



Appeal Decision

Site visit made on 20 February 2024

by B J Sims BSc (Hons) CEng MICE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2024

Appeal Ref: APP/J3720/W/23/3327119

Land north of Hall Lane, Harbury, Southam, Warwickshire, CV33 9HG.

- 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 Mrs Donald against the decision of Stratford-on-Avon District Council.
 - The application Ref 23/00130/FUL, dated 20 February 2023, was refused by notice dated 27 April 2023.
 - The development proposed is the erection of 1 No self-build dwelling and creation of a natural wildlife habitat including a wildflower meadow and native tree planting.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 No self-build dwelling and creation of a natural wildlife habitat including a wildflower meadow and native tree planting, on land north of Hall Lane, Harbury, Southam, Warwickshire, CV33 9HG, in accordance with the terms of the application, Ref 23/00130/FUL, dated 20 February 2023, subject to the conditions set out in the Schedule appended to this Decision.

Planning Issues

2. The main issues are:
 - i. the effects the proposed development would have on the local settlement pattern and the landscape of the adjacent open countryside;
 - ii. the effect of the proposed development with respect to the loss of open space within the setting of the adjacent Harbury Conservation Area (CA); and
 - iii. whether there are material considerations to override any planning harm the development may cause.
3. It is also necessary to consider further concerns raised with respect to residential amenity, access and road safety, flood risk and the natural environment.

Reasons

Settlement Pattern and Open Countryside

4. There is a practical degree of some logic in extending built development beyond Spinney Cottage and Hall Lane House. A new house as proposed would enjoy direct access shared with Hall Lane House, which, like Old Toms Barn to the west is set behind other development fronting Hall Lane.
5. The use of local construction materials could be secured by planning condition to ensure the satisfactory appearance of the house, in keeping with the locality. Due to the placement of the house within the site, the open view into the countryside from the access lane and the perception of the site from within the CA would be retained.
6. However, the development would project northwards beyond the defined settlement boundary and into the field which comprises the main part of the appeal site and forms part of the adjacent open countryside. Even though the rear elevation of the proposed house would align with the rear boundary fence of Old Toms Barn, its curtilage would extend into the field, past the extent of any other nearby domestic property.
7. Therefore, even though the site is in a sustainable location adjacent to the edge of the village of Harbury, the development would not truly reflect the character and distinctiveness of the locality and, to some extent, would erode the rural character of the open countryside.
8. In these respects, the development would thus be strictly contrary to Policies CS.5, CS.9, CS.15 and AS.10 of the adopted Stratford-on-Avon Core Strategy (CS) as well as Policy HO.1-2, HO.5-6 and HO.10 of the made Harbury and Deppers Bridge Neighbourhood Plan.

Open Space

9. The appeal site serves as open space immediately north and west of the boundary of the Harbury CA, contributing to its rural setting. Its partial loss to built development would reduce that contribution, resulting in less than substantial harm to the designated heritage asset, contrary to Policy CS.8 of the CS.

Other Material Considerations

10. There is no policy in the adopted development plan to provide for self-build homes. Policies SAP.6-7 of the emerging Site Allocations Plan do make such provision and the current proposal would potentially comply with the criteria of those policies, including with respect to its small scale and good access.
11. However, those emerging policies as yet carry limited weight, whilst currently there is an undisputed shortfall of some 81 self-build housing sites in Stratford-on-Avon, with respect to the statutory duty upon the Council to make such provision under the Self-Build and Custom Housebuilding Act 2015. The single self-build site offered by this proposal would contribute to the supply of such sites and reduce the shortfall.
12. The proposed creation of a wildflower meadow with native tree planting, in the remainder of the field which comprises the appeal site, would benefit local ecology with a calculated net gain in biodiversity.

