



Appeal Decision

Site visit made on 30 April 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal Ref: APP/E3335/W/23/3330798

Land at 345552 136293, Main Street, Walton, Street, Somerset

- 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 Frank Rizzuti against the decision of Somerset Council.
 - The application Ref is 2020/0832/OTS.
 - The development proposed is described on the application form as 'new construction of 6 dwellings'.
-

Decision

1. The appeal is allowed and planning permission is granted for construction of six dwellings at Land at 345552 136293, Main Street, Walton, Street, Somerset in accordance with the terms of the application, Ref 2020/0832/OTS, and the plans submitted with it, subject to the conditions in the attached Schedule.

Applications for costs

2. An application for costs was made by Mr Frank Rizzuti against Somerset Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address used on the planning application form appears to be incorrect, so I have used the address as it appears on the Council's Decision Notice and on the appeal form.
4. The appellant's name was incomplete on the planning application form so have used the one as it appears on the appeal form.
5. The planning application was submitted in outline with all matters of detail, except access, reserved for future consideration. I have assessed the proposal on this basis and treated the drawings as being for illustrative purposes only, except in respect of access.

Main Issues

6. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the appeal scheme having regard to the spatial strategy for housing in the development plan;
 - Whether the location of the appeal site would be appropriate having regard to the accessibility of services and facilities;
 - Whether the quantum of development proposed would be appropriate;

- The effect of the appeal proposal on highway safety; and
- The effect of the proposed development on the integrity of the Somerset Levels & Moors Special Protection Area and Ramsar site.

Reasons

Spatial Strategy

7. Together, Core Policy 1 and 2 (CP1 and CP2) of the Mendip District Local Plan 2006 – 2029 Part 1: Strategy and Policies adopted December 2014 (LP) set out the development strategy in the plan area. It steers development towards the five principal market towns with development tailored to meet local needs being directed to primary and secondary villages. Development in the open countryside is strictly controlled.
8. Walton is identified as a secondary village in CP1 of the LP, with some facilities and a public transport service aimed at meeting more localised housing needs. However, there is no dispute between the main parties that the appeal site lies outside the development limit of Walton. The appeal site is therefore in the open countryside. Core Policy 4 (CP4) permits rural affordable housing, to be held in perpetuity for the benefit of the community where there is evidence of local needs. The appeal proposal however, relates to the provision of up to six open market houses and would therefore be contrary to CP4 of the LP.
9. The proposal would introduce new housing into the countryside in a way which would not adhere to the distribution of development policies of the development plan including CP1, CP2 and CP4. This would undermine the planned approach to the distribution of development and be harmful, given the public interest in having a genuinely plan led system that provides consistency and direction.

Access to services and facilities

10. The appellant has provided details of a number of services and facilities on offer in Walton. I saw some of these during my site visit, including the primary school, church, village hall, Royal Oak public house, sports pitches, children's play area and car dealership. These are accessible on foot from the appeal site on footways that are reasonably level and lit. In addition, the close proximity of Walton to Street, together with good public transport links, means that the daily needs of occupiers of the appeal site could be met without reliance on the private car.
11. In my view this represents a reasonable level of provision for a rural settlement taking into account that opportunities to maximise sustainable transport solutions vary between urban and rural areas.

Quantum of development

12. Core Policy 2 (CP2) of the LP defines the minimum housing requirement for the plan area. It sets out how the growth is to be distributed within the various settlements. Table 9 in the supporting text to CP2 of the LP indicates that the housing requirement of 40 dwellings for Walton is based on a proportionate approach to growth in the villages equating to around 15% of the existing housing stock. To be clear, it is indicated that this is a 'guideline'¹.

¹ Paragraph 4.33 of the LP

13. The Council's case is that 56 new dwellings have been built or committed in Walton since 2017. The Council have also drawn my attention to a further housing allocation (Policy ST3) for a minimum of 400 dwellings in the parish of Walton in the Mendip District Local Plan 2006-2029 Part 2: Sites and Policies (December 2021). There is no residual need for further residential development in Walton, say the Council and the addition of the six dwellings in the appeal proposal, would constitute excessive and disproportionate growth.
14. Notwithstanding my findings in respect of the spatial strategy, there is no substantive evidence before me to demonstrate that harm would arise from the construction of six dwellings on the appeal site. For example, there is nothing before me to suggest that existing facilities and services are under pressure or would not have the capacity to accommodate the residents of the proposed development. Equally there is no evidence that the development would be harmful to landscape character or result in some other harmful environmental impact, particularly given my findings below in respect of highway safety.
15. Moreover, the LP housing requirement for Walton is not expressed as a maximum. It is clear that the figure of 40 dwellings in CP2 of the LP is a minimum and a guideline. In this instance, for the reasons set out above, the erection of a further six dwellings would not constitute excessive and disproportionate growth.

