



Appeal Decision

Site visit made on 24 January 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/Q3115/W/23/3329056

Brimpton Garage, access to Hotel from A40, Milton Common, Thame, Oxfordshire OX9 2JW

- 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 Messers Hall & Raymond (N & R Raymond Building Services Limited) against the decision of South Oxfordshire District Council.
 - The application Ref P22/S2788/FUL, dated 26 July 2022, was refused by notice dated 9 June 2023.
 - The development proposed is the erection 6no. detached dwellings, creation of vehicular and pedestrian access and associated infrastructure and works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site has planning permission for 4 dwellings¹, which have been implemented² and is extant. The Council recognise that the permission for 4 dwellings has lawfully been commenced and can be built out, and detail in the Committee Report that "development on this site will happen". Given the circumstances, this represents a realistic fallback position and I have had regard to this as a significant material consideration.
3. A previous appeal decision³ for 6 dwellings was dismissed. Yet this was a larger site and considered under a different development plan. I have had regard to this decision so far as relevant.

Main Issues

4. The main issues are whether the:
 - a) location of development is suitable, having regard to the development plan,
 - b) development would support active and sustainable modes of travel, and,
 - c) development would secure biodiversity net gain.

Reasons

Location

5. Located to the north of the A40, adjacent to a large hotel complex and a row of dwellings on Old London Road on the other side, the site is a vacant parcel of grassed flat land, bound by dense planting. The area surrounding the site

¹ P16/S3603/FUL and P17/S0921/FUL

² Under P17/S0921/FUL

³ APP/Q3115/W/18/3215893

comprises Milton Common, a small village which runs in a linear pattern along the A40. It is around 14 km from Oxford and is designated as an 'other village' by the South Oxfordshire Local Plan (SOLP), capable of accommodating limited amounts of housing. The proposal is for 6 dwellings.

6. Policy TwA2 of the Tiddington with Albury Neighbourhood Plan (made May 2023) (TANP) states infill development within the settlement boundaries will be supported provided they accord with other policies within the plan. The supporting map to the policy shows the site to be outside the newly defined settlement boundary for Milton Common. Thus, the location would conflict with Policy TwA2 of the TANP. Yet, as set out above, the site has an extant permission for 4 dwellings. This was granted significantly before the TANP was made and I do not understand why the site was not included in the settlement boundary, particularly given that all the conditions were discharged in 2020.
7. Nevertheless, the proposal would be small scale infill within an 'other village', which is permitted by Policy H1 of the SOLP, because the site is located between housing and the hotel complex and represents a small gap in an otherwise built-up frontage. It would also have exactly the same site area as the extant permission and would provide 2 additional, 3 bedroom dwellings, to which there is an identified need. This is particularly supported by Policy TwA5 of the TANP and Policy H11 of the SOLP. It would also optimise the potential of the site and avoid homes being built at low densities. This is supported by the National Planning Policy Framework (the Framework). Furthermore, the Framework supports the development of windfall sites and gives great weight to the benefits of using suitable sites within existing settlements for homes.
8. Therefore, despite the site lying outside the defined TANP village boundary, the location of development would be suitable. Thus, the material considerations in this instance indicate a decision that is not in accordance with Policy TwA2 of the TANP, but would be in accordance with the development plan when considered as a whole.

Active and sustainable modes of travel

9. Milton Common is a relatively small village, but with good transport links to the A40 and M40. The adjacent hotel contains publicly accessible services, such as the restaurant and bar, gym, pool and spa. Aside from this, however Milton Common does not contain a wide range of facilities, such as a school or shops.
10. That said, there is a bus stop nearby, accessible by footpath, and less than a 5 minute walk from the site. This offers a weekday service and would be a realistic option for future residents given the proximity. Cycling to access some services and facilities could also be utilised, although the propensity to cycle does depend on individuals, particularly noting that the roads surrounding the site are subject to higher speed limits.
11. Overall, the location of development is likely to result in future residents relying on a private car for some, but not all, journeys. Despite this, the dwellings would be fitted with electrical vehicle charging points. This means that future owners would be encouraged to own ultra low and zero emission vehicles, which represents a sustainable transport mode in the Framework.
12. Furthermore, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this

instance, services are not a long distance away such that the proposal could support services in other villages nearby. Additionally, given the site has an extant consent for 4 dwellings, the addition of 2 dwellings in this location would not cause significant harm to the promotion of sustainable transport modes. Additionally, even if there were some harms, the benefits of developing a windfall site in a way which optimises the site density and provides needed 3 bedroom units would outweigh this asserted harm.

13. I recognise that this is a different conclusion to the previous appeal decision. However, the scale of development and resulting spatial policy conflict in that decision is materially different to the proposal before me. There would be compliance with Policy H1 of the SOLP, which sets no prescriptive limits on dwelling numbers.
14. Therefore, the development would support active and sustainable modes of travel as far as reasonably necessary for the location. This would be compliant with Policies DES1 and TRANS2 of the SOLP. These seek to ensure development provides access to local services and facilities, and encourages walking and cycling to nearby facilities, employment and public transport hubs.

Biodiversity Net Gain

15. Whilst there is an extant consent for 4 dwellings, the additional 2 dwellings would result in an increased area of development on site such that there would be a greater loss of biodiversity. The Biodiversity Impact Calculation has demonstrated that the scheme results in a likely net loss of 1.0541 habitat units (- 72.40%). Biodiversity net gain (BNG) would be necessary to comply with Policy ENV3 of the SOLP, which sets out that "as a minimum, there should be no net loss of biodiversity".
16. The method by which the Council seeks to achieve this is through a condition. This would require a certificate confirming the agreement of an Offsetting Provider to deliver a Biodiversity Offsetting Scheme. This essentially requires payment by the appellant to the Council's preferred provider. The Council claim that other appeal decisions have used this suggested condition, however, none have been presented to me.
17. Off site gains should ideally be secured either through a planning obligation or a Conservation Covenant (when they apply). This would either be a tripartite obligation with a scheme that is on the register and within a Local Nature Recovery Strategies area. This would properly secure policy compliant BNG, in this instance, requiring the Council's external provider, Council and appellant to precisely agree to the delivery and location of the off site BNG.
18. Furthermore, although it would be a pre-commencement condition, because BNG is not currently mandatory for small scale schemes, I have concerns about whether the offsetting would be in a location that would mitigate the loss at a local level and to some extent, the reputability of the provider. Likewise, I have serious concerns about how the condition would be relevant to the development because the offsetting could be provided in an entirely different location detached from the site.
19. The details for the provider submitted by the Council appears to cover much of the Oxfordshire districts. Even though it looks to identify suitable receptor sites where the impact from the development is located, the funds are pooled into a

single pot for each district. Thus, my concerns remain about how off site gains relevant to the development are properly secured, despite the Council having control and oversight of the process.

20. I am not convinced that the suggested condition would properly secure BNG sufficient to meet the tests for conditions and policy compliance. The appellants comment that they would be content to enter into a planning obligation to provide BNG. However, I do not have such an obligation before me, and there are no exceptional circumstances presented that would warrant a condition requiring this.
21. Therefore, the development would not secure BNG. This would be contrary to Policy ENV3 of the SOLP.

Conclusion

22. The proposal would be in a suitable location and would support active and sustainable modes of travel. However, the proposal would not properly secure BNG, and there would be a conflict with the development plan. This conflict would outweigh all other matters and consequently, the appeal is dismissed.

Katie McDonald

INSPECTOR