13. The development would also make full use of the site and provide some local economic and social benefit.

Further Concerns

Residential Amenity

14. There is local concern regarding the potential long-term effect the development now proposed on living conditions, in particular at Hall Lane House, next to the appeal site.
15. This is understandable, especially considering that a previous proposal for a bungalow was refused on appeal, partly on amenity grounds, and noting a misleading assertion on behalf of the present Appellants that the proposed house would stand 10m from the Hall Lane House boundary, which is not confirmed by the submitted layout plan.
16. However, the evidence is that, in reality, the two buildings would be 10m apart and that direct facing overlooking between windows would be avoided. A separation distance of 10m appears consistent with the local development pattern and appears to me sufficient to avoid undue dominance, overshadowing, noise or disturbance.
17. There is also fear of disturbance during the construction period. Any development can cause some disruption or disturbance but this falls equally under environmental health legislation and is not generally an overriding planning consideration.
18. Overall, judging the present proposal on its own merits, I do not consider there to be a substantive planning objection with respect to residential amenity.

Access and Road Safety,

19. Notwithstanding local concern, I am satisfied that additional traffic generated by a single additional house with access along the existing access lane would not give rise to unacceptable danger to pedestrians or vehicles, given the access appears adequate and Hall Lane relatively lightly trafficked.

Flood Risk

20. The site is in a designated area of low flood risk and there is no evidence of significant likelihood of the appeal site becoming flooded.

Natural Environment

21. Natural England is concerned that the integrity of the nearby Harbury Railway Cutting Site of Special Scientific Interest must be protected from any construction or landscaping works permitted within the appeal site. There is also third party anecdotal evidence of species such as woodpecker and muntjac being observed on the site.
22. Natural England hold no objection, subject to conditions to secure a Construction Environmental Management Plan (CEMP) and a landscape biodiversity buffer, and the CEMP could be extended to cover any protected species encountered.

Cases in Precedent

23. The written representations for and against this appeal cite a number of cases in precedent.
24. The previous appeal for a bungalow on the same site was dismissed due to encroachment outside the settlement but also for other reasons of amenity.
25. The Council has allowed a six-house, self-build scheme outside the settlement boundary at Bush Heath but, unlike the present appeal site, the land had been allocated in the emerging Site Allocations Plan.
26. In the majority of a range of cases, the tilted balance of paragraph 11(d)(ii) of the National Planning Policy Framework (NPPF) was considered to have been engaged in view of the absence of a self-build housing policy, although there were exceptions.
27. In all of these instances, the outcome turned essentially on a judgement of the planning balance arising from the individual circumstances of the proposal. That is the approach I take in this appeal, considering that none of the cases cited are directly comparable with the present case.

Planning Balance and Conclusion

28. The development plan policies cited above are essentially consistent with national policy and are material to this assessment. However, the absence of any policy providing for self-build housing sites engages the so-called tilted balance of NPPF paragraph 11(d)(ii), whereby approval should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. Notwithstanding the conflict I have identified with a range of CS and NP policies in relation to the settlement pattern, open countryside and loss of open space, I consider the harm that the development would cause to be comparatively slight. That is because the appeal site is well enclosed by the railway cutting and associated vegetation and the house would, in practice, be a logical extension of built development at that point, with no harmful effect on neighbouring amenity. Further, the value of the field as open space is no more than that of relatively small area of grazing land devoid of any protective landscape designation, such that its contribution to the setting of the CA is limited.
30. Against that is set the benefits of a single self-build site in the face of a substantial local shortage of 81 self-build plots, together with a commitment to create a wildflower meadow with native tree planting providing environmental enhancement, secured by planning condition and a unilateral planning obligation. However, I regard these benefits too as relatively slight.
31. In the final balance, recalling that I have found the proposal to be neutral regarding any further planning concerns, I regard the slight benefits of the development as nonetheless sufficient to outweigh any degree of policy conflict with respect to the main issues of settlement pattern, countryside and loss of open space. On this basis, I conclude that planning permission is justified.

32. Applying the tilted balance, it follows that the adverse impacts of granting the permission sought in this appeal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.
33. Accordingly, this appeal should be allowed, subject to Conditions 1-8 suggested without prejudice by the Council, for the reasons stated in the appended Schedule.

B J Sims

INSPECTOR

APPENDIX

SCHEDULE OF PLANNING CONDITIONS

1. The development to which this permission relates must be commenced not later than the expiration of three years from the date of this permission.

Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in accordance with the following plans and drawings: 202210-01-B, 202210-02-B, 202210-03-A, 202210-04-B, 202210-05-B, 202210-07. The development shall also be carried out in accordance with the Design and Access Statement unless otherwise required by conditions attached to this permission.

Reason: To define the permission and to ensure that the development meets the design quality and environmental requirements of Policy CS.9 of the Stratford-on-Avon Core Strategy (2011-2031).

3. Prior to progression above slab level of any building which forms part of the development hereby permitted, a schedule of materials and finishes (including samples and trade descriptions/brochure details where appropriate) of materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details and completed before the development is first occupied or used and thereafter shall be retained and maintained in that form, unless the Local Planning Authority gives prior written approval to any subsequent variation.

Reason: To enable the Local Planning Authority to consider the details of all external finishing materials prior to their installation/construction at an appropriate stage in the course of the development to ensure that the development displays good design practice and reflects local distinctiveness, having due regard to safeguarding visual and residential amenity and to accord with Policies CS.9 and CS.15 of the Stratfordon-Avon District Core Strategy 2011-2031.

4. Prior to progression of any part of the development hereby permitted above slab level, a scheme of hard and soft landscaping detailing treatment of all parts of the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall include: - planting plans (to a recognized scale) and schedules indicating the location, number, species, density, form and size of proposed tree, hedge and shrub planting; - existing landscape features such as trees, hedges, shrubs and ponds which are to be retained and/or removed, accurately plotted (where appropriate); - location, type and materials to be used for hard surfacing where applicable for permeable paving, and use within tree Root Protection Areas ((RPAs), including specifications and details of manufacturer, type and design, colour and bonding pattern where appropriate; - the position, design, materials, means of construction of all site enclosures and boundary treatments (e.g. fences, walls, railings, hedge(banks)), where appropriate; - car parking layout and any other vehicular and pedestrian

access and circulation areas; - a timetable for the implementation of the soft and hard landscaping scheme. There shall be no excavation or raising or lowering of levels within the prescribed root protection areas of retained trees unless previously approved in writing by the Local Planning Authority. The approved soft and hard landscaping scheme shall be carried out strictly in accordance with the approved timetable of implementation and shall thereafter be protected, maintained and managed in accordance with the approved details.

Reason: To safeguard and enhance the character and amenity of the area, to provide ecological, environmental and bio-diversity benefits [and to maximise the quality and usability of open spaces within the development], and to enhance the setting within the immediate locality, having regard to Policies CS.5, CS.6 and CS.9 of the Stratford-on-Avon District Core Strategy 2011-2031.

5. The dwelling hereby approved shall only be built and first occupied by Mr and Mrs Donald (including where built following a commission by the aforesaid applicants).

Reason: The proposed dwelling is justified because it has been proposed as self-build housing, having regard to Policies CS.1, CS.15, CS.16 and AS.10 and the Self-Build and Custom Housebuilding Act 2015.

6. Prior to progression of any part of the development hereby permitted a Construction Environmental Management Plan shall have been submitted to and approved in writing by the Local Planning Authority to demonstrate how the construction works will avoid damage to the Harbury Railway Cutting Site of Special Scientific Interest and any protected species encountered on the site.

Reason: To ensure the protection of biodiversity interests.

7. Prior to progression of any part of the development hereby permitted and notwithstanding the landscape scheme to be provided under Condition 4 of this permission a Landscape Biodiversity Buffer shall be established to protect the Harbury Railway Cutting Site of Special Scientific Interest and shall be permanently maintained thereafter in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the protection of the Harbury Railway Cutting Site of Special Scientific Interest.

8. Prior to first use of the development hereby permitted, the sustainability measures set out within the supporting Climate Change Checklist shall be incorporated into the design of the development and/or site layout as relevant. Thereafter, the approved sustainability measures shall be retained and maintained.

Reason: To ensure sustainability measures are taken into account in the development, having regard to Policies CS.1, CS.2 and CS.9 of the Stratford-on-Avon District Core Strategy 2011-2031 and Part V of the Development Requirements SPD.

- End of Schedule -