Highway safety

16. The appeal site would be accessed from the A39, within the 30mph speed limit. The appeal proposal would result in an increase in the number of vehicles using the existing access.
17. There is anecdotal evidence from residents that cars using the A39 regularly exceed the speed limit. Indeed, the appellant's Highways and Transportation Statement of Case (HTSC)² indicates that the 85th percentile vehicle speeds are above the speed limit, being 33.4mph for westbound traffic. Accordingly, the HTSC calculates that Manual for Streets (MfS) requires a visibility splay of 45.8m to the left and 50.1m to the right.
18. The appeal site is set well back from the highway behind a wide grassed verge. The access would be upgraded to provide a pedestrian footway on one side and it would be wide enough to accommodate two way traffic. The HTSC³ indicates that the required visibility in both directions can be achieved and this has not been disputed by the Council. Accordingly, I am satisfied that the proposed access would be constructed to an acceptable standard for the additional traffic arising from the development, to ensure the safety of vehicles pulling out onto the A39.
19. There may be occasions when vehicles turning right into the appeal site, would interrupt the free flow of traffic on the A39. The HTSC refers to this as 'kerbside friction'. This occurs elsewhere in Walton when vehicles travelling in both directions along the A39 have to stop and wait in the carriageway to access dwellings, commercial properties, farms and secondary side roads. This affects the free flow of traffic, requiring traffic to slow down. The committee minutes record that the Highway Authority advised that a right-hand turn lane

² by Neil Brant Consulting dated September 2023

³ Figure NBC-8 of the Highways and Transportation Statement of Case

into the appeal site was not feasible for the development of six dwellings. I have not been presented with evidence as part of this appeal which would lead me to conclude that vehicles waiting on the highway to turn right into the appeal site would be inherently unsafe.

20. The appeal proposal includes the provision of an uncontrolled pedestrian crossing on the A39 near the access. The HTSC sets out that the two-way AM peak traffic flow on the A39 equates to one vehicle every three seconds but that traffic does not pass at a uniform rate, as a consequence of kerbside friction and slow moving vehicles elsewhere in the network. This is consistent with what I saw at my site visit. Visibility at the crossing, a distance of 1.5m back from kerb edge, is shown to be in excess of the visibility splays required by MfS for the 85th percentile traffic speed set out above. I am therefore satisfied that pedestrians will have sufficient visibility of oncoming vehicles and sufficient time between vehicles to safely cross the road.
21. Anecdotal evidence of car accidents and near misses has also been raised by interested parties. Whilst that may be the case, no specific or detailed information has been provided. In the absence of any specific details, I have had regard to the road traffic accidents resulting in injury provided in the HTSC. There were four in a five year period. One instance was 168m to the west of the appeal site in a 40mph speed limit. Two others occurred 435m to the east of the appeal site in the dark and the fourth was on Long Lane to the south of the appeal site, not the A39. Given the number and distribution of these incidents, it does not lead me to conclude that the road is inherently dangerous nor that the vehicular traffic arising from the development of the appeal site would lead to an unacceptable impact on highway safety.
22. Taken together, I conclude that the appeal proposal would not result in an unacceptable impact on highway safety. Accordingly, the proposal would comply with Policy DP9 of the LP which seeks to ensure that safe and satisfactory access is provided. For the same reasons, I also find no conflict with Paragraphs 114 and 115 of the National Planning Policy Framework (the Framework).

Habitats

23. The application site is within the fluvial catchment of the Somerset Levels & Moors Special Protection Area (SPA) and Ramsar, specifically the Brue sub-catchment. While the SPA is designated for its international waterbird communities, the Ramsar Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches.
24. There is potential for the appeal proposal to result in likely significant effects on the SPA and Ramsar as a result of increased recreational pressure. However, the appeal site is 3km away from the SPA and Ramsar. At this distance, it would be too far to be a realistic destination for walkers. The availability of car parking is a restricting factor and the low number of car parking facilities means that additional visits by car are inherently limited. The appeal proposal would not therefore lead to a likely significant effect on the designated features of the SPA and Ramsar in this respect.

