/01484/OUT, dated 13 May 2022, was refused by notice dated 27 January 2023.
 - The development proposed is an outline application with all matters reserved, with the exception of access and layout, for up to 8no. self-build/custom-build dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was submitted by Build1 Ltd against the Council. This matter is subject to a separate decision.

Preliminary Matters

3. The application seeks outline planning permission with only access and layout to be considered at this stage. Appearance, landscaping and scale (including the height of dwellings) are reserved matters to be considered in the future. I have taken any indication of any reserved matters shown on the submitted drawings to be illustrative. I note the appellant has stated in their Statement of Case that the layout is illustrative only, however, layout was identified on the application form as being for consideration. The Council assessed the application on that basis and therefore so shall I.
4. Since the determination of the application subject to this appeal, a revised scheme has been submitted to the Council for consideration. The appellant has requested that the revised scheme is taken into account in considering the appeal before me. However, the revised application is undetermined currently and therefore I can have little regard to it.
5. A Landscape and Visual Impact Statement dated May 2023 (LVIA) and a Heritage Appeal Statement dated July 2023 (HAS) have also been submitted with the appeal which were not provided with the planning application. However, these both respond to the scheme as determined by the Council and the reasons for refusal cited on the Council's decision notice. I therefore am able to take these into account, as they do not alter the scheme before me.
6. A Unilateral Undertaking (UU) has been submitted with the appeal which seeks to secure the delivery of self-build and custom housebuilding (SBCH) at the

appeal site along with securing a financial contribution towards ecology and biodiversity. I will return to this matter later in this decision.

7. Following the refusal of the application the revised National Planning Policy Framework (the Framework) has been published. Comments were sought from the main parties on this, and where received have been taken into account in my decision.

Main Issues

8. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether the proposed layout would provide for acceptable living conditions for future occupiers in relation to proposed plots 5 and 6; and
- the effect of the proposal on the setting of the adjacent Harbury Conservation Area (CA).

Reasons

Character and appearance

9. The appeal site comprises part of a grass field located adjacent to the built up area of Harbury. A combination of fencing, hedgerows and trees run along the eastern, western and southern boundaries. Along the northern boundary the appeal site is open to the remainder of the wider grass field. Trees and hedgerows bound the northern boundary of the wider field. The appeal site is not within or does not contain any designated or non-designated heritage assets, but it does adjoin the northern boundary of the CA. The appeal site is not subject to any specific landscape designations.
10. The appeal site is rural in its character. It represents the starting point in this location of the transition from the edge of Harbury to the open countryside beyond to the north and forms part of the rural setting of the settlement. When heading south along Bull Ring Farm Road towards the site, the appeal site adds positively to the rural appearance and the spacious and open character of the setting of the settlement.
11. Directly to the south, built form along Bull Ring Farm Road and Church Terrace is formed of two storey detached, semi-detached and terraced properties that generally follow a linear arrangement with frontage onto the road. Other than a large detached dwelling that sits further east in more extensive grounds, dwellings along Bull Ring Farm Road and Church Terrace mostly have a strong relationship with their respective road frontages, be it how they appear from the road, or how they relate spatially.
12. The proposal would result in built form extending north, into open countryside on the western side of Bull Ring Farm Road. The number of dwellings proposed in combination with the proposed cul-de-sac layout would result in a development that would have a suburban character. Whilst I accept that it would not be irregular or sporadic in form given the build zone areas identified on the proposed layout show a fairly tight knit relationship between the proposed dwellings, it would not reflect the established pattern of development along the eastern side of Bull Ring Farm Road or the development adjacent to

the south. It would result in a development of a more urban quality, at odds with the more rural nature of this part of the settlement.

13. I recognise that there isn't a necessity for proposals to replicate exactly the surrounding pattern of development and that change is not necessarily detrimental, nevertheless, proposals must take account of the surrounding context and respond to it in a sympathetic way in order to effectively integrate with it.
14. The submitted LVIA sets out that the appeal site is located within the Lias Village Farmlands landscape character area within the wider Feldon area. The character area description, identified in the LVIA, states the farmed landscape is characterised by a geometric pattern of small to medium sized fields enclosed by thorn hedges; this complements the undulating nature of the topography creating a strong sense of scale and visual unity. I agree with the findings of the LVIA that the landscape of the immediate locality shares some of the landscape characteristics of the wider Landscape Character Area. I visited all of the viewpoints set out in the LVIA during my site visit.
15. Views of the proposed development would be mostly gained from Bull Ring Farm Road in close proximity to the appeal site with glimpsed views through and above the vegetation possible from viewpoints 2, 3, 4 and 6 to the north and west. I accept that views would be localised and that they would be more likely in the autumn and winter months when the vegetation is less dense.
16. The LVIA sets out that with mature mitigation planting there will be some adverse effects in the early years but that the proposal would be assimilated into the overall landscape pattern once established. With regard to viewpoint 5, located at the access point into the appeal site, it is concluded that by year 10 there would be a slight magnitude of effect and a slight visual effect. All other viewpoints are identified as having a negligible magnitude of effect and neutral visual effect by this point in time.
17. An area is shown on the proposed layout for a planting scheme along the eastern boundary which would soften the appearance of built form from direct views alongside the site. However, the location of the plots along the northern boundary wouldn't allow space for any substantive tree planting without it resulting in conflict with the proposed dwellings. Built form is proposed in depth in this location, with three dwellings identified along the northern boundary, meaning that it would be more heavily developed than the existing plots directly adjacent to the existing settlement edge.
18. I am not satisfied that the proposed layout would allow for the sense of enclosure identified as being required from the mitigation planting in the LVIA along this northern boundary, due to the limited space allowed for it. Whilst a hedgerow could be planted, space for maturing trees located within the hedgerow would be limited. Whilst landscaping is a future consideration, layout is part of the proposal before me.
19. Despite the relatively localised views, the proposed development, in encroaching into the countryside with the number of dwellings proposed in combination with the layout identified would have an urbanising effect that would be detrimental to the rural character and appearance of the area.

