

Appeal Decision

Site visit made on 15 January 2024

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/J0405/W/22/3292202

Land to the South of Marsworth Road and West of Vicarage Way (Poultons Meadow), Pitstone LU7 9TE

- 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 planning permission.
 - The appeal is made by Nicholas King Homes against Buckinghamshire Council.
 - The application Ref 21/02999/APP, is dated 16 July 2021.
 - The development proposed is construction 21no. dwellings (8 flats and 13 houses), including associated works, car parking and landscaping.
 - This decision supersedes that issued on 6 April 2023. That decision on the appeal was quashed by order of the High Court¹.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An earlier Decision for this scheme was quashed in relation to issues concerning the effects of the development on Chilterns Beechwoods Special Area of Conservation (the SAC) and procedural fairness considerations relating to the same. The parties have commented on material changes that have occurred in the intervening period.
3. The Council issued putative reasons for refusal (RfRs) in its Statement², which I have adopted as the main issues in this appeal. The plans assessed by the Council in forming these RfRs have been considered. I have not accepted the submission of the revised parking or layout plans submitted with the appeal.
4. A unilateral undertaking (UU) submitted as a deed under S106 of the Town and Country Planning Act 1990, dated 28 July 2022, was submitted. The UU deals with aspects such as affordable housing provision, education contributions, provision of open space and management, sports and leisure projects and the contribution to mitigate the effects on the SAC. A similar UU dated 17 March 2023 was also submitted. Another UU dated 11 August 2023 was submitted with changes to the mitigation obligations on the developer in respect of the SAC, which I deal with below.
5. For the purposes of the appeal, the Development Plan includes the Vale of Aylesbury Local Plan (adopted 2021) (VALP) and the Pitstone Neighbourhood Plan (made 2016) (PNP).

¹ High Court Order, Ref CO/1805/2023, dated 30.06.2023

² Council's SoC dated 14 July 2022 (and associated appendices)

6. A revised version of the National Planning Policy Framework (the Framework) was issued in December 2023. The parties commented on the relevance of the changes to the appeal case and these have been taken into consideration.

Main Issues

7. The main issues in the appeal are:
- whether or not the proposed location is suitable for housing, with particular regard to national and local policies for housing and community uses;
 - the effect of the proposal on the character and appearance of the local area;
 - whether the proposal would include an adequate parking provision;
 - whether the proposal would deliver enough adaptable and accessible units to accord with relevant local policies;
 - the effects on the living conditions of future and existing neighbouring occupiers, with particular regard to privacy and loss of outlook;
 - whether the proposal would accord with local policies concerning its energy efficiency and carbon saving measures;
 - whether or not infrastructure is included which is necessary, directly, fairly and reasonably related to support the scheme; and
 - the effects of the proposal on the SAC.

Reasons

Location of development

8. The appeal site comprises two parcels of land at opposite gateways to an estate of recently constructed housing in Pitstone, 'Poultons Meadow', linked by the internal estate road. The parcel to the north, closest to Marsworth Road, is proposed to accommodate 8 flats within a single building of 2 principal storeys with a dormer level within the roof. The parcel to the east, close to Pitstone Memorial Hall and Vicarage Road, is proposed to accommodate 13 No two storey dwellings in short terraces, each with 3 – 4 dwellings.
9. Under Policy 2 of the PNP, the site was allocated for a mixed use development including around 70 homes, and subject to viability: a drinking establishment use and/or a licensed A3 restaurant or café use; a day nursery/crèche/pre-school use; and, c) the re-siting of the existing Memorial Hall public car park. The allocation relates back to a Comprehensive Plan document endorsed by the former Aylesbury Vale District Council in 2005. The preamble to the Policy states that any proposals for housing development on the non-housing land will be resisted and that a future review of the Plan will re-assess the deliverability of the Policy should the non-housing elements not have been implemented by then.
10. Outline planning permissions granted in 2017³ referred to the Class D1 non-residential institution (day nursery) and separate pub/restaurant (Class A3/A4) as was required by PNP Policy. The remainder of the site was built out for housing purposes under a separate approval⁴.

