



Appeal Decision

Site visit made on 20 May 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Appeal Ref: APP/D3125/W/23/3329201

Land North East of Lantern House, 15 Shilton Road, Burford, Oxfordshire OX14 4PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Richard and Barbara Allen against the decision of West Oxfordshire District Council.
 - The application Ref is 23/00002/OUT.
 - The development proposed is for the provision of two self-build/custom housebuilding plots with new access from the A40/Oxford Road and provision for pedestrian crossing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline consent with all matters, except for access, reserved for future consideration.
3. There is an extant outline planning permission on the appeal site, ref. 20/01210/OUT granted 30 July 2020 for two self-build/custom housebuilding plots with vehicular access from Shilton Road. Subsequent reserved matters were agreed for the two dwellings, ref. 23/02021/RES on 16 October 2023. This extant scheme is a material consideration to which I turn to, as appropriate, throughout my decision.
4. An updated Ecological Impact Assessment (EIA) and Biodiversity Impact Assessment (BIA), both dated September 2023 have been submitted subsequent to the Council's decision. The Council has reviewed and commented on these documents, and so I have had regard to them in reaching my decision.
5. A revised National Planning Policy Framework (the Framework) was published in December 2023 and so is a material consideration I have had regard to. The parties had opportunity to comment on the revised Framework in their submissions.

Main Issues

6. The main issues in this appeal are the effect of the proposed development on:
 - highway safety, in particular with regard to pedestrian movements across the A40; and,
 - biodiversity.

Highway Safety

7. The appeal site comprises a large parcel of garden land to the rear of Lantern House, set between this host dwelling and the A40. The appeal proposal differs from the extant permission in that it proposes vehicular access and sole pedestrian access to the proposed dwellings via the A40, with a proposed dedicated dropped kerb pedestrian crossing point on the A40. The extant consent includes vehicular and pedestrian access via Shilton Road and, through choice, offers the opportunity for pedestrians to access the site from the A40, where the bin store collection point is to be situated along the main road.
8. The traffic speed limit on the A40 in front of the appeal site, where the crossing point is proposed, is 40mph, it then drops down to 30mph closer to the junction of the A40 and Shilton Road on approach to Burford. Evidence¹ has been provided that the real-life vehicular speeds along the road in front of the appeal site are an average of 40 mph westbound and 43 mph eastbound. While there is no footway on the appeal site side of the A40, there is a footway on the opposite side of the road.
9. The two-way peak hour traffic flows recorded in the Automatic Traffic Count² equate to between 1,112 and 1396 vehicles per hour. Although, the Glanville assessor noted that vehicle travel behaviours along the A40 are not so constant and that they were able to cross the highway several times over the peak morning traffic period, with gaps being in reality between vehicle platoons ranging between 2 to 7 seconds.
10. However, I observed the movement of traffic along the A40 between approximately 9.15am and 10.30am on the day of my visit, both from the side of the A40 and from within the site. I noted traffic travelling at speed and that there were infrequent gaps between traffic at such time, creating a fairly constant traffic flow along this busy stretch of the A40, despite being beyond the morning peak period. I found that as a pedestrian, the volume and speed of traffic provided a daunting and unpleasant feeling crossing the A40, with the need to cross cautiously and quickly. In such context, I consider it would be particularly difficult and unsafe to cross the A40 for a child, elderly person, or for someone with mobility issues or a pram, even with dropped kerb heights at the defined crossing point.
11. I appreciate the findings of the crossing demand survey carried out in respect of the controlled crossing located some 100 metres west of the junction of the A40 and Shilton Road. It notes the demand to cross the A40 at this crossing would mean eastbound traffic on the A40 is likely to be stopped at times and that, westbound traffic will be slowing down on approach to the junction with Shilton Road and the controlled crossing. Although, this survey was limited to just one day and the crossing would only stop traffic for limited periods (between 14 and 26 seconds) when called upon, and the crossing survey does not account for any traffic traveling out of Shilton Road and turning right to travel eastbound along the A40 either.
12. That there is a bin collection point on the A40 in the extant consent, whereby a refuse vehicle would stop fortnightly on the road is not comparable to

¹ Recorded 85th%ile Vehicle Speeds taken from Automatic Traffic Count Surveys (ATC) carried out in the vicinity of the site from 27 November 2020 until 03 December 2020.

² ATC surveys carried out 27 November 2020 until 03 December 2020.

pedestrians crossing the A40 in terms of pedestrian safety. Furthermore, that there would be appropriate access visibility splays for the 40 mph speed limit, in accordance with relevant highway guidance, does not persuade me that the proposal would provide a safe pedestrian crossing on the A40, for the reasons set out above.