25. In relation to the SPA, Natural England⁴ is satisfied that additional nutrients from additional residential units are unlikely, either alone or in combination, to have a likely significant effect on the internationally important bird communities for which the site is designated. On this basis, the effects of additional nutrients from development on the SPA can be screened out of further assessment.
26. However, the interest features of the Ramsar are considered unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates largely derived from the discharge from wastewater treatment works. The proposed development would generate waste water effluent which would be discharged to main sewers connected to Glastonbury Wastewater Treatment Works. This would result in increased phosphate loading within the hydrological catchment of the Ramsar leading to a likely significant effect upon the designated features of the Ramsar either on its own or cumulatively with other similar development, without avoidance measures. As the competent authority, I am required to carry out an Appropriate Assessment pursuant to the Habitat Regulations. I have consulted Natural England accordingly.
27. Currently there is no strategic approach to mitigation for phosphorus in the Ramsar. Therefore, the proposed development would result in an adverse effect upon the integrity of the site, unless the appellant can demonstrate phosphorus neutrality.
28. Calculations provided by the appellant indicate that the proposed development will increase phosphate loading in the area by 1.34kg of phosphates per year (kgP/yr) under current permitted discharge levels. This would reduce to 0.58kgP/yr after the completion of the Asset Management Plan (AMP7) upgrades scheduled for the Glastonbury Wastewater Treatment Works. That calculation is premised on water usage being limited to 110 litres per person per day. To mitigate this, the appellant proposes replacing an existing septic tank associated with a single dwelling, located approximately 100m south of the appeal site, with a Package Treatment Plant (PTP) which would provide 1.15kgP/yr mitigation. This would not be sufficient to mitigate the impact of the development under the current permitted discharge levels but would be sufficient once the AMP7 upgrade has been secured (after December 2024).
29. The appellant has submitted a Unilateral Undertaking pursuant to Section 106⁵ which secures the upgrading of the existing septic tank at Bramble Hill to a package treatment plant and delays occupation of the proposed dwellings until post December 2024.
30. On this basis, the planning obligation is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. The obligation therefore meets the tests of the Community Infrastructure Levy Regulations 2010, as amended, and the Framework. The development can therefore proceed without harm to the integrity of the SPA and Ramsar, thus complying with the expectations of the Habitats Regulations.

⁴ Advice contained in their letter to local planning authorities regarding development in relation to the Somerset Levels and Moors Ramsar Site dated 17 August 2020

⁵ Of the Town and Country Planning Act 1990

Planning Balance

31. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of a planning application must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.
32. There is no dispute that the Council cannot demonstrate a five-year housing land supply. The extent of the shortfall is disputed with the Council saying it sits at 3.24 years and the appellant suggesting figures of 2.94 and 2.87 years. Even if I take the higher of the figures, this represents a significant shortfall and Paragraph 11. d) of the Framework is engaged.
33. A rigorous application of Core Policies 1, 2 and 4 would frustrate attempts to address the Council's current housing supply deficit. Hence, the conflict with the spatial strategy does not carry full weight. However, as the policies seek to balance the need for rural housing whilst recognising the intrinsic character and beauty of the countryside and promoting sustainable transport, they are broadly consistent with the Framework. As such, the conflict with the spatial strategy carries moderate weight.
34. Conversely, the proposal would deliver several benefits. It would contribute to housing supply and choice at a point in time when there is a significant shortfall. There is nothing to suggest the proposal could not be delivered quickly and it would deliver six homes. In addition, the housing would not be isolated being surrounded by existing development and there would be access to services and facilities other than by private car. There would also be economic benefits arising from the construction and occupation of the dwellings. In the circumstances, the provision of housing is a moderate benefit.
35. In the absence of harm resulting from the quantum of development and highway safety, the adverse impact of the appeal scheme arising from the conflict with the spatial strategy would not significantly and demonstrably outweigh its cumulative benefits. This is an important material consideration that in this instance indicates the appeal should be determined otherwise than in accordance with the development plan.

Other Matters

36. Interested parties refer to planning permission having been granted for nine dwellings on the site of the former Walton Gateway public house and an additional dwelling using the same access as to the appeal site. However, I have not been provided with details of either of these proposals to enable me to draw any conclusion on the cumulative impact.
37. Interested parties have also referred to the inadequacies of the existing water pressure and sewerage facilities but I have no evidence, such as the comments of the Statutory Undertaker to confirm that this is the case.
38. An updated Extended Habitat and Bat Transect Survey was undertaken in August 2023. A condition can secure the recommended mitigation measures as part of the reserved matters submission. In addition, concerns raised about the layout and impact on living conditions of neighbouring properties are matters which fall to be considered at reserved matters stage.