³ 17/01875/AOP and 17/01873/AOP dated 19 October 2017 and 6 November 2017 respectively.

⁴ Reference 17/01871/APP for a total of 74 dwellings and associated infrastructure

11. Policy I3 of the VALP requires that in the consideration of proposals where community buildings and facilities will be lost, the Council will consider the viability of the existing use, that the site/use has been marketed for a minimum period of 12 months at a price commensurate with its use. These factors are to be considered together with consideration of the presence of alternative local facilities, the community benefits of the proposed use and proof there has been no viable interest.
12. From the evidence, marketing campaigns were undertaken by a firm of chartered surveyors between 1 April 2020 until at least June 2021 through targeted adverts to operators of nurseries and public house/restaurant chains/owners. Whilst I understand that there were no advertising boards visible at the site itself during this period, this does not suggest that the marketing campaign was deficient. I am of the view, as asserted in the evidence, that the internet is now the predominant medium for the marketing of commercial property.
13. The evidence acknowledges that despite some enquiries during the marketing period, no firm offers materialised for either parcel of land. The COVID-19 Pandemic may have influenced the lack of interest in the parcel intended for a hospitality business given how badly that particular industry was affected.
14. The period of marketing appears to have exceeded the minimum required by VALP Policy I3, despite its lack of direct applicability to the appeal scheme and overlapped with some of the period during which the parcels benefitted from their respective outline permissions. I have no reason to reach an alternative conclusion about the suitability of the asking prices for the respective parcels of land. The evidence does not point to any change in circumstances since the cessation of marketing and it does not appear that there is an absence of such facilities in the local area.
15. Given that there is no viable ongoing community uses and limited prospects of the respective parcels being acquired and viably operated for such purposes, I find that the proposal would not conflict with the objectives of PNP Policy 2. Nonetheless, this finding does not automatically lead to a finding that the site is a suitable location for new housing.
16. Policies S1 and S2 of the VALP promote a sustainable pattern of growth based on mixed use schemes in main centres. Pitstone is defined in the VALP as a larger village which has at least reasonable access to facilities and services and public transport, making them sustainable locations for development. The VALP and PNP envisage the site as part of an allocation. So, the site is allocated for purposes including housing such as to accord with the objectives of the PNP. However, even if I consider that the allocation has been spent by way of the 74 permitted and constructed dwellings and proven lack of viability of the other intended community and commercial uses for which it was allocated, it may be a candidate for an infill proposal within a defined larger village, under Policy D3 of the VALP and given the position of the site surrounded by the defined settlement boundary of Pitstone.
17. Policy D3 of the VALP requires that infilling shall be limited to, (a), the infilling of small gaps within undeveloped frontages in keeping with the scale and spacing of nearby dwellings and the character of the surroundings; or (b), development that consolidates existing settlement patterns without harming

important settlement characteristics, and does not comprise partial development of a larger site.

18. The filling of the leftover spaces, which the development now surrounds, would form a logical completion of the allocated site. Given the size of the parcels that together form the site and the way in which they would consolidate the settlement pattern, as also addressed below, my view is that the site would be an acceptable location for housing in accordance with, in particular, Policy D3 of the VALP and PNP Policy 1 and 2.