13. The Stage 1 Road Safety Assessment (RSA)³ was based on a proposed vehicle access onto the A40 to serve the two dwellings with a separate pedestrian/cycle access out onto Shilton Road. Also, the RSA considered the possibility of a footway along the south side of the A40 between the site and Shilton Road. It found that pedestrians would be unlikely to use this footway, favouring to cross the A40, as this would provide a more direct route.
14. The RSA also noted that it would introduce a new problem, with no continuing footway beyond the site travelling east away from Burford, meaning pedestrians would have to cross the A40 to the existing footway on the opposite side of the road or turn back. Thereby, instead, the RSA recommended a dedicated pedestrian crossing point on the A40, subject to the provision of dropped kerbs, noting that pedestrians may seek to use the proposed vehicular access as well as the proposed Shilton Road pedestrian access.
15. Having reviewed the comments made by the Oxfordshire County Council Highway Authority (HA) in respect of the extant consent and the other evidence before me, I disagree the current proposal is not materially different to the principles previously considered by the HA. The extant consent includes a safe means of pedestrian access via Shilton Road, as well as providing pedestrians with the opportunity to use the proposed vehicular access via the A40 through choice. Therefore, the extant consent does not solely rely on pedestrian access from the A40, as per the proposed development.
16. The appellants assert that there would be an enhancement compared to the extant permission in providing an access onto the A40, as this would allow vehicles to pull off the road entirely from the A40 to pick up/drop off pedestrians and so prevent vehicles stopping on this main road. In view of the speed and frequency of traffic and that, the previously approved dwellings face toward the rear of Lantern House, with vehicular and pedestrian access from Shilton Road, I feel it would be unlikely that future occupants of the approved dwellings would choose to be picked up/dropped off along the A40, as opposed to from Shilton Road. Any such benefit would therefore be limited.
17. That there are other existing residential properties and a telephone exchange beyond the appeal site to the east, with similar access onto the A40 and, that there are no recent recorded incidents of personal injuries related thereto, does not justify nor demonstrate that the proposed dwellings would be provided with an acceptable safe means of pedestrian access. Even with the proposed dedicated crossing point adjacent to the appeal site, this would not aid the pedestrians accessing neighbouring properties further along the road, as the scheme does not propose a footway along the south side of the A40 leading to such properties. Rather, the proposal would compound unsafe pedestrian crossing of the busy A40 highway, with pedestrians trying to cross at several different points along the road.

³ Traffic Management Consultants Stage 1 Road Safety Audit Report (Feasibility), produced for Red Living, dated 6 July 2022.

18. The TRICS⁴ data forecasts that the number of pedestrian trips associated with the proposed new dwellings would be low, but not non-existent. Also, it notes that the number of trips may differ in reality. Therefore, there would still be potential harm caused to the safety of pedestrians crossing the A40 related to the proposed development. Furthermore, even if there may have been some inconsistency in the HA advice between the various applications and the pre-application process, this would not justify the harm that would be caused.
19. Overall, I find there would likely be highway safety concerns in regard to pedestrians crossing the A40 and so, in terms of the Framework, as the proposal would not provide a safe and suitable access to the site for all users, the development would cause an unacceptable impact on highway safety.
20. Having regard to such, the proposal would conflict with Policy T2 of the West Oxfordshire Local Plan 2031, September 2018 (LP), which requires, amongst other matters, that all development demonstrates safe access. Also, there would be conflict with Policies T3 and OS2 of the LP, which set out respectively that development that fails to make adequate provision of measures to encourage the use of non-car modes of transport will not be favourably considered, and that all development should be provided with safe and convenient pedestrian access to supporting services and facilities.

Biodiversity

21. The EIA sets out that a Preliminary Ecological Appraisal (PEA) was carried out on 10 July 2023. It concludes that the site is unremarkable in regard to ecology and sets out several recommendations for avoidance and/or mitigation measures, which do not require further survey work to be undertaken. Therefore, subject to a condition to ensure any required assessment and mitigation work is carried out prior to any development or vegetation clearance taking place at the site, the proposal would be acceptable in regard to ecology. Also, the range of habitat creation and biodiversity protection and enhancement measures set out in the PEA could be adequately secured via condition.
22. The BIA demonstrates the proposed development would provide in excess of 10% biodiversity net gain. This would be an additional benefit of the new scheme compared to the extant permission, as no biodiversity assessment was undertaken, nor net gain enhancement required for the previous consent.
23. I appreciate the Council ecologist's comments about the ownership and management of the proposed on-site areas of biodiversity net gain. However, as the areas where net gain is proposed lie within the appeal site, a biodiversity management plan could be secured via condition, to ensure the areas are managed and maintained appropriately to provide long term biodiversity net gain.
24. Therefore, subject to conditions, the proposal would be acceptable in terms of biodiversity and consequently, there would be no conflict with Policy EH3 of the LP, which requires biodiversity to be protected and enhanced to achieve an overall net gain in biodiversity.

⁴ TRICS Report contained in Appendix J of Glanville Statement on Transportation Matters dated 06 September 2023.

Other Matters

25. A small part of the proposed visibility splay along the A40 at its western edge lies within the Burford Conservation Area (CA), yet the majority of the appeal site lies some distance outside the CA, including where the new dwellings are proposed. Bearing in mind this context, I must have regard to my statutory duty, as decision-maker, under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
26. No structures or buildings are proposed within the visibility splay and furthermore, it would need to remain open and clear of any obstruction in the interests of providing a safe means of access to the proposed development. Therefore, the character and appearance of the small area of land which lies within the CA would not change as a result of the proposed development. Consequently, there would be no harm caused to the significance of the CA.

Planning Balance

27. The benefits of the proposed scheme, above those related to the extant consent, including but not limited to the provision of biodiversity net gain and housing delivery, would not outweigh the harm I have identified. Thereby, having regard to the Framework, the proposal does not represent a sustainable form of development.
28. The appellants assert that the Council does not have a 5 year housing land supply (HLS), referring to a recent Inspectors' decision, ref APP/D3125/W/23/4441279⁵, which the appellants advise sets out the Council's current HLS to be 4.38 years. Where the policies which are most important for determining the application are out-of-date, the 'tilted balance' would be engaged, as set out in paragraph 11 (d) of the Framework. However, in this instance, even if the undersupply in housing land was at the level argued by the appellant, the harms identified in respect of highway safety amount to adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

29. In view of the above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

C Billings

INSPECTOR

⁵ Note, this appeal reference does not align with the Planning Inspectorates' current numbering system.