20. The Council has raised concerns about the potential for the scheme to be car dominant. Limited information is provided at this stage in terms of how parking areas will be located within the plots. However, given the size of the plots I consider that there would be space to provide sensitively located parking as part of an overall scheme, without it being car dominated.
21. I find that the proposal would be harmful to the character and appearance of the area. It would therefore be contrary to Policies CS.5 and CS.9 of the Stratford-on-Avon District Core Strategy 2011 to 2031 (CS) and Policies H.06 and H.10 of the Harbury and Deppers Bridge Neighbourhood Development Plan 2018-2031 (amended version May 2020) (NDP). These policies seek, amongst other things to ensure development minimises and mitigates impact, and where possible, incorporate measures to enhance the landscape, ensure that proposals, including layout, will be sensitive to the setting, existing built form and landscape character whilst enhancing local distinctiveness and ensuring measures to retain and enhance the environment.

Living conditions

22. Due to the arrangement of the build zone areas around the identified road layout, the dwelling on proposed plot 6 would have a front elevation in close proximity and directly facing a neighbouring dwelling; either that at plot 5 or at plot 7. I recognise that the idea behind the SBCH provision is that the design input is from the self-builder and therefore the exact siting of the dwellings, along with the scale, is to be determined at a later date.
23. However, the layout of the build zone areas is before me as part of this appeal proposal given the application form included layout for consideration. On the basis of the evidence before me, there could be a conflict which means the living conditions of the future occupiers of the dwellings on Plots 5 and 6 could be compromised in terms of the potential for overlooking of private rear garden space and a harmful relationship in terms of outlooks. As a result, it is likely that there would be harm to the living conditions of future occupiers in this regard.
24. Without substantive evidence to the contrary, the proposal is likely to be harmful to the living conditions of the future occupiers of Plots 5 and 6. It is therefore contrary to Policy CS.9 of the CS. This policy seeks, amongst other things, that proposals ensure a good standard of space and amenity for occupiers and that occupants of new and neighbouring buildings will be protected from loss of privacy and adverse surroundings.

Setting of Harbury Conservation Area

25. The appeal site lies outside of but adjacent to the CA. I find that the significance of the CA relates to the historical development of the settlement and the design, form and layout of the traditional buildings. More modern development sits directly adjacent to the appeal site, within the CA.
26. The main views from and towards the CA where the appeal site is also appreciated from is along Bull Ring Farm Road. The proposed layout identifies that built form would be set back from the eastern boundary with a vegetative buffer surrounding the existing access point provided. This arrangement would soften the appearance of the proposal along the eastern boundary. Given the existing more modern development that the appeal site sits alongside and the

mitigation planting and set back from the road, the proposal would have a neutral effect on the setting of the CA. This is consistent with the Inspector of a previous scheme at the site, which though different in scale, would have a similar impact when seen from the east.

27. In this regard the proposal would comply with Policy CS.8 of the CS and the heritage related requirements of Policy H.10 of the NDP. These policies seek, amongst other things, to protect and enhance the historic environment and to assess the impact of proposals on heritage assets.

Other Matters

28. In order to consider the proposal as SBCH, a mechanism must be in place in order to ensure this, as set out in the Plot 89 Luddington Road appeal decision put before me. In this case a UU is provided. The Council has been consulted on the UU as part of this appeal and has raised issues about its content.
29. The Land Registry details have been submitted with the appeal. I find that inclusion of definitions relating to affordable housing and affordable housing unit may add further clarity, however, not including them would not negate that the UU secures the development as SBCH. The contribution secured in relation to ecology and biodiversity is in line with the Council's Ecologist response to the planning application. I have not been provided with any policy requirement setting out the need for a local connection or marketing scheme as part of a legal agreement. Whilst the notification is set out as being directed to a different person/team to that suggested by the Council, the UU still requires the notification of the Council to take place.
30. I therefore am satisfied that the UU as submitted would secure the development as SBCH and the required ecology and biodiversity contribution. I find that the UU would be necessary to make the development acceptable in planning terms in relation to the matters of SBCH and ecology and biodiversity, that it would be directly related to the development and fairly and reasonably related to the development in scale and kind.
31. The Council acknowledge that currently and historically there has been a shortfall in the supply of SBCH plots in the district, having regard to the Council's register on such matters. The proposal would contribute 8 plots towards this shortfall. I attribute considerable weight to this matter.
32. The proposal would represent a small site which paragraph 70 of the Framework identifies as making an important contribution to meeting the housing requirement for an area. The appellant asserts that the proposal would make the optimum use of the site. The provision of 8 dwellings would provide social and economic benefits during the construction phase and in the longer term with future occupants using local shops, facilities and services. The appellant submitted a Sustainability Statement with the application which identifies a fabric first approach to construction methods and renewable energy technologies. However, given the scale of the development I attribute limited weight to these benefits.
33. I have been referred to case law regarding the assessment of whether a site is isolated. I accept that the appeal site is not isolated being located adjacent to the settlement where a range of services, facilities and access to public transport are located. I give this benefit limited weight.