Character and appearance

19. Both parts of the site are accessed via the completed estate road and are contained by temporary fencing and hoardings. Given their siting and condition, they currently give the otherwise completed surrounding development an illogically unfinished appearance.
20. On reviewing the plans for 'Block E' on the northern parcel, I consider that the building would have an appropriate relationship with the completed development such as to provide some variety in the streetscene without appearing bulky or at odds with the predominant two storey high terraced blocks of dwellings that form the street scene and in the wider surroundings. Though it would be visible from Marsworth Road, it would remain some separation from it, and the intervening trees and hedges separate it from the lower density housing that exists further towards the village centre.
21. The arrangement of blocks A-D on the eastern parcel would be logical and would maintain the largely continuous building line towards the Village Road access. The short terraces of 3 – 4 dwellings each would assimilate well with the layout of the completed development with a logical arrangement of public frontages and largely private backs. The relationship of these blocks, with the streetscene on Vicarage Road, and in particular Block A, would be acceptable.
22. My finding is that the proposal would not be at a greater density than the completed development such that it would appear out of context or overly urbanising. The siting of the building, blocks and their respective scales would sufficiently relate to the established street hierarchy. Furthermore, the use of the same architectural language, features and building materials would also help to ensure coherence across the wider development.
23. Another aspect raised in connection with the suitability of the design relates to the pull distances for the refuse collection given the changes in the format of building blocks compared to those proposed previously. From the evidence and given my findings that the respective parts of the site would be served by the existing estate road infrastructure, the bin pull distances would be within the norms elsewhere within the surrounding development in the context of VALP Policy S5. In any event, the Appellant is willing to accept a planning condition to seek for these details to be confirmed in a refuse management plan prior to the implementation of the development.
24. For the reasons outlined, the proposal would not harm the character and appearance of the local area and would thus comply with, in particular, Policies BE2 and D3 of the VALP and Policy 6 of the PNP. Together, these Policies seek for development to be appropriate in terms of scale, context, setting and in character with the local distinctiveness and vernacular of the area.

Adequacy of parking provision

25. The Council's evidence indicates that the parking provision would fall short in number and in some respects, where shown, in dimensions and suitability when compared to the standards set out in the Tables accompanying Policy T6 of the VALP. Reference is also made to a lack of additional parking that would be delivered for the Memorial Hall and multi-use games area (MUGA).
26. The Appellant's evidence points to the submission of a revised parking layout plan which I have opted not to accept, but nonetheless indicates that such would be capable of being addressed by way of condition to address the issues of the deficit and sizes, where necessary. I have not seen any cogent evidence to suggest that additional parking is necessary to serve the existing Memorial Hall or MUGA, with an existing provision available and given the desire to attract users of these facilities to walk from the surrounding area in any event.
27. In view of the above, subject to conditions, the proposal would deliver an adequate supply of parking in accordance with, in particular, Policy T6 of the VALP which sets optimum car parking standards which should be provided unless specific local circumstances can justify a deviation therefrom.

Accessibility standards

28. The Council's accessibility standards set out in Policy H6c of the VALP requires developments to provide at least Building Regulations 2010 Part M4(2) Category 2 Accessible and adaptable dwellings (unless unviable to do so), and a minimum of 15% of Affordable dwellings as per Building Regulations 2010 Part M4(3) Category 3 Wheelchair user dwellings.
29. It was unclear from the submitted plans and documentation whether the provision was sufficient to achieve these requirements. However, the Appellant's evidence indicates that such requirements are achievable and that a planning condition, as suggested by the Council, would secure such. Therefore, subject to a planning condition, the scheme would provide deliver enough adaptable and accessible units to ensure inclusivity in accordance with VALP Policy H6c.

Living conditions of future and existing occupiers

30. Plot 13 (Block D) would be an end-of-terrace dwelling situated approximately 12.8 metres to the north-west and perpendicular to the flatted block containing Nos 86-104 Poultons Meadow. The block is 2 storeys with rooms in the roof and would have upper storey windows that would, to an extent, be able to overlook the amenity space of Plot 13 to a degree. The Council also allege that the siting of Block D at the distance of 12.8 metres would result in an overbearing effect on the shared amenity space accessed by residents of No 86-104 Poultons Meadow.
31. Though the 12.8 metre separation distance is, in my view, at the lower end of a tolerable distance in the context of the development, I do not consider that there would be a harmful degree of either overlooking or overbearing as a result of the proposal. With particular regard to the effects on the future occupiers at Plot 13, as the dwelling would be a new one, the urban context and degree of overlooking would be evident to any potential future occupiers. The effects would also be further mitigated by way of a future landscaping scheme.

32. In view of the above, the proposal would not cause undue harm to the living conditions of future or existing neighbouring occupiers and thus complies with, in particular, Policy BE3 of the VALP. Amongst other things, this Policy requires that planning permission will not be granted where the proposed development would unreasonably harm any aspect of the amenity of existing residents and would not achieve a satisfactory level of amenity for future residents.