Conditions

39. I have had regard to the advice in the Planning Practice Guidance and the conditions set out in the Council's officer report and Appendix 3 of their statement of case. The appellant has had sight of those conditions and has not indicated that I should not impose them. Where necessary, I have undertaken some minor editing and amalgamation of those conditions in the interests of precision and clarity without changing their overall substance with the exception of those referred to in paragraphs 44 and 45 below. I have also considered the conditions proposed by the parish council.
40. I have imposed standard conditions (1,2 and 3) relating to the submission and timing of reserved matter applications and the commencement of development. It is necessary to require compliance with the submitted plan, but only in relation to access and the pedestrian crossing as these are not reserved matters (4).
41. Conditions 5 and 6 are necessary to ensure that the reserved matters incorporate sustainable construction and renewable energy opportunities and measures to prevent ecological harm and provision of biodiversity gain.
42. A condition (7) is necessary to secure a surface water and foul drainage scheme in order to ensure the provision of satisfactory drainage and avoid pollution of the environment. Condition 8 is necessary to safeguard the amenities of nearby occupiers from excessive noise during the construction of the development.
43. Condition 9 relating to water usage is necessary for the reasons given in paragraph 28 of this decision and Conditions 10 and 11 are necessary in the interests of highway safety.
44. I have not imposed conditions put to me in respect of materials of construction, landscaping, housing mix, arrangements for the storage of recycling and waste, rainwater harvesting, the arrangement of on-site roads, parking, vehicular and pedestrian movement routes and cycling storage as these fall squarely to reserved matters. I have also not imposed a condition requiring further footway to be provided, as set out by the parish council, as this would not be necessary to make the development acceptable.
45. In addition, I have not imposed conditions requiring the Shadow Habitats Regulations Assessment and Nutrient Neutrality Assessment and Mitigation strategy be implemented as this has been secured through the Unilateral Undertaking, as has the ongoing maintenance of the proposed package treatment plant and the requirement to prevent occupation until January 2025.

Conclusion

46. In conclusion, the proposed development would not adhere to the development plan but material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal should succeed.

Alison Fish

INSPECTOR

Schedule of Conditions

1. Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: SL01 rev C (Site Layout) and PHL-01 rev A (Junction and Crossing Visibility Splays 85th Percentile Traffic Speeds) but only insofar as they relate to access and the pedestrian crossing.
5. A detailed Sustainability Strategy Statement shall be submitted to and approved in writing by the local planning authority as part of the reserved matters application. This shall demonstrate how the development has incorporated reasonable and practical measures through siting, layout and design, and maximised the opportunities for the use of sustainable construction techniques, renewable energy on site and water efficiency measures. The development shall thereafter be carried out in accordance with the approved details.
6. A Wildlife Protection and Enhancement Scheme shall be submitted to and approved in writing by the local planning authority as part of the reserved matters application. This shall include measures to prevent ecological harm and to provide biodiversity gain as set out in the Extended Habitat and Bat Transect Survey by Country Contracts updated August 2023. This shall include proposals for any external lighting. The development shall thereafter be carried out in accordance with the approved details and maintained as such thereafter. No other external lighting shall be installed.
7. No development shall commence, except ground investigations and remediation, until a detailed scheme for the disposal of surface water and foul drainage from the development shall have been submitted to and approved in writing by the local planning authority. This shall include infiltration test results to ascertain whether soakaways would be suitable for the proposed development. The development shall thereafter be carried out in accordance with the approved details and completed prior to occupation of any dwelling.
8. Noise emissions from the site outside the hours of 0800-1800 Monday to Friday and 0800-1300 on Saturday shall not exceed a level of 3 dB(A) below the existing background L90 level (or 8dB (A) below if there is a particular tonal quality) when measured as a 15 minute equivalent continuous sound

level at the boundary of any noise sensitive receptor during any part of the development of the site i.e. the demolition, clearance and construction.

9. No individual dwelling hereby permitted shall be occupied until the optional requirement for potential consumption of wholesome water by persons occupying that dwelling in Part G of Schedule 1 and Regulation 36 of the Building Regulations 2010 of 110 litres per person per day has been complied with.
10. No dwelling hereby permitted shall be occupied until the proposed access and uncontrolled pedestrian crossing shall have been constructed in accordance with details shown on drawing number SL01 Rev C (Site Layout). Once constructed the access shall be maintained thereafter.
11. No dwelling hereby permitted shall be occupied until the visibility splays shown on drawing number PHL-01 rev A (Junction and Crossing Visibility Splays 85th Percentile Traffic Speeds) shall have been provided. The visibility splays shall be retained permanently thereafter and shall be free of any obstruction exceeding 600mm in height.

End of Schedule