34. A Preliminary Ecological Appraisal was submitted with the planning application which states that subject to mitigation, and biodiversity net gain via an off-site commuted sum, there would be no harm to protected species. Given the limited scale of the proposal I attribute limited weight to this benefit.
35. The CS is more than 5 years old, however this does not automatically mean that policies within it are out of date. The Council has stated that it currently has a five year land supply in place. However, there are currently no policies within the CS or the NDP that deal with the provision of SBCH. The development plan is therefore silent on this particular matter.
36. There is dispute between the main parties as to whether paragraph 11 d) of the Framework should be engaged, given the development plan is silent on SBCH. The appellant has provided a number of appeal decisions where paragraph 11 d) was engaged by other Inspectors. In those cases, paragraph 11 d) was triggered because the Inspectors found that the SBCH policy, or lack of it in the development plan, was the most important issue or because other considerations were relevant.
37. The Council's reasons for refusal relate to character and appearance, the effect on the setting of the CA and the living conditions of future occupiers. Policies CS.5, CS.8 and CS.9 of the CS and Policies H.06 and H.10 of the NDP that relate to these main issues are the most important for determining the appeal. I find that the most important policies in this case are generally consistent with the requirements of the Framework. Therefore, paragraph 11 d) is not triggered in this case.
38. The Council has identified that the proposal would comply with emerging policy SAP.6 which relates specifically to SBCH, set out in the emerging Site Allocations Plan (SAP) in terms of its location, due to the appeal site being adjacent to a built up area boundary of a Local Service Village. The SAP is at an early stage of the plan process, as such, I can give it only limited weight. I am referred to a number of other planning applications where the appellant asserts that the decision maker did not object to the principle of SBCH schemes outside of settlement boundaries. However, in this case, the Council has not objected to the principle of SBCH development on the appeal site based on its relationship with the settlement boundary.
39. The appellant asserts that the proposed development would not be at risk of flooding, that the site would have access to adequate utility services, that there would be no detrimental impact on archaeology or protected trees, that it would be a safe development, that it would provide adequate garden space for future occupants, would not affect neighbouring properties in respect of noise, loss of daylight, sunlight or privacy and that no objections were received from statutory external consultees. A lack of harm in these respects is a neutral consideration that weighs neither for nor against the proposal.
40. I note there is planning history on the appeal site for different schemes that have not been permitted. Be that as it may, and whilst the amount of development proposed now maybe less than previously proposed, I must deal with this appeal on its individual merits.
41. I have been referred to another site adjacent to Harbury where planning permission has been granted by the Council for 6 self-build dwellings on land off Bush Heath Lane. It is put to me that this other site was a draft allocation in

the emerging SAP for SBCH development. The appellant asserts that the Council has been inconsistent in its approach to decision making because this other proposal was also for SBCH on a site adjacent to the settlement. However, regardless of the fact this site was identified in the emerging SAP as a draft allocation for SBCH, having reviewed the location plan, proposed block plan, Council decision notice and delegated report, I find that site has a different relationship with the settlement and the surrounding built form is of a different pattern to the appeal site before me.

42. The appellant refers to case law which relates to an assessment of whether a site constitutes limited infilling in a village in the Green Belt. The appeal site is not within the green belt and would not represent limited infilling in any case.
43. I understand, having regard to relevant case law¹ referred to me, I must make a planning judgement and that conflict with one policy does not necessarily mean that an application does not accord with the development plan as a whole. I give considerable weight to the contribution that the proposal would make to the current shortfall in SBCH plots and weight to the other benefits as identified above. Nevertheless, the benefits of this provision need to be weighed against the harm I have found in relation to the character and appearance of the area and the likely harm to the living conditions of future occupiers which I consider to be significant, given the long lasting effects of the proposal.

Conclusion

44. In conclusion, the proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations. Therefore, for the reasons given above, the appeal is dismissed.

G Dring

INSPECTOR

¹ Barwood Strategic Land II LLP v East Staffordshire BC and SSCLG [2017] WECA Civ 893; R (Corbett) v Cornwall Council [2020] EWCA Civ 508