Energy efficiency and carbon saving measures

33. Policy C3 of the VALP requires all development schemes to look to achieve greater efficiency in the use of natural resources, including measures to minimise energy use, improve water efficiency and promote waste minimisation and recycling. Developments should also minimise, reuse and recycle construction waste wherever possible.
34. Details of this nature were absent from the original submission and the Council indicate that the energy hierarchy should influence the layout and form of buildings, thus, not a matter that can be left to planning condition. Nonetheless, the Council has suggested a condition on a without prejudice basis to secure compliance with this Policy if in the event the appeal were allowed.
35. My view is that the nature, layout and form of the development is largely dictated by the surrounding completed development to the extent that a materially different approach would inevitably fail to assimilate with it in design and layout terms. As such, in this case, I consider it satisfactory to impose planning conditions to secure energy efficiency measures to comply with Policy C3 of the VALP.

Infrastructure provision

36. The submitted UU dated 11 August 2023 replicates a number of obligations in favour of the Council which were also included within earlier versions of the UU. For the sake of clarity, I deal with the SAC mitigation measures separately below. The other UU obligations include:
- a contribution of £57,475 towards off site sports and leisure as required by Policies I1 and I2 of the VALP;
 - 8 affordable dwellings in excess of that required by VALP Policies H1 and H6a;
 - a contribution of £157,518 towards the provision of school places at primary and secondary schools in the area;
 - details concerning the provision and future maintenance of the open space and sustainable urban drainage (SUDS) system.
37. Notwithstanding the alleged absence of clauses to indicate which version of the UU would be operative in the event the appeal were allowed, or whether all three could bite and be enforced, the infrastructure requirements and contributions could be secured by way of one of the UU to meet with the aforementioned VALP Policies. On this basis, these particular obligations would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended.

38. Though the Council would prefer these aspects to be secured by way of a bilateral agreement, I accept the time constraints which have dictated the chosen course of action in this instance.

Effects on the SAC

39. The proposal could affect the SAC which is designated under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations). The parties agree that this proposal is not a plan or project which is directly connected with or necessary to the management of the SAC. As the likelihood of significant effects cannot be ruled out at this stage, an Appropriate Assessment (AA) must be undertaken by me as the competent authority.
40. The SAC is designated for its beech forests (*Asperulo-Fagetum*) (Annex 1 habitats) which support a range of semi-natural dry grasslands and scrub (*Festuco-Brometalia*) and which host a population of stag beetles (*Lucanus cervus*) (Annex II species). The Conservation Objectives for the SAC are to maintain or restore the extent and distribution of qualifying natural habitats and habitats of qualifying species; the structure and function (including typical species) of qualifying natural habitats and habitats of qualifying species; the supporting processes on which qualifying natural habitats and the habitats on which qualifying natural species rely and the populations and distributions of qualifying species.
41. As set out in the Natural England letter to the Partner Authorities⁵, outside the 500 metres Avoidance Zone, but within 12.6 kilometres of the boundary of the Ashridge Commons and Woods Site of Special Scientific Interest component of the SAC, a net increase in homes is likely to result in additional recreational visits, with consequential erosion and pollution effects. Without mitigation, the proposal would harm the integrity of the SAC.
42. Whether or not an adverse effect on site integrity (alone or in combination with other plans or projects) can be ruled out depends on the mitigation that may be secured as part of the plan or project, subject to conditions and restrictions.
43. In this case, financial contributions are proposed by way of a legal undertaking (dated 11 August 2023) to improve site management through Strategic Access Management and Monitoring (SAMM) measures, involving access management and engagement work wholly within the boundary of the Ashridge Commons and Woods Site of Special Scientific Interest component of the SAC. The rate of contribution for this scheme of net 21 additional dwellings within the North and Central area, is £566.23 per dwelling, making a total SAMM Contribution requirement of £11,890.83.
44. As this component of the mitigation is in line with the Council's requirements⁶, and would be paid in full prior to commencement of the development, the SAMM component of the mitigation is acceptable.
45. The other component of mitigation which the letter from Natural England to the Partner Authorities details, is the need for either provision on site of, or financial contributions towards, Suitable Alternative Natural Greenspace

⁵ Dated March 2022

⁶ Statement of Common Ground dated November 2022 and within Council's 'Chiltern Beechwoods Special Area of Conservation Frequently Asked Questions' Document, dated August 2023

(SANG) that would secure the provision of alternative recreation opportunities away from the SAC.

46. The scheme does not include any proposals for a specifically identified SANG to address the effects of the development. Instead, the submitted UU (dated 11 August 2023) provides for a 'Chilterns Beechwoods SANG Contribution'. This contribution to be paid to the Council is defined as a contribution towards the cost of facilitating, upgrading and maintaining the SANGS in accordance with the Council's Chilterns Beechwoods SAC Mitigation Strategy. The undertaking states that the contribution shall be agreed between the Developer and the Council following the adoption of the Council's Chiltern Beechwoods SAC Mitigation Strategy and agreed in accordance with the general guidelines set by the Policy and the multipliers used in new home developments in Buckinghamshire. The accompanying schedule to the undertaking obliges the developer to pay the SANG Contribution prior to implementation of the development (using a different term than 'prior to commencement' as used for the SAMM contribution, and without implementation having been defined).
47. 'The Chilterns Beechwoods SAC Mitigation Strategy' is not defined in the UU and nor does it exist as a composite strategy at the present time. Whilst perhaps slim, there is a risk that the future strategy could be called something else. It is also a risk that the Council, not party to the UU, is required to agree with the developer about the amounts payable without any obvious dispute resolution mechanisms. Nonetheless, the key issue is that there is presently no defined SANG project on which the contribution can be directed that would mitigate the effects of the development. At the time of writing, there is no evidence that the SANG strategy has been developed to a point where it can be guaranteed to cater for the development proposed within the lifetime of any permission. Deadlines for the confirmation of such a Mitigation Strategy have already been missed and work undertaken on a similar strategy in a neighbouring authority area has no real bearing on the need to address the direct effects of the proposal before me.
48. Given the need for me to have certainty at the point of granting planning permission that the integrity of the SAC will not be harmed, the undertaking therefore lacks certainty and is not considered to be compliant in with Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended, in respect of the SANG contribution. Therefore, this aspect of the mitigation cannot be relied upon, and the development would result in significant effects on the integrity of the SAC.
49. The scheme therefore fails to meet the requirements under the Habitats Regulations and VALP Policy NE1 which prevents development being permitted unless any significant adverse effects on the Chiltern Beechwoods Special Area of Conservation can be fully mitigated.

Other considerations

50. The Council have provided an update to indicate that it is unable to demonstrate a five-year supply of deliverable housing sites for the North and Central Area taken from a base date of 31 March 2023 for the five year period 2023 – 2028⁷. The current figure is considered to lie somewhere around a 4.7

⁷ North and Central Planning Area Five Year Housing Land Supply Position Statement dated September 2023, updated 8 January 2024

year supply which, taking an annualised requirement of 1,407 dwellings, equates to a shortfall of around 400 or so homes.

51. Whilst a relatively modest deficiency against the five year requirement, a shortfall of that order attracts substantial weight in the overall balance. The delivery of 21 dwellings would make a small, but beneficial contribution to help address the shortfall.

Planning Balance

52. The scheme would result in harm to the Chilterns Beechwoods Special Area of Conservation which is an issue of such gravity that it brings the scheme into conflict with the development plan when considered as a whole.
53. The shortfall in the housing land supply would typically engage Framework paragraph 11 d), otherwise known as the tilted balance. However, the SAC is an area protected by policies and footnote 7 of the Framework. The harm to the SAC from the development provides a clear reason for refusing the development. Therefore, the tilted balance is disengaged.
54. I afford significant weight to the provision of housing, including the provision of 8 affordable dwellings, as a public benefit of the scheme in the context of the acknowledged shortfall in housing land. The economic benefits of the construction phase, albeit temporary in nature, also attract little positive weight in favour of the scheme. Other factors that achieve compliance with the relevant development plan policies are neutral factors which neither pull for or against the scheme.
55. However, the totality of these benefits do not outweigh the identified conflict or indicate that a decision should be taken other than in accordance with the development plan.

Conclusion

56. For the foregoing reasons, the appeal is dismissed.

H Nicholls

INSPECTOR